

ORANGE COUNTY

Audit Report

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

Chapter 654, Statutes of 1996

July 1, 2002, through June 30, 2005



JOHN CHIANG
California State Controller

November 2008



JOHN CHIANG
California State Controller

November 12, 2008

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

Dear Mr. Moorlach:

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

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

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

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Honorable David E. Sundstrom, CPA
Auditor-Controller
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Orange County Health Care Agency
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Audit Report

Summary

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

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

Background

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

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

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

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

Objective, Scope, and Methodology

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

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

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

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

Conclusion

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

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

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

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

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

**Views of
Responsible
Officials**

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

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

November 12, 2008

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

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

Schedule 1 (continued)

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

¹ See the Finding and Recommendation section.

Finding and Recommendation

FINDING— Ineligible vendor costs

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

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

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

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

The following table summarizes the unallowable vendor costs claimed:

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

Recommendation

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

County's Response

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

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

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

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

2. The county contracted with nonprofit facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCO's Response

The finding remains unchanged.

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

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

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

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

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

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

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

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

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



*Excellence
Integrity
Service*

**COUNTY OF ORANGE
HEALTH CARE AGENCY**

BEHAVIORAL HEALTH SERVICES

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March 13, 2008

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

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

Dear Mr. Spano:

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

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

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

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

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

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

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

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

2. The County Contracted with Nonprofit Facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

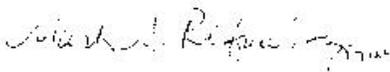
This means that in California, if there is no nonprofit placement to meet the unique needs of a special education child, his or her parents can place the child in *any* school of their choosing, regardless of educational standards, state approval, whether nonprofit or for-profit, etc., and then demand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

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

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

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

Sincerely,



Mark A. Refowitz
Deputy Agency Director
Behavioral Health Services

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

ATTACHMENT A

F I L E D
Clerk of the Superior Court

MAY 12 2006

By: L. ROCKWELL, Deputy

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

COUNTY OF SAN DIEGO,
Plaintiff/Petitioner,

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

v.

JUDGMENT (~~PROPOSED~~)

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

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

~~JUDGMENT (PROPOSED)~~

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

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

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

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

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~~JUDGMENT (PROPOSED)~~

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

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

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

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

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

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ATTACHMENT B

BUDGET ITEM - STATE DEPARTMENT		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Mandate											
Item 0430-295-0001 State Trial Court Funding										22,572	7,921
1 Grand Jury Proceeding (Ch 1170/96)											
Item 0698-295-4001 Office of Emergency Services											
2 Crime Victims' Rights (Ch 411/93) (Previously 8100-295-0001 OFF OF Crm Justice)					13,838	14,276	15,237	14,646	14,749	17,649	16,964
3 Sex Crimes Confidentiality (Ch 502/92)											
Item 0820-295-0001 Department of Justice											
4 Booking & Fingerprinting (Ch 1105/92)								947			
5 Child Abduction and Recovery (Ch 1399/76)								144,508	171,935	584,528	516,632
6 Sex Offenders Disclosure By Law Enforcement Officers (Megan's Law) - (Local Agencies) (Ch 908/96)				10,067	295,206	368,974	401,231	441,988	438,597	448,889	
7 Stolen Vehicle Notification (Ch 337/90)											
Item 0890-295-4001 Secretary of State											
8 Absentee Ballots (Local Agency) (Ch 77/78 and Ch 920/94)								401,436	348,334	573,375	891,366
9 Absentee Ballots: Tabulation by Precinct (Ch 697/99)								2,979			

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT	PY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
10 Personnel Absent Voters (Ch 1422/82)								86,663	91,815	45,754
11 Presidential Primaries 2000 (Ch 1899)						26,176				
12 Voter Registration Procedures (Ch 704/75)								38,150	41,950	89,864
Item 0950-295-0001 State Treasurer										
13 County Treasury Oversight Comm. (Ch 784/95)		6,330	22,496	41,910	55,775	51,664	61,407	65,163	105,617	452,471
Investment Reports (Local Agencies) (Ch 783/95)										
Item 1880-295-0001 State Personnel Board										
15 Police Officers Procedural Bill Of Rights (Ch 465/76)	417,968	434,219	775,948	451,726	384,219	315,388	341,751	508,494	513,301	654,900
Item 2740-295-004 Department of Motor Vehicles										
16 Administrative License Suspension (Ch 1460/89)						1,570	2,189	1,569	1,815	1,761
Item 4260-295-0001 Department of Health Services										
17 Aids Testing (Ch 1597/88)								1,126	46,843	
18 Medical-Cal Death Notices (Ch 102/81)								6,181	8,441	5,085
Pacific Beach Safety (Ch 961/92)										
20 Search Warrant: Aids (Ch 1088/88)										

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT Mandate		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
21	SIDS: Autopsy Protocols (Ch 955/89)								2,498	82,939	
22	SIDS: Contact By Local Health Officers (Ch 268/91)									30,985	
	Item 4300-295-0001 Department of Developmental Services										
23	Conservatorship (Ch 1304/80)									5,600	5,928
24	Developmentally Disabled: Attorney Services (Ch 694/75)								25,337	121,334	123,265
25	SMAS Mentally Retarded: Division (Ch 1253/80)									3,809	4,325
	Item 4440-295-0001 Department of Mental Health										
26	MDSO (Mentally Disordered Sex Offenders) Recountenents (Ch 1036/78)								4,758	17,665	21,183
27	Mentally Disordered Offenders' Extended Commitment Proceedings (Ch 1418/85)				5,359	9,207	14,699	76,672	82,777	152,136	102,479
28	Not Guilty By Reason Of Insanity (Ch 1114/79 and Ch 650/82)				127,307					255,800	126,771
29	Seriously Emotionally Disturbed Pupils: Out-Of-State Mental Health Services (Ch 654/96)				53,524	63,355	53,099	1,191,638	1,538,794	1,692,038	1,497,554
30	Services to Handicapped and Disabled Students (Ch 1747/84 and Ch 1274/85)						4,895,541	3,320,500	10,590,208	20,223,066	7,581,073

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT													
Mandate		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04		
31	Sexually Violent Predators (Ch 762 and 763, Statutes of 1995)								619,630	1,310,550	1,016,836		
32	SMAAS Coroners (Ch 498/77)									15,170	16,134		
	Item 5180-295-0001 Department of Social Services												
33	Child Abuse Treatment Services Authorization And Case Management (Ch 1090/96)												
	Item 5240-295-0001 Department of Corrections												
34	Prisoner Paritial Rights (Ch 820/93)								227,010	652,104	304,142		
	Item 5430-295-0001 Board of Corrections												
35	Domestic Violence Treatment Services Authorization And Case Management (Ch 183/92)								54,876	281,552	318,814		
	Item 5460-295-0001 Department of Youth Authority												
36	Extended Commitment - Youth Authority (Ch 546/84 & 267/98)								3,944	7,483	1,132		
	Item 7350-295-0001 Department of Industrial Relations (Previously Item 8350-295-0001)												
37	Peace Officers' Cancer Presumption (Ch 1171/89)								1,239	2,132	1,872		

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT												
Mandate		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	
38	Item 8120-295-0001 Commission on Peace Officer Standards and Training Domestic Violence Arrest Policies And Standards (Ch 246/95)								15,598	22,456	21,966	
39	Law Enforcement Sexual Harassment Training (Ch 126/93)						1,043					
	Item 8570-295-0001 Department of Food and Agriculture											
	Animal Adoptions (Ch 752/98)					2,205	31,446	63,175	22,600	17,422		
	Item 9100-295-0001 Local Assistance - Tax Relief											
41	Allocation of Property Tax Revenue: Educational Revenue Augmentation Funds (Ch 697/92)								122			
42	Redevelopment Agencies - Tax Disbursement Reporting (Ch 39/98)				2,182	2,249	2,361	2,459	2,513	2,580		
43	Senior Citizens' Property Tax Deferral Program (Ch 124/77)									14,759	15,569	
44	Uniform Countywide Tax Rate (Ch 921/87)											
	Item 9210-295-0001 Local Government Financing											
45	Health Benefits For Survivors Of Peace Officers And Firefighters (Local Agencies) (Ch 1120/96)											

Claims Summary - Orange County

BUDGET ITEM - STATE DEPARTMENT		FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	
Mandate												
46	Mandate Reimbursement Process (Ch 48675)							238,241	164,785	188,444	197,642	
47	Open Meetings (Ch 64186)				11,189	11,489	12,459	20,765	77,666	87,432	112,381	
48	Rape Victim Counseling Center Notices (Ch 999/91 and Ch 224/92)											
49	Mentally Disordered Sex Offenders: Extended Commitments (Ch 991/79)											
	Item No. 2660-1920890 Dept. of Transportation (FY 05-06) - Gov. line itemed vetoed appropriation											
50	Regional Housing Needs (1143/80)									5,061	0	
TOTAL		417,968	440,749	808,513	1,000,269	911,682	5,825,746	6,132,486	15,385,496	27,982,168	13,650,982	72,755,977

ATTACHMENT C

1 JOHN J. SANSONE, County Counsel
County of San Diego
2 By TIMOTHY M. BARRY, Senior Deputy (SBN 089019)
C. ELLEN PILSECKER, Senior Deputy (SBN 154241)
3 THOMAS D. BUNTON, Senior Deputy (SBN 193560)
1600 Pacific Highway, Room 355
4 San Diego, California 92101
Telephone: (619) 531-6259

5 Attorneys for Plaintiff/Petitioner County of San Diego

6 BENJAMIN P. de MAYO, County Counsel
County of Orange
7 By JOHN H. ABBOTT, Senior Deputy (SBN 150788)
8 WENDY J. PHILLIPS, Deputy (SBN 178452)
10 Civic Center Plaza, 4th Floor
9 Post Office Box 1379
Santa Ana, California 92702-1379
10 Telephone: (714) 834-3319
Facsimile: (714) 834-2359

11 Attorneys for Plaintiff/Petitioner County of Orange

12
13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 COUNTY OF SAN DIEGO,
16 Plaintiff/Petitioner,

17 v.

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

22 Defendants/Respondents.

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

23 **JOINT TRIAL READINESS**
24 **CONFERENCE REPORT**

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

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

27 U/C Judge: Honorable Jay M. Bloom

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

///

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Joint Trial Readiness Conference Report

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

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

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

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

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

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

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

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

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

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

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

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

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

28 H. Special verdict form: Not Applicable

ATTACHMENT D

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

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

7
8 **III. Facts**

9 **A. Plaintiffs' Case**

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

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

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

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