

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
May 26, 2017

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Mark Hariri
Representative of the State Treasurer
Member Ken Alex
Representative of the Director of the Office of Planning and Research
Member Carmen Ramirez
City Council Member
Member Lee Adams
County Supervisor

Absent: Member Sarah Olsen
Public Member

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Ortega called the meeting to order at 10:04 a.m. Before the roll was called, Chairperson Ortega welcomed Sierra County Supervisor Lee Adams to the Commission as its new local government member, thanked Mr. Saylor for his many years of service, mentioned that Ms. Ramirez was reappointed to the Commission, and noted that Ms. Olsen could not be present at the meeting. Executive Director Heather Halsey called the roll.

APPROVAL OF MINUTES

Member Hariri made a motion to adopt the minutes. With a second by Member Alex, the March 24, 2017 hearing minutes were adopted by a vote of 4-0, with Member Adams abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. There was no response.

CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLES 7 AND 8 (action)

ADOPTION OF ORDER TO INTIATE RULEMAKING

Item 6* General Cleanup Provisions, Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 2, 3, 4, 5, 6, 7, 8, and 10

Chairperson Ortega asked if there was any objection to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment.

Member Ramirez made a motion to adopt the Consent Calendar. With a second by Member Alex, the Consent Calendar was adopted by a vote of 5-0.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Heather Halsey swore in the parties and witnesses participating in the hearing.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 2 Appeal of Executive Director Decisions

Executive Director Halsey stated that there were no appeals to consider for this hearing.

INCORRECT REDUCTION CLAIM

Item 3 *Health Fee Elimination, 10-4206-I-35*

Former Education Code Section 72246 (Renumbered as 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);
and Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, and
2006-2007

San Mateo County Community College District, Claimant

Executive Director Heather Halsey stated that the claimant notified Commission staff that they would not be appearing at this hearing.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate the indirect costs reduced in fiscal year 2004-2005.

Parties were represented as follows: Jim Spano and Ken Howell, representing the State Controller's Office.

Without further discussion among the Commission members, staff, and parties, Member Alex made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 5-0.

Item 4 *Handicapped and Disabled Students (04-RL-4282-10); Handicapped and Disabled Students II (02-TC-40/02-TC-49); and Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services (97-TC-05), 15-9705-I-06*

Government Code Sections 7571, 7572, 7572.5, 7572.55, 7576, 7581, and 7586 as added by Statutes 1984, Chapter 1747 (AB 3632); and as amended

by Statutes 1985, Chapter 1274 (AB 882); Statutes 1994, Chapter 1128 (AB 1892); Statutes 1996, Chapter 654 (AB 2726);

California Code of Regulations, Title 2, Division 9, Chapter 1, Sections 60020, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200, and 60550 (Emergency regulations effective January 1, 1986 [Register 86, No. 1], and refiled June 30, 1986, designated effective July 12, 1986 [Register 86, No. 28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26]; final regulations effective August 9, 1999 [Register 99, No. 33])

Fiscal Years: 2006-2007, 2007-2008, and 2008-2009

County of San Diego, Claimant

Senior Commission Counsel Julia Blair presented this item, detailed two legal analyses proposed as options for the Commission's consideration, and recommended that the Commission adopt Option 2 to deny this Incorrect Reduction Claim.

Member Chivaro joined the meeting.

Parties were represented as follows: Kyle Sand, representing the claimant; and Jim Spano and Chris Ryan, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Adams, the motion to adopt Option 2 and deny this Incorrect Reduction Claim was adopted by a vote of 5-1, with Ms. Ramirez voting no.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

STAFF REPORTS

- Item 7 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 8 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 9 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the July and September 2017 Meetings (info)

Executive Director Heather Halsey presented this item and reported on the Commission's budget and the Commission's pending caseload.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166734
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
2. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166735
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
3. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS167447
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
4. ***On Remand from California Supreme Court, Case No. S214855, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al*** (petition and cross-petition)
Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

Courts of Appeal:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)
Third District Court of Appeal, Case No. C070357
Sacramento County Superior Court Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. *Coast Community College District, et al. v. Commission on State Mandates*,
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes

1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

3. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]
4. *California School Board Association (CSBA) v. State of California et al.*
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
California Supreme Court, Case No. S239907
Fourth District Court of Appeal, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a).

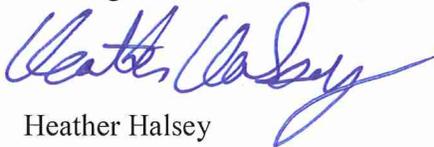
The Commission adjourned into closed executive session at 10:40 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION
REPORT FROM CLOSED EXECUTIVE SESSION**

At 10:55 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 10:55 a.m.



Heather Halsey
Executive Director

ORIGINAL

PUBLIC MEETING

COMMISSION ON STATE MANDATES



RECEIVED

JUN 13 2017

TIME: 10:00 a.m.

**COMMISSION ON
STATE MANDATES**

DATE: Friday, May 26, 2017

**PLACE: State Capitol, Room 447
Sacramento, California**



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller
(Vice Chair of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer

M. CARMEN RAMIREZ
Oxnard City Council Member
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 9)

HEIDI PALCHIK
Assistant Executive Director

JULIE BLAIR
Senior Legal Counsel
(Item 4)

KERRY ORTMAN
Program Analyst
(Item 7)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 3 and Item 8)



PUBLIC TESTIMONY

Appearing Re Item 3:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

KEN HOWELL
Audit Manager
Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

Appearing Re Item 4:

For Appellant County of San Diego:

KYLE E. SAND
Senior Deputy County Counsel
County of San Diego
1600 Pacific Highway Room 355
San Diego, California 92101

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

CHRISTOPHER B. RYAN
Audit Manager, Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816



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1 insightful as a person with a long history of public
2 service. And I'm sure Commissioner Adams is going to
3 follow in that great tradition.

4 CHAIR ORTEGA: Absolutely.

5 And Ms. Olsen could not be here today.

6 So with that, we'll go ahead and call the roll.

7 MS. HALSEY: Mr. Adams?

8 MEMBER ADAMS: Here.

9 MS. HALSEY: Mr. Alex?

10 MEMBER ALEX: I've been usurped at the front of the
11 roll.

12 I'm here.

13 MS. HALSEY: Mr. Chivaro?

14 *(No response)*

15 MS. HALSEY: Mr. Hariri?

16 MEMBER HARIRI: Here.

17 MS. HALSEY: Ms. Ortega?

18 CHAIR ORTEGA: Here.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Here.

21 CHAIR ORTEGA: Okay, we do have a quorum.

22 So we'll start with the minutes from the March 24th
23 meeting.

24 Any corrections suggested to the minutes?

25 *(No response)*

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1 CHAIR ORTEGA: Seeing none, do we have a motion?

2 MEMBER HARIRI: I move to approve.

3 CHAIR ORTEGA: Okay, moved by Mr. Hariri.

4 MEMBER ALEX: Second.

5 CHAIR ORTEGA: Seconded by Mr. Alex.

6 All in favor of approval of the minutes, please say

7 "aye."

8 *(A chorus of "ayes" was heard.)*

9 MEMBER ADAMS: I will abstain since I was not a
10 member of the Commission at that time.

11 CHAIR ORTEGA: Great. Mr. Adams will abstain.

12 And we did still have enough votes there, so that
13 motion passes.

14 MS. HALSEY: And now we will take up public comment
15 for matters not on the agenda.

16 Please note that the Commission cannot take action
17 on items not on the agenda. However, it can schedule
18 issues raised by the public for consideration at future
19 meetings.

20 CHAIR ORTEGA: Okay, any members of the public
21 wishing to address the Commission?

22 *(No response)*

23 CHAIR ORTEGA: Seeing none, we will move on to the
24 Consent Calendar.

25 MS. HALSEY: The next item is the Proposed Consent

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1 Calendar, which consists of Item 6.

2 CHAIR ORTEGA: Okay, any public comment on Item 6?

3 *(No response)*

4 CHAIR ORTEGA: Seeing none, do we have a motion?

5 MEMBER RAMIREZ: So moved.

6 CHAIR ORTEGA: Moved by Ms. Ramirez.

7 MEMBER ALEX: Second.

8 CHAIR ORTEGA: Seconded by Mr. Alex.

9 All in favor of the Consent Calendar, please say
10 "aye."

11 *(A chorus of "ayes" was heard.)*

12 CHAIR ORTEGA: And that passes unanimously.

13 MS. HALSEY: Then let's move on to the Article 7
14 portion of the hearing.

15 Will the parties and witnesses for Items 3 and 4
16 please rise?

17 *(Parties/witnesses stood to be sworn or affirmed.)*

18 MS. HALSEY: Do you solemnly swear or affirm that
19 the testimony which you are about to give is true and
20 correct, based on your personal knowledge, information,
21 or belief?

22 *(A chorus of affirmative responses was heard.)*

23 MS. HALSEY: Thank you.

24 Item 2 is reserved for appeals of Executive Director
25 decisions. There are no appeals to consider for this

1 hearing.

2 Chief Legal Counsel Camille Shelton will present
3 Item 3, an incorrect reduction claim on *Health Fee*
4 *Elimination*.

5 Yesterday, the claimant's representative notified
6 the Commission staff that they would not be appearing at
7 this hearing.

8 MS. SHELTON: Good morning.

9 This incorrect reduction claim is based on
10 reductions made by the Controller under the *Health Fee*
11 *Elimination* program for fiscal years 2002-2003 through
12 2006-2007. Staff finds that the audit of the first two
13 fiscal-year reimbursement claims was timely. Staff
14 further finds that the reductions based on promotional
15 items distributed during health fairs, costs claimed as
16 a bad-debt expense resulting from uncollected student
17 health fees, overstated indirect costs for the first
18 two fiscal-year claims, and unreported offsetting fee
19 revenues authorized to be charged are correct. However,
20 the Controller's reduction of indirect costs for fiscal
21 year for 2004-2005 is incorrect as a matter of law since
22 the reduction is based solely on the Controller's change
23 to the claiming instructions issued two weeks before
24 reimbursement claims were due, without evidence that the
25 claimant had notice or an opportunity to be heard on the

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1 change in the rule. Thus, the Controller's change to the
2 indirect cost rule constitutes an invalid underground
3 regulation.

4 The Controller has filed comments agreeing with the
5 proposed decision.

6 Staff recommends that the Commission adopt the
7 proposed decision to partially approve the incorrect
8 reduction claim and requests that the Controller
9 reinstate the indirect costs reduced in fiscal year
10 2004-2005.

11 Will the witnesses please state your names for the
12 record?

13 MR. SPANO: Jim Spano, State Controller's Office.

14 MR. HOWELL: Ken Howell, State Controller's Office,
15 Division of Audits.

16 CHAIR ORTEGA: Okay, thank you.

17 Mr. Spano or Mr. Howell, anything to add?

18 MR. HOWELL: No, ma'am.

19 CHAIR ORTEGA: Okay, any questions from the
20 Commissioners?

21 *(No response)*

22 CHAIR ORTEGA: Any public comment on this item?

23 *(No response)*

24 CHAIR ORTEGA: Okay, Mr. Alex?

25 MEMBER ALEX: I'll move the staff recommendation.

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1 MEMBER RAMIREZ: Second.

2 CHAIR ORTEGA: Moved by Mr. Alex and seconded by
3 Ms. Ramirez.

4 Please call the roll.

5 MS. HALSEY: Mr. Adams?

6 MEMBER ADAMS: Aye.

7 MS. HALSEY: Mr. Alex?

8 MEMBER ALEX: Aye.

9 MS. HALSEY: Mr. Chivaro?

10 *(No response)*

11 MS. HALSEY: Mr. Hariri?

12 MEMBER HARIRI: Aye.

13 MS. HALSEY: Ms. Ortega?

14 CHAIR ORTEGA: Aye.

15 MS. HALSEY: Ms. Ramirez?

16 MEMBER RAMIREZ: Aye.

17 MS. HALSEY: Thank you.

18 CHAIR ORTEGA: Thank you.

19 MS. HALSEY: Senior Legal Counsel Julia Blair will
20 present Item 4, an incorrect reduction claim regarding
21 *Seriously Emotionally Disturbed Pupils: Out-of-State*
22 *Mental Health Services.*

23 MS. BLAIR: Good morning.

24 This incorrect reduction claim addresses the
25 Controller's reduction of vendor costs claimed for board

1 and care and treatment services for out-of-state
2 residential placement of seriously emotionally disturbed
3 pupils in facilities organized and operated for profit.

4 The proposed decision includes the findings from
5 the October 28th, 2016, Commission meeting, where the
6 Commission found that the IRC was timely filed based on
7 the date of the revised final audit report. The
8 Commission will not rehear that issue today, but must now
9 determine whether that portion of the proposed decision
10 accurately reflects the Commission's October 2016 vote.

11 The remaining analysis addresses the issues
12 presented in this IRC.

13 Staff finds the Controller timely initiated the
14 audit. Staff also finds the Controller timely completed
15 the March 7th, 2012, final audit report but did not
16 timely complete the December 18th, 2012, revised final
17 audit report as required by statute; and thus, the
18 December 18th revised final audit report is void.

19 The Commission must therefore determine whether the
20 Controller's audit conclusions and reduction of costs
21 in Finding 2 remain valid when the final audit report is
22 timely but the superseding revised report is void.

23 There are two legal analyses on this issue which are
24 proposed as options for the Commission to consider.

25 Staff recommends the Commission adopt Option 2.

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1 Option 1 approves the IRC based on the findings that
2 the December 2012 revised final audit report superseded
3 the March 2012 final audit report for all purposes,
4 making the final audit report void.

5 Since the revised final audit report was not timely
6 completed and is also void, Audit Finding 2 is void.
7 As a result, the \$1,387,095 in costs reduced for board
8 and care and treatment services under Finding 2 must be
9 reinstated to the claimant under Option 1.

10 Option 2 denies the IRC based on findings that the
11 timely completion of the audit for Finding 2 was made
12 with the Controller's March 2012 final audit report.
13 The amount reduced and the reasons for the reduction in
14 Finding 2 were included in the March 2012 report and
15 remained the same in the revised report. Since the
16 revised report was not timely completed and is void, it
17 has no effect on the March 2012 reductions under
18 Finding 2. Therefore, the Commission must reach the
19 merits of the reductions in Finding 2 as requested by
20 the claimant in its appeal of the Executive Director
21 decision.

22 On the merits, the Controller's reduction of costs
23 claimed for board and care and treatment services by
24 for-profit out-of-state providers is correct as a matter
25 of law.

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1 During all of the fiscal years at issue in these
2 claims, the parameters and guidelines only allow vendor
3 payments for SED pupils placed in an out-of-state program
4 organized and operated on a nonprofit basis.

5 *(Mr. Chivaro entered the meeting room.)*

6 MS. BLAIR: Staff recommends the Commission find
7 that the proposed decision regarding the timeliness of
8 the IRC filing accurately reflects the Commission's
9 October 2016 vote that the audit was timely initiated,
10 and adopt Option 2 to deny this IRC.

11 Will the parties and witnesses please state your
12 names for the record?

13 MR. SAND: Senior Deputy County Counsel Kyle Sand
14 for the County of San Diego.

15 MR. SPANO: Jim Spano, State Controller's Office,
16 Division of Audits.

17 MR RYAN: Chris Ryan, Division of Audits, State
18 Controller's Office.

19 CHAIR ORTEGA: Thank you.

20 Mr. Sand?

21 MR. SAND: Well, thank you for having me back and
22 hearing our matter.

23 It cannot be said that the County of San Diego
24 doesn't bring novel issues to the Commission.

25 The County's argument that we submitted in our

1 incorrect reduction claim has been heard numerous times
2 by the Commission in different matters. So I only want
3 to focus on -- and the reason I'm here is to address the
4 issue raised in both the draft decision and the proposed
5 decision. And that would be section C of the discussion.

6 As staff indicated, the staff analysis and the
7 proposed decision, in part, states that the final audit
8 report in December 2012 was not completed in the time
9 frame required by law and is therefore void. We agree.

10 The options presented are twofold, Option 1 and
11 Option 2. And I always think Option Number 1 is the
12 best, if you had to pick one, in general.

13 But Option Number 1 is more straightforward. Option
14 Number 1 is more logically consistent. Option Number 1
15 essentially states that the Controller never finished the
16 audit by spring of 2012; and the final audit report
17 issued in December is evidence of that. The Controller,
18 in issuing the December 2012 final audit report, set
19 aside the March report.

20 The issue is when the audit was complete. The
21 December 2012 audit report indicates that it is the final
22 determination on the issue. "Final" and "complete" are,
23 in my opinion, the same thing. So if the law requires
24 the audit to be completed by a certain time frame, and a
25 report is issued that indicates that this is the final

1 determination on the issue, that should control when it
2 is completed. And as both the staff analysis and the
3 County are in agreement, that the December 2012 was
4 beyond the time frame.

5 The second option is, in my mind, a little less
6 straightforward. The second option states that the
7 March report means something in one context and it
8 doesn't mean something in the other.

9 To make that finding, you must reconcile the fact
10 that the Controller issued a superseding final report in
11 December, setting aside the March report. And as it's
12 been stated previously, it did it for all matters within
13 the report.

14 So I'm prepared to answer questions.

15 Although it's stated that the December 2012 report
16 is void as an audit, it's still evidence -- it's still
17 evidence of, this was the completion of the audit.

18 And so with that, I'm prepared to answer questions.

19 CHAIR ORTEGA: Before we move ahead, I did want to
20 note for the record that Mr. Chivaro joined us prior to
21 Mr. Sand beginning his comments.

22 Mr. Alex?

23 MEMBER ALEX: It seems like you're arguing that the
24 December revised report is void as to you, but still
25 applicable as to the Controller. Is that right?

1 MR. SAND: What I'm arguing is that the 2012 -- the
2 December 2012 audit report was not completed in the time
3 frame required by law and that it is evidence of the fact
4 that the audit was not completed in time.

5 And although it cannot be -- and although it cannot
6 be used as the basis for the audit, because it wasn't
7 timely, it evidences that the March was not the final
8 determination on the issue.

9 MEMBER ALEX: So other than the existence of the
10 December 12th version, or update, is there anything else
11 that indicates that the March report can't stand on its
12 own?

13 MR. SAND: Well, as we've addressed previously,
14 the -- and it's always been our contention from the
15 outset -- that the March 2012 report no longer had any
16 effect once the revised audit report was issued in
17 December. So the issue does --

18 MEMBER ALEX: But wait. That's my concern. Because
19 if you're saying that the December report is void, then
20 how is that somehow precluding the application of the
21 earlier report?

22 MR. SAND: Well, in order to say that the December
23 2012 was void, only for the purpose of whether or not the
24 audit was completed in time; now, if we were to do that,
25 then the argument under section 2 is that we must revert

1 back to March, and then March was the final audit.
2 However, in looking at the report and using it as
3 evidence of what occurred, we can see that the December
4 report was intended to supersede for the purposes of the
5 completed audit. And when it did that, it replaced the
6 March report. So the March report had no effect for
7 purposes of the audit. However, the December report
8 wasn't completed within the time frame required. So,
9 what we're arguing is that it can't be both.

10 If this report means something, it means it was the
11 final determination. And if that is the case, we have
12 to determine when that final determination happened, if
13 it was on time, within the period required by law. And
14 simply because it was -- and when we say that it's void
15 now because it's too late, the issue really becomes,
16 well, what of the March report?

17 MEMBER ALEX: Well, I'm trying to think of some
18 analogies. And, you know, if you submit something that
19 has a time deadline; and then you realize, "Oh, I made
20 a -- I want to make a change," and it's past the time
21 deadline, my expectation is that the change will not be
22 accepted and you're stuck with the previous submission.

23 Now, I can think of some instances where that may
24 not be true.

25 MR. SAND: Right.

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1 MEMBER ALEX: But I think it often is the case. And
2 so that seems to me like what happened here, that the
3 report was done, they had some further evaluation and
4 thought, and proceeded to do a further report. But that
5 turns out to not have been timely. So don't we just
6 revert back to what was submitted in a timely way as the
7 final report?

8 MR. SAND: Well, I don't think we do. And the
9 reason is, if you do such a thing and you indicate that
10 the report that was submitted originally was not
11 completed in some sense, which the December report
12 does evidence by its language, then you are -- and I
13 think in our -- in the prior time I was here, on the
14 other matter, there was a lot of discussion about what
15 the word "supersedes" means and so forth. And, of
16 course, it really came down to: Did the December report
17 set aside the March report? And it did for those
18 purposes. And if it does for those purposes, it must for
19 all purposes.

20 So it's just, we need to reconcile here. And that's
21 why I would state that Option Number 1 makes the most
22 sense, logically.

23 CHAIR ORTEGA: Thank you.

24 Mr. Adams?

25 MEMBER ADAMS: I certainly understand the argument

1 that by there being more evidence out there, the belief
2 that somehow the March report was not the final-final
3 answer on it. I'm having difficulty, though, that if
4 we're not accepting the December report, that it's void;
5 that it seems to me one can't have it both ways. If it's
6 void, it didn't supersede anything. It's -- you know, I
7 think to do otherwise is terrible public policy.

8 It would be interesting to know if this issue has
9 ever been judged by public policy before. But it just
10 seems to me that you go back to a previous report, you
11 don't go back to nothing. That just, to me, flies in the
12 face of reason.

13 So I'm inclined to believe that we do judge this on
14 the March 7th report.

15 Again, I understand the argument. But if we're
16 arguing that that did not get over the hurdle in time,
17 then we just pretend it doesn't exist.

18 CHAIR ORTEGA: Thank you.

19 Anything else from commissioners?

20 *(No response)*

21 CHAIR ORTEGA: Let me ask, Mr. Spano or Mr. Ryan,
22 do you have anything to add at this point?

23 MR RYAN: Yes. The Controller supports the staff
24 recommendation to adopt Option 2.

25 Between the initial and the revised audit reports,

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1 there were no changes made to Finding 2, and that's the
2 finding related to the residential-placement issue that
3 they're contesting.

4 We only made changes to Finding 4 based on the
5 subsequent finalization of EPSDT revenues by the
6 Department of Mental Health. They finalized those after
7 we issued our audit report, so we went back and revised
8 it. "EPSDT" is the Early and Periodic Screening
9 Diagnosis and Treatment offset. The actual adjustment
10 we made was actually in the claimant's favor, to correct
11 an overstatement of offsetting revenues. However, that
12 did not impact net allowable costs because revenues
13 exceeded claimed costs in that particular year that we
14 made the adjustment, which was 2008-2009.

15 CHAIR ORTEGA: Okay, thank you.

16 Ms. Ramirez?

17 MEMBER RAMIREZ: I just would like to ask maybe
18 both sides: Should there be any consequences for an
19 audit not timely filed?

20 MR. SPANO: I think I'm going to leave it up to the
21 Commission to address the filing issue here.

22 CHAIR ORTEGA: Okay, Mr. Sand?

23 MR. SAND: Well, there generally are.

24 And in this case, you know, we can -- the only thing
25 we can look at is what does the law say, and what are the

1 facts in this matter, and how do they apply. And it goes
2 to -- it goes to the ability, you know, to even have this
3 matter before this body.

4 These issues cut both ways: Sometimes it will work
5 against a party; sometimes they will work not in their
6 favor. And in this matter, the consequence of not --
7 the actions that the Controller took procedurally,
8 unfortunately for the Controller -- and, you know, it
9 does benefit the County -- looking at the law and the
10 application of facts in this case, eliminated the ability
11 of the audit to have any effect; because the final
12 determination, the final completion of the audit, for all
13 purposes, was beyond the two-year time frame. And this
14 was an issue that we noted and we discovered in looking
15 at the analysis that was in the draft decision. And in
16 looking at that, we needed to reconcile, "Well, this
17 doesn't quite make sense. If it can be used in this
18 purpose, why -- why isn't it working over here?" And
19 that's why we argue that Option Number 1 is more
20 logically consistent and more in line with what the law
21 says.

22 CHAIR ORTEGA: I think I would comment on the
23 consequences question. I mean, from my view, there are
24 consequences to the audit not being timely filed. And
25 the consequences are, the audit is void. And the

1 Controller is constitutionally charged with certain
2 duties including reviewing and auditing reimbursement
3 claims. And when an audit is not timely filed, the
4 Controller is not able to fulfill that duty; and so I
5 think that is actually a serious consequence.

6 In this case, because the audit finding is in
7 question, is the same in both audits, it doesn't really
8 have a practical effect. But we could imagine a scenario
9 where it would be quite different, where the void audit
10 would not have allowed enforcement of a correction of a
11 serious issue.

12 And so I would argue that there are consequences in
13 that the Commission determined that the audit was void,
14 not timely filed.

15 MS. SHELTON: I was just going to say that we've
16 had several incorrect reduction claims in the past where
17 there has been one final audit report which has been late
18 and the Commission has found that that audit report is
19 void. And, you know, whatever was challenged in the
20 incorrect reduction claim had to be reinstated back.

21 We've also had the same situation that we've got
22 here. It wasn't as contested as it is here, where we had
23 two audit reports, a final audit report and a revised
24 final audit report. And the revised final audit report,
25 like this case, gave more money back to the claimant; and

1 it was to let -- you know, it was void for being too
2 late. So we didn't use the revised final audit report
3 for analysis, but took notice of the fact that the
4 Controller conceded on a couple of the issues and gave
5 more money back to the claimant. So obviously we had to
6 use that for what the bottom-line number was. So that
7 analysis is consistent with Option 2.

8 So we've done this before.

9 MR. SPANO: Just for the record, when we reissue
10 your report, it's -- you know, we don't issue reports to
11 increase audit findings here; we only do it to benefit
12 the claimant here and only if information wasn't
13 available by that point in time here.

14 CHAIR ORTEGA: Mr. Alex?

15 MEMBER ALEX: Yes, I do appreciate why staff
16 provided two options. I mean, it's a unique question and
17 it's interesting.

18 For me, though, I think the fact that there's a
19 final audit report that's identified as such, and I
20 recognize that sometimes you have to revise that and
21 you have an interesting explanation as to why in this
22 instance, that you might have to revise even a final
23 report. It seems to me, though, that if that revision is
24 not valid and is void, it doesn't mean that it precludes
25 the previously determined final report from existing.

1 So I support Option 2.

2 CHAIR ORTEGA: Mr. Sand, I'll give you one last
3 chance if you have anything else you want to add.
4 Otherwise, I'm going to ask if there's any other public
5 comment.

6 MR. SAND: Well, the only other thing I wanted to
7 add is that the implication of Option 2 is that however
8 far along and however far you are completed prior to the
9 two-year time period, would then be where you were locked
10 in. And that could be -- you know, the implication of
11 that is, however far along, whatever findings you've made
12 at that period, is where you stop, as opposed to, have
13 you really finally completed the final determination of
14 the audit.

15 MEMBER ALEX: But isn't that, in essence, what a
16 statute of limitations is? I mean, there has to be an
17 end point, according to the rules, so that's how we
18 operate. And in any circumstance where there is a cutoff
19 point, if you fail to file a document in court, you'd be
20 out, even if you had a valid claim. So, I mean, it may
21 be somewhat arbitrary; but that's what the Legislature
22 has determined.

23 MR. SAND: Well, I would also argue, in this
24 particular circumstance, that it does appear, based on
25 the way the revised report is written, that there was an

1 intention to set aside the March report.

2 And I suppose if we say, "Okay, well, that was late,
3 and we can't consider it," then I suppose the argument
4 that I'm hearing is that they don't also have the ability
5 to say, "We're withdrawing this March report." I think
6 they do. I think they did.

7 The March report appears not any place I can find on
8 the State Controller's Web site. They use the December
9 report. This is the final determination in the matter.
10 I think that was the intent all along.

11 And to go back to a report that is not the final
12 determination anymore, I think is problematic.

13 CHAIR ORTEGA: Thank you.

14 Mr. Adams?

15 MEMBER ADAMS: Again, I would argue if the December
16 report is void, then how can we give it any weight to
17 strike anything else? It appears to me that we want it
18 both ways: We don't want to use what it says, but we do
19 want to use it to kill a previous report. And that just
20 seems very, very strange to me. It either exists or it
21 doesn't exist.

22 It seems to me, you can't pick from column A when it
23 benefits you, and then column B when it doesn't benefit
24 you. I find that confusing. To me, it's either there or
25 it's not there.

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1 MR. SAND: I would argue both options, in some
2 sense, do that.

3 CHAIR ORTEGA: Thank you.

4 Is there any other public comment on this item?

5 *(No response)*

6 CHAIR ORTEGA: Any other commissioner comments?

7 *(No response)*

8 CHAIR ORTEGA: Camille, would you clarify what a
9 motion might look like for anyone who might be interested
10 in making one?

11 I know that there needs to be a reference to our
12 past action -- or Ms. Blair.

13 MS. SHELTON: Julia actually had it in her opening.

14 If you could just restate.

15 CHAIR ORTEGA: Yes, that would be great.

16 MS. BLAIR: So you need to move to find that the
17 proposed decision regarding the timeliness of the IRC
18 filing accurately reflects the Commission's October 2016
19 vote the audit was timely initiated, and adopt Option 2
20 to deny the IRC.

21 CHAIR ORTEGA: Okay, so that is the staff
22 recommendation?

23 MS. BLAIR: Yes.

24 MEMBER CHIVARO: I'll move the staff recommendation.

25 CHAIR ORTEGA: All right, moved by Mr. Chivaro.

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1 MEMBER ADAMS: Second.

2 CHAIR ORTEGA: Seconded by Mr. Adams.

3 Please call the roll.

4 MS. HALSEY: Mr. Adams?

5 MEMBER ADAMS: Aye.

6 MS. HALSEY: Mr. Alex?

7 MEMBER ALEX: Aye.

8 MS. HALSEY: Mr. Chivaro?

9 MEMBER CHIVARO: Aye.

10 MS. HALSEY: Mr. Hariri?

11 MEMBER HARIRI: Aye.

12 MS. HALSEY: Ms. Ortega?

13 CHAIR ORTEGA: Aye.

14 MS. HALSEY: Ms. Ramirez?

15 MEMBER RAMIREZ: No.

16 MS. HALSEY: All right, thank you.

17 CHAIR ORTEGA: Thank you. Thank you, Mr. Sand and
18 the Controller's representatives.

19 MS. HALSEY: Item 5 is reserved for County
20 applications for a finding of significant financial
21 distress, or SB 1033 applications.

22 No SB 1033 applications have been filed.

23 Program Analyst Kerry Ortman will present Item 7,
24 the Legislative Update.

25 MS. ORTMAN: Good morning.

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1 We are monitoring the following bills this
2 legislative session:

3 AB 268 was introduced by Assembly Member Waldron on
4 February 1st, 2017, as a spot bill. The author's office
5 has confirmed that they currently do not have any intent
6 to pursue changes to the mandates process with the bill.

7 Commission staff will continue to monitor that bill
8 for changes.

9 The Education Omnibus Trailer bill would not affect
10 the mandates process; but staff notes that it would
11 revise the list of programs that are authorized for
12 block-grant funding in lieu of program-specific
13 reimbursements as listed in the budget.

14 And then on May 11th, 2017, the Governor issued the
15 2017-18 May Revision to his budget bill, which includes
16 the following changes to state-mandated program funding:

17 The May Revision includes almost 750 million in
18 additional funds, providing more than 1 billion in
19 one-time discretionary funding to schools in 2017-18,
20 which shall first be used to fund any mandated costs.
21 It is anticipated that these resources, coupled with more
22 than 4.8 billion in one-time Prop. 98 funding provided
23 to schools over the last three budgets for the same
24 purposes, will reduce the outstanding mandate debt owed
25 to local educational agencies to 1.3 billion.

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1 The May Revision also added 15,000 to the
2 Commission's proposed operating budget to account for
3 increased salary and benefits included in the Bargaining
4 Unit 1 and 4 MOUs.

5 That's it. Thank you.

6 CHAIR ORTEGA: Thank you, Ms. Ortman.

7 MS. HALSEY: Thank you, Kerry.

8 Chief Legal Counsel Camille Shelton will present
9 Item 8, the Chief Legal Counsel report.

10 MS. SHELTON: Since the last Commission meeting,
11 there have been no new filings or recent decisions; but
12 we do have some hearing dates scheduled.

13 For the first box, the two County of Los Angeles
14 lawsuits, dealing with the *Handicapped and Disabled*
15 *Students* incorrect reduction claims, the Court has
16 consolidated those matters for all purposes and scheduled
17 the hearing for November 1st, 2017.

18 The third County of Los Angeles case, dealing with
19 *Seriously Emotionally Disturbed Pupils*, has been set for
20 hearing on April 3rd, 2018.

21 MS. HALSEY: And Item 9 is the Executive Director's
22 report.

23 As Kerry just mentioned, there was a slight increase
24 to the Commission's budget. The Commission's operating
25 budget was approved by both budget subcommittees and is

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1 expected to be enacted as proposed.

2 With regard to the Commission's budget for local
3 assistance for reimbursement of local government, the
4 subcommittees approved the mandates proposed to be funded
5 and suspended.

6 For workload, after this hearing, there are 15 test
7 claims, all but one of which are regarding *NPDES Permits*.
8 And those are all active now.

9 We also have one parameters and guidelines and one
10 statewide cost estimate regarding *NPDES Permits*, and
11 those are on inactive status pending the outcome of
12 litigation on those specific matters.

13 In addition, there is one parameters-and-guidelines
14 amendment on inactive status pending outcome of
15 litigation in the *CSBA* case, which is in the First
16 District Court of Appeal.

17 And finally, we have three remaining incorrect -- or
18 13 remaining incorrect reduction claims.

19 As of today, the Commission staff expects to
20 complete all currently pending test claims and IRCs by
21 approximately September 2018.

22 And that's all I have.

23 CHAIR ORTEGA: Okay. Any questions for Camille or
24 Heather?

25 *(No response)*

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1 CHAIR ORTEGA: No?

2 Seeing none, we will now move into closed session.

3 The Commission will meet in closed executive session
4 pursuant to Government Code section 11126(e) to confer
5 with and receive advice from legal counsel for
6 consideration and action, as necessary and appropriate,
7 upon the pending litigation listed on the published
8 notice and agenda; and to confer with and receive advice
9 from legal counsel regarding potential litigation. The
10 Commission will also confer on personnel matters pursuant
11 to Government Code section 11126(a)(1).

12 We will reconvene in open session in approximately
13 ten minutes.

14 Thank you, everyone.

15 *(The Commission met in closed executive session*
16 *from 10:40 a.m. to 10:55 a.m.)*

17 CHAIR ORTEGA: Okay, the Commission met in
18 closed-executive session pursuant to Government Code
19 section 11126(e)(2) to confer with and receive advice
20 from legal counsel for consideration and action, as
21 necessary and appropriate, upon the pending litigation
22 listed on the published notice and agenda; and to confer
23 with and receive advice from legal counsel regarding
24 potential litigation; and pursuant to Government Code
25 section 11126(a)(1), to confer on personnel matters.

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Seeing no members of the public to come before us,
we will be adjourned.

Thank you.

(The Commission meeting concluded at 10:55 a.m.)

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REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 7th day of June 2017.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomat Reporter
Certified Realtime Reporter