STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

May 20, 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: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Handicapped and Disabled Students, 13-4282-I-06
Government Code Sections 7572 and 7572.5
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
(Emergency regulations filed December 31, 1985, designated effective January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Los Angeles, Claimant

Dear Dr. Kay and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **June 10, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, July 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about July 8, 2016. 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.

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\IRC\2013\4282 (Handicapped and Disabled Students)\13-4282-I-06\Correspondence\draftPDtrans.docx

ITEM ___

INCORRECT REDUCTION CLAIM

DRAFT PROPOSED DECISION

Government Code Sections 7572 and 7572.5;
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);

California Code of Regulations, Title 2, Division 9, Section 60040
(Emergency regulations filed December 31, 1985, designated effective January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28][1]

Handicapped and Disabled Students

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

13-4282-I-06

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* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) 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 $18,180,829.

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 June 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 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 claim for fiscal year 2003-2004, dated January 5, 2005.[2] The claimant submitted its 2004-2005 reimbursement claim dated January 10, 2006.[3] The claimant then submitted an amended reimbursement claim for fiscal year 2005-2006, dated April 5, 2007.[4]

The Controller sent a letter to the claimant, dated August 12, 2008, confirming the scheduling of the audit.[5]

The Controller issued the Draft Audit Report dated May 19, 2010.[6] The claimant sent a letter to the Controller dated June 16, 2010, in response to the Draft Audit Report, agreeing with the findings and accepting the recommendations.[7] The claimant sent a letter to the Controller, also dated June 16, 2010, with regard to the claims and audit procedure.[8] The Controller issued the Final Audit Report dated June 30, 2010.[9]

On August 2, 2013, the claimant filed this IRC.[10] On November 25, 2014, the Controller filed late comments on the IRC.[11] On December 23, 2014, the claimant filed a request for an extension of time to file rebuttal comments which was granted for good cause. On March 26, 2015, the claimant filed rebuttal comments.[12]

Commission staff issued the Draft Proposed Decision on May 20, 2016.[13]

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[2] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[3] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[4] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[5] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…", however there is no evidence in the record to support this assertion.

[6] Exhibit A, IRC, page 547.

[7] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[8] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[9] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

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

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

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

[13] Exhibit D, Draft Proposed Decision.

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.

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.[14] 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."[15]

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.[16]

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.[17] 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.[18]

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

[15] *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.

[16] *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.

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

[18] 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.

Claims

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

Issue	Description	Staff Recommendation
Did the claimant timely file its Incorrect Reduction Claim?	The Controller issued the Final Audit Report dated June 30, 2010. The Controller issued three documents, dated August 6, 2000, summarizing the audit findings that were stated in the Final Audit Report and setting a deadline for payment. On August 2, 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), renumbered as § 1185(c) effective January 1, 2011.) Remittance advices and other communications which merely re-state the findings of the Final Audit Report do not re-set the running of the three-year limitations period.
Did the claimant waive the objections it is now raising?	In two letters both dated June 16, 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 June 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

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 audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.[19]

[19] 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.

The Controller's Final Audit Report and the cover letter forwarding the Controller's Final Audit Report to the claimant are both dated June 30, 2010.[20] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[21]

Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days late.[22]

On its face, the IRC was untimely filed.

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[23] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A-1)."[24]

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

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.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant

[20] Exhibit A, IRC, pages 542, 547 (Final Audit Report).

[21] See Code of Civil Procedure section 12a; Government Code section 6700(a)(1).

[22] Exhibit A, IRC, page 1.

[23] Exhibit A, IRC, pages 21-27.

[24] Exhibit A, IRC, page 6.

fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[25]

The Commission's regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and the cover letter forwarding the Final Audit Report to the claimant were both dated June 30, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this 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.[26] 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.[27]

Under these principles, the claimant's three-year limitations period began to run on June 30, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC, because, as of that day, the claimant received or been deemed to have received detailed notice of the harm, and possessed the ability to file and maintain an IRC with the Commission.

Accordingly, the IRC should be denied as untimely filed.

B. 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. 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 14)."[28] By stating these facts in opposition to the IRC, the Controller raises the question of whether the claimant waived its right to contest the audit findings.[29]

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[25] Compare Exhibit A, IRC, pages 21-27 with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

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

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

[28] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[29] 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 June 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.*

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."[30] 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."[31] Waiver is a question of fact and is always based upon intent.[32] Waiver must be established by clear and convincing evidence.[33]

On May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[34] In response to the Draft Audit Report, the claimant's Auditor-Controller issued a four-page letter dated June 16, 2010, a copy of which is reproduced in the Controller's Final Audit Report.[35] The first page of this four-page letter contains the following statement:

> *The County's attached response 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 HDS are eligible, mandate related, and supported.[36]

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 three pages of the four-page letter contain further statements of agreement with each of the Controller's findings and recommendations.[37]

The claimant also filed a separate two-page letter dated June 16, 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 it provided cost report data — not actual cost data — to the

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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").

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

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

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

[33] *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). See also *Sheila S. v. Superior Court (Santa Clara County Dept. of Family and Children's Services)* (2000) 84 Cal.App.4th 872, 880.

[34] Exhibit A, IRC, page 547.

[35] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[36] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[37] Exhibit A, IRC, pages 559-561.

Controller, which then erred by conducting an audit as if the claimant had provided actual cost data.[38] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[39] However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[40]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[41] However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 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."[42] "We designed and implemented the County's accounting system to ensure accurate and timely records."[43] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[44] "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."[45]

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.[46] 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."[47] "We are

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[38] Exhibit A, IRC, pages 6-10.

[39] Exhibit A, IRC, page 9. (Emphasis in original.)

[40] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4) (emphasis added.)

[41] Exhibit A, IRC, pages 11-15, 17-18.

[42] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[43] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[44] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[45] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[46] Exhibit A, IRC, pages 15-17.

[47] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[48]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 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 June 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.

[48] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Government Code Sections 7572 and 7572.5; Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882); California Code of Regulations, Title 2, Division 9, Section 60040 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28])[49] Fiscal Years 2003-2004, 2004-2005, and 2005-2006 County of Los Angeles, Claimant	Case No.: 13-4282-I-06 *Handicapped and Disabled Students* 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:

[49] 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* program for fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller reduced the claims because it found that the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) for fiscal year (FY) 2005-06, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[50] 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):

FY2003-2004: $5,247,918

FY2004-2005: $6,396,075

FY2005-2006: $6,536,836[51]

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 June 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, and that the IRC should be denied and dismissed with prejudice on that separate and independent basis.

[50] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[51] Exhibit A, IRC, page 1. In footnotes 1 to 4, inclusive, of the Written Narrative portion of the IRC, the claimant explains why it is requesting reinstatement of cost amounts which are greater than the amounts that the Controller reduced. Exhibit A, IRC, page 4.

Accordingly, the Commission denies this IRC.

I. Chronology

01/05/2005 Claimant dated the reimbursement claim for fiscal year 2003-2004.[52]

01/10/2006 Claimant dated the reimbursement claim for fiscal year 2004-2005.[53]

04/05/2007 Claimant dated the amended reimbursement claim for fiscal year 2005-2006.[54]

08/12/2008 Controller sent a letter to claimant dated August 12, 2008 confirming the start of the audit.[55]

05/19/2010 Controller issued the Draft Audit Report dated May 19, 2010.[56]

06/16/2010 Claimant sent a letter to Controller dated June 16, 2010 in response to the Draft Audit Report.[57]

06/16/2010 Claimant sent a letter to Controller dated June 16, 2010 with regard to the claims and audit procedure.[58]

06/30/2010 Controller issued the Final Audit Report dated June 30, 2010.[59]

08/02/2013 Claimant filed this IRC.[60]

11/25/2014 Controller filed late comments on the IRC.[61]

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

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[52] Exhibit A, IRC, page 564 (cover letter), page 571 (Form FAM-27).

[53] Exhibit A, IRC, page 859 (cover letter), page 862 (Form FAM-27). The cover letter is dated one day before the date of the Form FAM-27; the discrepancy is immaterial, and this Decision will utilize the date of the cover letter (January 10, 2006) as the relevant date.

[54] Exhibit A, IRC, page 1047 (cover letter), page 1050 (Form FAM-27).

[55] Exhibit B, Controller's Late Comments on the IRC, page 181 (Letter from Christopher Ryan to Wendy L. Watanabe, dated August 12, 2008). The Controller also asserts on page 25 of its comments that "The SCO contacted the county by phone on July 28, 2008, to initiate the audit…", however there is no evidence in the record to support this assertion.

[56] Exhibit A, IRC, page 547.

[57] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[58] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[59] Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

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

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

03/26/2015 Claimant filed rebuttal comments.[62]

05/20/2016 Commission staff issued the Draft Proposed Decision.[63]

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 . . . ."[64] Among other things, the EHA authorized the payment of federal funds to states which complied with specified criteria regarding the provision of special education and related services to handicapped and disabled students.[65] The EHA was ultimately re-named 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.[66]

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.[67] 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.[68] And, in 1985, the Legislature further amended chapter 26.5.[69]

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.[70]

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

[63] Exhibit D, Draft Proposed Decision.

[64] 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].

[65] 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].

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

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

[68] Statutes 1984, chapter 1747.

[69] Statutes 1985, chapter 1274.

[70] "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

In 1990 and 1991, the Commission adopted the Test Claim Statement of Decision and the Parameters and Guidelines approving, *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.[71] The Commission found that the activities of providing mental health assessments; participation in the 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.[72] 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.[73]

In 2004, the Legislature directed the Commission to reconsider *Handicapped and Disabled Students*, CSM 4282.[74] 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.[75]

Statutes 2011, chapter 43 (AB 114) eliminated the mandated programs for *Handicapped and Disabled Students*, 04-RL-4282-10 and 02-TC-40/02-TC-49, by transferring responsibility for

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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.

[71] "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.)

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

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

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

[75] In May 2005, the Commission also adopted a 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. The period of reimbursement for *Handicapped and Disabled Students II* (02-TC-40/ 02-TC-49) began July 1, 2001.

providing mental health services under IDEA back to school districts, effective July 1, 2011.[76] On September 28, 2012, the Commission adopted an amendment to the parameters and guidelines ending reimbursement effective July 1, 2011.

The Controller's Audit and Reduction of Costs

The Controller issued the Draft Audit Report dated May 19, 2010, and provided a copy to the claimant for comment.[77]

In a four-page letter dated June 16, 2010, the claimant responded directly to the Draft Audit Report, agreed with its findings, and accepted its recommendations.[78] The first page of this four-page letter contains the following statement:

> *The County's attached response 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 HDS are eligible, mandate related, and supported.[79]

The following three pages of the four-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 assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[80]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct

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[76] Assembly Bill No. 114 (2011-2012 Reg. Sess.), approved by Governor, June 30, 2011.

[77] Exhibit A, IRC, page 547.

[78] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[79] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[80] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[81]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[82]

In a separate two-page letter also dated June 16, 2010, the claimant addressed its compliance with the audit and the status of any remaining reimbursement claims.[83] 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."[84]
- "We designed and implemented the County's accounting system to ensure accurate and timely records."[85]
- "We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[86]
- "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[87]
- "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."[88]

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[81] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[82] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[83] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010).

[84] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[85] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[86] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4).

[87] Exhibit B, Controller's Late Comments on the IRC, pages 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[88] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7).

- "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."[89]
- "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[90]

On June 30, 2010, the Controller issued the Final Audit Report.[91] The Controller reduced the claims because the claimant: (1) claimed ineligible, unsupported, and duplicate services related to assessment and treatment costs and administrative costs; (2) overstated indirect costs by applying indirect cost rates toward ineligible direct costs; and (3) overstated offsetting revenues by using inaccurate Medi-Cal units, by applying incorrect funding percentages for Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) for FY 2005-2006, including unsupported revenues, and by applying revenue to ineligible direct and indirect costs.[92]

On August 2, 2013, the claimant filed this IRC with the Commission.[93]

III. Positions of the Parties

A. County of Los Angeles

The claimant objects to $18,180,829 in reductions. The claimant asserts that the Controller audited the claim as if the claimant used the actual increased cost method to prepare the reimbursement claim, instead of the cost report method the claimant states it used. Thus, the claimant takes the following principal positions:

1. The Controller lacked the legal authority to audit the claimant's reimbursement claims because the claimant used the cost report method for claiming costs. The cost report method is a reasonable reimbursement methodology (RRM) based on approximations of local costs and, thus, the Controller has no authority to audit RRMs. The Controller's authority to audit is limited to actual cost claims.[94]
2. Even if the Controller has the authority to audit the reimbursement claims, the Controller was limited to reviewing only the documents required by the California Department of

[89] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[90] Exhibit B, Controller's Late Comments on the IRC, pages 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 9).

[91] Exhibit B, Controller's Late Comments on the IRC, page 6 (Declaration of Jim L. Spano, dated Nov. 17, 2014, paragraph 7); Exhibit A, IRC, page 542 (cover letter), pages 541-562 (Final Audit Report).

[92] See, e.g., Exhibit A, IRC, page 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

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

[94] Exhibit A, IRC, pages 10-11.

Mental Health's cost report instructions, and not request supporting data from the county's Mental Health Management Information System.[95]

3. The Controller also has the obligation to permit the actual costs incurred on review of the claimant's supporting documentation. However, the data set used by the Controller to determine allowable costs was incomplete and did not accurately capture the costs of services rendered.[96]

4. Under the principle of equitable offset, the claimant may submit new claims for reimbursement supported by previously un-submitted documentation.[97]

The claimant also asserts that the Controller improperly shifted IDEA funds and double-counted certain assessment costs.[98]

B. State Controller's Office

The Controller contends that it acted according to the law when it made $18,180,829 in reductions to the claimant's reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006.

The Controller takes the following principal positions:

1. The Controller possesses the legal authority to audit the claimant's reimbursement claims, even if the claims were made using a cost report method as opposed to an actual cost method.[99]

2. The documentation provided by the claimant did not verify the claimed costs.[100]

3. The claimant provided a management representation letter stating that the claimant had provided to the Controller all pertinent information in support of its claims.[101]

[95] Exhibit A, IRC, pages 11-12.

[96] Exhibit A, IRC, pages 12-15, 17-18.

[97] Exhibit A, IRC, pages 15-17.

[98] Exhibit A, IRC, page 4 fn. 1 through 4 ("The amounts are further offset because the SCO, in calculating the County's claimed amount, added the amounts associated with re-filing of claims based on the CSM's Reconsideration Decision to the original claims submitted for Fiscal Years 2004-05 and 2005-06, thus double-counting certain assessment costs for those fiscal years.").

[99] Exhibit B, Controller's Late Comments on the IRC, page 27. But see Exhibit C, Claimant's Rebuttal, page 2 ("The SCO states it disagrees with the County's contention that the SCO did not have the legal authority to audit the program during these three fiscal years. However, it offers no argument or support for its position."). The Commission is not aided by the Controller's failure to substantively address a legal issue raised by the IRC.

[100] Exhibit B, Controller's Late Comments on the IRC, pages 27-29.

[101] Exhibit B, Controller's Late Comments on the IRC, page 29.

4. The claimant may not, under the principle of equitable offset, submit new claims for reimbursement supported by previously un-submitted documentation.[102]

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.[103] 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."[104]

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.[105] Under this standard, the courts have found:

> 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

[102] Exhibit B, Controller's Late Comments on the IRC, page 28.

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

[104] *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.

[105] *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.

between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[106]

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. [107] 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.[108]

A. The IRC Was Untimely Filed.

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.[109]

Thus, the applicable limitations period is "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."[110]

The Controller's Final Audit Report and the cover letter forwarding the Controller's Final Audit Report to the claimant are both dated June 30, 2010.[111] Three years later was June 30, 2013. Since June 30, 2013, was a Sunday, the claimant's deadline to file this IRC moved to Monday, July 1, 2013.[112]

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

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

[108] 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.

[109] Former Code of California Regulations, title 2, section 1185(b), which was re-numbered section 1185(c) effective January 1, 2011. Effective July 1, 2014, the regulation was amended to state the following: "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).

[110] Former Code of California Regulations, title 2, section 1185(b).

[111] Exhibit A, IRC, pages 542, 547 (Final Audit Report).

[112] See Code of Civil Procedure section 12a(a) ("If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."); Government Code section 6700(a)(1) ("The holidays in this state are: Every Sunday…."). See also Code of

Instead of filing this IRC by the deadline of Monday, July 1, 2013, the claimant filed this IRC with the Commission on Friday, August 2, 2013 — 32 days late.[113]

On its face, the IRC was untimely filed.[114]

The claimant attempts to save its IRC by calculating the commencement of the limitations period from the date of three documents which bear the date August 6, 2010, and which were issued by the Controller; the claimant refers to these three documents as "Notices of Claim Adjustment."[115] In the Written Narrative portion of the IRC, the claimant writes, "The SCO issued its audit report on June 30, 2010. The report was followed by Notices of Claim Adjustment dated August 6, 2010 (see Exhibit A)."[116]

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

1. The Three Documents Dated August 6, 2010, Are Not Notices Of Adjustment.

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."

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.

Each of the three documents which the claimant dubs "Notices of Claim Adjustment" contains the amount adjusted, but the other three required elements are absent. None of the three documents specifies the claim components adjusted; each provides merely a lump-sum total of

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Civil Procedure section 12a(b) ("This section applies . . . to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.").

[113] Exhibit A, IRC, page 1.

[114] "The statute of limitations is an affirmative defense" (*Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309), and, in civil cases, an affirmative defense must be established by a preponderance of the evidence (31 Cal.Jur.3d, Evidence, section 97 [collecting cases]; *People ex. rel. Dept. of Public Works v. Lagiss* (1963) 223 Cal.App.2d 23, 37). See also Evidence Code section 115 ("Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.").

[115] Exhibit A, IRC, pages 21-27.

[116] Exhibit A, IRC, page 6.

all *Handicapped and Disabled Students* program costs adjusted for the entirety of the relevant fiscal year. None of the three documents contains interest charges. Perhaps most importantly, none of the three documents enunciates a reason for the adjustment.[117]

In addition to their failure to satisfy the statutory definition, the three documents cannot be notices of adjustment because none of the documents adjusts anything. The three documents re-state, in the most cursory fashion, the bottom-line findings contained in the Controller's Final Audit Report.[118]

None of the three documents provides the claimant with notice of any new finding. When the claimant received the Final Audit Report, the claimant learned of the dollar amounts which would not be reimbursed and learned of the dollar amounts which the Controller contended that the claimant owed the State.[119] The Final Audit Report informed the claimant that the Controller would offset unpaid amounts from future mandate reimbursements if payment was not

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[117] Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment"). See also Decision, *Domestic Violence Treatment Services — Authorization and Case Management*, Commission on State Mandates Case No. 07-9628101-I-01, adopted March 25, 2016, page 16 ("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.").

[118] Compare Exhibit A, IRC, pages 21-27 (the "Notices of Claim Adjustment") with Exhibit A, IRC, pages 548-550 ("Schedule 1 — Summary of Program Costs" in the Final Audit Report). The bottom-line totals are identical.

[119] The Final Audit Report and the Controller's cover letter to the Final Audit Report are each dated June 30, 2010. Exhibit A, IRC, pages 542, 547. In addition, the claimant has admitted that the Controller issued the Final Audit Report on June 30, 2010, and that the three documents dated August 6, 2010 "followed" the Final Audit Report. Exhibit A, IRC, page 6.

In a subsequent letter, the Controller appeared to state that the claimant was notified of the claim reductions on August 6, 2010, the date of the three documents. "An IRC must be filed within three years following the date that we notified the county of a claim reduction. The State Controller's Office notified the county of a claim reduction on August 6, 2010, for the HDS Program . . . ." Exhibit A, IRC, page 486 (Letter from Jim L. Spano to Robin C. Kay, dated May 7, 2013).

The Controller's statement is not outcome-determinative for several reasons. First, the Controller's letter does not explicitly state that August 6, 2010, was the first or earliest date on which claimant was informed of the reductions. Second, to the extent that the Controller was stating its legal conclusion regarding the running of the limitations period, the Commission is not bound by the Controller's interpretation of state mandate law. See, e.g., Government Code section 17552 (Commission's "sole and exclusive" jurisdiction). Third, to the extent that the Controller was making a statement of fact, the relative vagueness of the statement in the letter dated May 7, 2013 (which was sent more than two and a half years after the fact), is, on a preponderance of the evidence standard, outweighed by the evidence contained in the Final Audit Report and its cover letter.

remitted.[120] The three documents merely repeat this information. The three documents do not provide notice of any new and material information, and the three documents do not contain any previously un-announced adjustments.[121]

For these reasons, the Commission is not persuaded that the three documents are notices of adjustment which re-set the running of the limitations period.

2. The Limitations Period to File this IRC Commenced on June 30, 2010, and Expired on July 1, 2013.

From May 8, 2007, to June 30, 2014, 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.[122]

Per this regulation, the claimant's IRC was untimely filed.

The regulation states on its face that the three-year limitations period commences on "the date of" the Controller's Final Audit Report or a "letter . . . notifying the claimant of a reduction." The Controller's Final Audit Report and the cover letter forwarding the Final Audit Report to the claimant were both dated June 30, 2010. Since the claimant filed its IRC more than three years after that date, the IRC was untimely filed.

The IRC was also untimely filed under the "last essential element" rule of construing statutes of limitations. Under this 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.

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"

[120] Exhibit A, IRC, page 547.

[121] 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 three documents identified by the claimant, the three documents are not "notices of adjustment" under state mandate law.

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

> accrual rule: ordinarily, the statute of limitations runs from "the occurrence of the last element essential to the cause of action." (Citations.)[123]

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.][124]

Under these principles, the claimant's three-year limitations period began to run on June 30, 2010, the date of the Final Audit Report and its attendant cover letter. As of that day, the claimant could have filed an IRC pursuant to Government Code sections 17551 and 17558.7, because, as of that day, the claimant had been (from its perspective) harmed by a claim reduction, had received or been deemed to have received detailed notice of the harm, and possessed the ability to file and maintain an IRC with the Commission. The claimant could have filed its IRC one day, one month, or even three years after June 30, 2010; instead, the claimant filed its IRC three years and 32 days after — which is 32 days late.

This finding is consistent with three 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 adjustment in the record.[125] This argument parallels that of the claimant in this instant IRC, who argues that between the Final Audit Report dated June 30, 2010, and the three documents dated August 6, 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.[126] "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.[127]

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

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

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

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

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

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

notice to the claimant of the adjustment that includes the reason for the adjustment."[128] In the instant IRC, the limitations period therefore began to run when the claimant received 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* 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 sent after the Controller's Final Audit Report.[129] This Decision is distinguishable because, in that claim, the Controller's cover letter (accompanying the audit report) to the claimant requested additional information and implied that the attached audit report was not final.[130] 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.[131]

The finding in this instant IRC is therefore consistent with recent Commission rulings regarding the three-year IRC limitations period.[132]

Consequently, the limitations period to file this instant IRC commenced on June 30, 2010, and expired on July 1, 2013.

The IRC is denied as untimely filed.

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

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

[130] 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 542 (Letter from Jeffrey V. Brownfield to Gloria Molina, dated June 30, 2010).

[131] Exhibit A, IRC, page 542.

[132] All that being said, an administrative agency's adjudications need not be consistent. 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.").

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 June 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 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 14)."[133] 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.[134]

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 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.[135]

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[133] Exhibit B, Controller's Late Comments on the IRC, page 25. The referenced "Tab 14" is the two-page letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010 (Exhibit B, Controller's Late Comments on the IRC, pages 185-186).

[134] 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 June 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").

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

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."[136] 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."[137] Waiver is a question of fact and is always based upon intent.[138] Waiver must be established by clear and convincing evidence.[139]

The Commission finds that the record of this IRC contains clear and convincing evidence that the claimant's intention in June 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 May 19, 2010, the Controller provided the claimant a draft copy of the audit report.[140] 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 four-page letter dated June 16, 2010 (a copy of which is reproduced in the Controller's Final Audit Report).[141] The first page of this four-page letter[142] contains the following statement:

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

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

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

[139] *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).

[140] Exhibit A, IRC, page 547.

[141] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[142] Exhibit A, IRC, pages 558-561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield) (the "four-page letter").

> *The County's attached response 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 HDS are eligible, mandate related, and supported.[143]

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."

The following three pages of the four-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 assessment and treatment costs by more than $27 million, the claimant responded in relevant part:

> We agree with the recommendation. The County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program. The County will ensure all staff members are trained on the applicable policies and procedures. . . . . .
>
> The County has agreed to the audit disallowances for Case Management Support Costs.[144]

In response to the Controller's Finding No. 2, that the claimant overstated administrative costs by more than $5 million, the claimant responded in relevant part:

> We agree with the recommendation. As stated in the County's Response for Finding 1, the County will strengthen the policies and procedures to ensure that only actual units of service for eligible clients are claimed in accordance with the mandated program and will ensure the administrative cost rates are applied appropriately. At the time of claim preparation, it was the County's understanding that the administrative cost rates were applied to eligible and supported direct costs. The State auditor's discovery of ineligible units of service resulted in the ineligibility of the administrative costs.[145]

In response to the Controller's Finding No. 3, that the claimant overstated offsetting revenues by more than $13 million, the claimant responded in relevant part:

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[143] Exhibit A, IRC, page 558 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010) (emphasis added).

[144] Exhibit A, IRC, pages 559-560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[145] Exhibit A, IRC, page 560 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

> We agree with the recommendation. It is always the County's intent to apply the applicable offsetting revenues (including federal, state, and local reimbursements) to eligible costs, which are supported by source documentation.[146]

Each of the claimant's responses to the Controller's three findings supports the Commission's conclusion 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 four-page letter to reserve rights or to clarify issues,[147] the overall intention communicated in the letter is that the claimant intended to agree with 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 four-page letter was sent, the claimant agreed with the Controller and intended to waive its right to file an IRC.

In addition, the Commission's finding of waiver is supported by a separate two-page letter — also dated June 16, 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:

> June 16, 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**
>
> **JULY 1, 2003 THROUGH JUNE 30, 2006**
>
> 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:

---

[146] Exhibit A, IRC, page 561 (Letter from Wendy L. Watanabe to Jeffrey V. Brownfield, dated June 16, 2010).

[147] For example, the claimant purports, without citation to legal authority, to "reserve[] the right to claim these unallowed [assessment and treatment] costs in future fiscal year claims." (Exhibit A, IRC, page 560.) The claimant also purports to recognize, without citing legal authority or factual foundation, that the Controller would revise the Final Audit Report if the claimant subsequently provided additional information to support its claims. (Exhibit A, IRC, page 558.) The Commission finds that clear and convincing evidence of waiver in the record as a whole outweighs these sporadic, pro forma statements.

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 Program's parameters and guidelines.

4. We claimed mandated costs based on actual expenditures allowable per the Handicapped and Disabled Students 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[148]

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 it provided cost report data — not actual cost data — to the Controller, which then erred by conducting an audit as if the claimant had provided actual cost data.[149] "[T]he Cost Report Method is not, nor was it ever intended to be, an *actual* cost method of claiming," the claimant argues in its IRC.[150] "The inclusion of the Cost Report Method in the original parameters and guidelines and in all subsequent parameters and guidelines indicates that the intent of such a methodology was to provide a basis to reimburse counties for the costs of the State-mandated program based on an allocation formula *and not actual costs*," the IRC continues.[151]

However, in the two-page letter, the claimant stated the opposite: that, in the claimant's reimbursement requests, "We claimed mandated costs *based on actual expenditures* allowable per the Handicapped and Disabled Students Program's parameters and guidelines."[152]

In its IRC, the claimant argues that the Controller based its audit on incorrect or incomplete documentation.[153] For example, the claimant now contends that "repeated attempts to develop a 'query' that would extract data from the County's Mental Health Management Information System (MHMIS) and Integrated System (IS) generated results that were unreliable"[154] and "[t]he source documentation, therefore, would be in each agency's internal records and these are the documents that the SCO should have used in conducting the audit."[155]

However, neither claimant's four-page letter nor claimant's two-page letter dated June 16, 2010, objected to the audit findings on these grounds — objections which would have been known to the claimant in June 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

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[148] Exhibit B, Controller's Late Comments on the IRC, pages 185-186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010) (the "two-page letter").

[149] Exhibit A, IRC, pages 6-10.

[150] Exhibit A, IRC, page 9. (Emphasis in original.)

[151] Exhibit A, IRC, page 10. (Emphasis added.)

[152] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 4) (emphasis added).

[153] Exhibit A, IRC, pages 11-15, 17-18.

[154] Exhibit C, Claimant's Rebuttal, pages 3-4.

[155] Exhibit C, Claimant's Rebuttal, page 4.

financial records and data to support the mandated cost claims submitted to the SCO."[156] "We designed and implemented the County's accounting system to ensure accurate and timely records."[157] "We made available to the SCO's audit staff all financial records, correspondence, and other data pertinent to the mandated cost claims."[158] "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."[159]

In the IRC, the claimant 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.[160]

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."[161] "We are not aware of any events that occurred after the audit period that would require us to adjust the mandated cost claims."[162]

The claimant's two-page letter demonstrates that, as far as the claimant was concerned in June 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, the Commission finds by clear and convincing evidence that the claimant's intention in June 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.

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.

Therefore, the Commission denies this IRC.

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[156] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 1).

[157] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 2).

[158] Exhibit B, Controller's Late Comments on the IRC, page 185 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 5).

[159] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 7(d)).

[160] Exhibit A, IRC, pages 15-17.

[161] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 2010, paragraph 8).

[162] Exhibit B, Controller's Late Comments on the IRC, page 186 (Letter from Wendy L. Watanabe to Jim L. Spano, dated June 16, 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 May 20, 2016, I served the:

> **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
> *Handicapped and Disabled Students*, 13-4282-I-06
> Government Code Sections 7572 and 7572.5
> Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882);
> California Code of Regulations, Title 2, Division 9, Chapter 1, Section 60040
> (Emergency regulations filed December 31, 1985, designated effective
> January 1, 1986 [Register 86, No. 1] and re-filed June 30, 1986, designated effective
> July 12, 1986 [Register 86, No. 28])
> 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 May 20, 2016 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/24/16

Claim Number: 13-4282-I-06

Matter: Handicapped and Disabled Students

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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