

# **PLACER 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

February 2008



**JOHN CHIANG**  
**California State Controller**

February 22, 2008

The Honorable Katherine Martinis  
Auditor-Controller  
Placer County  
2970 Richardson Drive  
Auburn, CA 95603

Dear Ms. Martinis:

The State Controller's Office audited the costs claimed by Placer 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 \$309,185 (\$310,185 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$199,120 is allowable and \$110,065 is unallowable. The unallowable costs resulted because the county claimed ineligible basic education services, used ineligible contracted providers, and underclaimed board-and-care costs from eligible vendors. The State paid the county \$142,452. The State will pay allowable costs claimed that exceed the amount paid, totaling \$56,668, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at [www.csm.ca.gov](http://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](mailto: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:vb

cc: Richard Knecht, Director  
Children's System of Care  
Placer County  
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# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by Placer 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 \$309,185 (\$310,185 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$199,120 is allowable and \$110,065 is unallowable. The unallowable costs resulted because the county claimed ineligible basic education services, used ineligible contract providers, and underclaimed board-and-care costs from eligible vendors. Allowable costs claimed exceed the amount paid by \$56,092.

## 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 a 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;
- 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, 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, 2007.

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 the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

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

## **Conclusion**

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Placer County claimed \$309,185 (\$310,185 less a \$1,000 penalty for filing a late claim) for costs of the Seriously Emotionally Disturbed Pupils: Out-of-State Mental Health Services Program. Our audit disclosed that \$199,120 is allowable and \$110,065 is unallowable.

For the fiscal year (FY) 2002-03 claim, the State paid the county \$8. Our audit disclosed that \$72,106 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$72,098, contingent upon available appropriations.

For the FY 2003-04 claim, the State made no payment to the county. Our audit disclosed that \$44,510 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$44,510, contingent upon available appropriations.

For the FY 2004-05 claim, the State paid the county \$142,444. Our audit disclosed that \$82,504 is allowable. The State will offset \$59,940 from other mandated program payments due to the county. Alternatively, the county may remit this amount to the State.

**Views of  
Responsible  
Officials**

We issued a draft audit report on November 14, 2007. Sabrena Thompson, Deputy County Counsel, responded by letter dated January 4, 2008 (Attachment), disagreeing with the audit results for Finding 1. The county did not respond to Finding 2. This final audit report includes the county's response.

**Restricted Use**

This report is solely for the information and use of Placer 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

February 22, 2008

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

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2002, through June 30, 2003</u>				
Vendor reimbursements:				
Treatment costs	\$ 105,592	\$ 31,680	\$ (73,912)	Finding 1
Board-and-care costs	—	38,256	38,256	Finding 1
Case management costs	3,357	—	(3,357)	Finding 2
Travel costs	2,170	2,170	—	
Indirect costs	<u>11,112</u>	<u>—</u>	<u>(11,112)</u>	Finding 2
Total program costs	<u>\$ 122,231</u>	72,106	<u>\$ (50,125)</u>	
Less amount paid by the State		<u>(8)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 72,098</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Vendor reimbursements:				
Treatment costs	\$ 41,340	\$ 26,340	\$ (15,000)	Finding 1
Board-and-care costs	—	38,361	38,361	Finding 1
Case management costs	1,411	—	(1,411)	Finding 2
Travel costs	1,648	1,648	—	
Indirect costs	<u>111</u>	<u>—</u>	<u>(111)</u>	Finding 2
Subtotal	44,510	66,349	21,839	
Less allowable cost that exceed costs claimed <sup>2</sup>	<u>—</u>	<u>(21,839)</u>	<u>(21,839)</u>	
Total program costs	<u>\$ 44,510</u>	44,510	<u>\$ —</u>	
Less amount paid by the State		<u>—</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 44,510</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Vendor reimbursements:				
Treatment costs	\$ 45,388	\$ 24,628	\$ (20,760)	Finding 1
Board-and-care costs	93,186	54,006	(39,180)	Finding 1
Travel costs	<u>4,870</u>	<u>4,870</u>	<u>—</u>	
Subtotal	143,444	83,504	(59,940)	
Less late filing penalty	<u>(1,000)</u>	<u>(1,000)</u>	<u>—</u>	
Total program costs	<u>\$ 142,444</u>	82,504	<u>\$ (59,940)</u>	
Less amount paid by the State		<u>(142,444)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (59,940)</u>		



## Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>Summary: July 1, 2002, through June 30, 2005</u>				
Vendor reimbursements:				
Treatment costs	\$ 192,320	\$ 82,648	\$ (109,672)	
Board-and-care costs	93,186	130,623	37,437	
Case management costs	4,768	—	(4,768)	
Travel costs	8,688	8,688	—	
Indirect costs	11,223	—	(11,223)	
Subtotal	310,185	221,959	(88,226)	
Less allowable costs that exceed costs claimed <sup>2</sup>	—	(21,839)	(21,839)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 309,185</u>	199,120	<u>\$ (110,065)</u>	
Less amount paid by the State		(142,452)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 56,668</u>		

<sup>1</sup> See the Findings and Recommendations section.

<sup>2</sup> Government Code section 17561 stipulates that the State will not reimburse any claim more than one year after the filing deadline specified in the SCO's claiming instructions. That deadline has expired for FY 2003-04.

# Findings and Recommendations

## **FINDING 1— Overstated payments to service vendors**

The county overstated payments to service vendors by \$72,235 for the audit period.

The county claimed \$66,579 for mental health services provided by two ineligible service vendors because some of the contracted providers did not meet the nonprofit status required under the program. It also claimed \$43,093 for ineligible basic education service under the program. Furthermore, the county underclaimed board-and-care costs for eligible service vendors by \$37,437.

The program's parameters and guidelines under reimbursable activities (section IV) specify that the direct and indirect costs of eligible services to SED pupils in out-of-state residential placements are reimbursed as specified in Government Code Section 7576, and California Code Regulations, Title 2, sections 60100 and 60110, and California Welfare and Institutions Code section 11460, subdivision (c), (2) and (3). In part, the codes state that the state reimbursement shall only be made to a group home organized and operated on a nonprofit basis.

The following table summarizes the overstated vendor payments:

	Fiscal Year			Total
	2002-03	2003-04	2004-05	
Board-and-care costs	\$ 38,256	\$ 38,631	\$ (39,180)	\$ 37,437
Basic education services	(43,093)	—	—	(43,093)
Treatment service providers	(30,819)	(15,000)	(20,760)	(66,579)
Audit adjustment	<u>\$ (35,656)</u>	<u>\$ 23,361</u>	<u>\$ (59,940)</u>	<u>\$ (72,235)</u>

### Recommendation

We recommend that the county ensure that its contracted service providers comply with the non-profit requirement under the program.

Additionally, we recommend the county ensure that the claimed costs are made for eligible services in accordance with the program's parameters and guidelines.

### County's Response

The county objects to the \$72,138 of unallowable vendor costs for three clients who were unilaterally placed in a for-profit residential facility by the parent. Subsequently, the county ratified the placement by reaching a negotiated agreement with the Local Education Agency (LEA) and Individual Education Program (IEP) team for retroactive and continuing reimbursement to the private for-profit provider.

The county contends that out-of-state residential placements are governed only by California Code of Regulations (CCR), section 60010 when the IEP team makes a placement of a Seriously Emotionally Disturbed (SED) pupil. However, the county believes that placements made unilaterally by a parent fall outside of governing state regulations.

The county cites a Supreme Court case, federal legislation, and State Education Code sections that create exceptions to state regulations.

The following is a summary of the county's arguments. The entire text of the county's arguments is attached to this report.

1. CCR, section 60100, is not applicable to situations in which placements are not initially made by the IEP team. Citing a Supreme Court Case, *Carter vs. Florence County School District 4*, the county argues that a parent's unilateral placement in a private school of a child who is subsequently determined to be SED and eligible for residential placement frees the county from meeting the eligibility requirements of the state. In this case, the court ruled that parents who unilaterally place their child in a private school that lacks state certification are entitled to reimbursement.
2. Education Code section 56365 authorizes expenditure of state and federal funds where private services are necessary to provide a free appropriate public education (FAPE) to a student with exceptional needs.
3. The Individuals with Disabilities Education Act includes no provision for removing a child from an appropriate educational placement simply because the business structure of the facility is not sanctioned by California administrative regulation.
4. The State Board of Education has determined that it is not necessary for a school district to seek a waiver of contracting and certification requirements, under Education Code section 56101, when a school district acknowledges in mediation that the parent's unilateral placement provided the child with an appropriate education.

#### SCO's Response

The finding remains unchanged. The county is prohibited from placing, or paying for, a client in a for-profit, out-of-state residential 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 state reimbursement shall only be made to a group home organized and operated on a nonprofit basis. The state-mandated program's parameters and guidelines do not provide reimbursement for out-of-state residential placements made outside the regulation, regardless of who made the initial placement.

The county ratified the placement and reimbursed the for-profit facility through a negotiated agreement with the LEA and IEP team despite the state regulations. In an administrative hearing, OAH No. N2005070683, an administrative law judge decided in October 2005 that the San Bernardino County Department of Behavioral Health was statutorily prohibited from reimbursing a parent for costs incurred for unilateral placement in a for-profit facility.

We do not dispute the judgment rendered by the U.S. Supreme Court in *Carter vs. Florence County School District 4*, or Education Code sections 56365 and 56101. The case and code sections cited relate to educational services, not mental health out-of-state residential placements. Moreover, we neither require nor recommend removal of a child from an out-of-state facility. Instead, our focus is on the reimbursements for placements outside of state regulations. The fact remains that the SED pupils program is a state-mandated cost program, and the county filed a claim seeking reimbursement from the State under the California Code of Regulations, Title 2, section 60100, and Welfare and Institutions Code section 11460. Again, residential placements made outside of the regulation are not subject to reimbursement under the state-mandated cost program.

**FINDING 2—  
Costs claimed twice**

The county inadvertently claimed \$15,991 in reimbursable costs for case management costs and related indirect costs that it also claimed under the mandated Handicapped and Disabled Students Program.

The program's parameters and guidelines specify that only actual increased costs incurred in the performance of the mandated activities and adequately documented are reimbursable.

The following table summarizes the duplicated costs claimed:

	Fiscal Year		Total
	2002-03	2003-04	
Case management costs	\$ (3,357)	\$ (1,411)	\$ (4,768)
Indirect costs	(11,112)	(111)	(11,223)
Audit adjustment	<u>\$ (14,469)</u>	<u>\$ (1,522)</u>	<u>\$ (15,991)</u>

Recommendation

We recommend that the county ensure that costs claimed are eligible increased costs incurred as a result of the mandate

County's Response

The county did not respond to the audit finding.

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

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**ANTHONY J. La BOUFF**  
County Counsel

**GERALD O. CARDEN**  
Chief Deputy

**Placer County Counsel**  
COUNTY ADMINISTRATIVE CENTER • 175 FULWEILER AVENUE  
AUBURN, CALIFORNIA 95603-4583  
(530) 889-4044 • FAX: (530) 889-4060

January 4, 2008

Jim L. Spano  
Chief, Mandated Cost Audits Bureau  
Office of the State Controller  
Division of Audits  
P.O. Box 942850  
Sacramento, California 94250-5874

Dear Mr. Spano:

I am writing on behalf of Katherine Martinis, Auditor-Controller for Placer County, in response to the draft audit report issued by your office dated November 2007, regarding Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services Program, for the period of July 1, 2002 through June 30, 2005.

Specifically, I am objecting to your finding \$72,138.00 of our costs disallowable, as the facilities were for-profit facilities. In the cases of Lana N., Alisha S., and Michael L., the parent unilaterally placed the child in the for-profit private residential facility, and afterward reached a negotiated agreement with the LEA and Individualized Education Program (IEP) team in a post-placement meeting concerning retroactive and continuing reimbursement to the private for profit provider.

This situation is not governed by CCR 60100, which details procedures to be followed when an IEP team initially places the child in residential treatment. In this case, it has been determined by the U.S. Supreme Court, and accepted by the California Department of Education that a parent's placement of a child that is subsequently determined to be SED and eligible for residential placement is not required to meet the eligibility requirements of the state. The United States Supreme Court in *Carter v. Florence County School Dist. 4*, 950 F.2d 156, 163 (4th Cir. 1991), *aff'd.*, 114 S. Ct. 361, 365 (1993), ruled unanimously that parents who unilaterally place their child in a private school that lacked state certification could obtain reimbursement if the school

district's proposed placement was not appropriate or non-existent and the parents' placement was effective and appropriate.

Education Code section 56365 authorizes the expenditure of state and federal funds when private services are necessary to provide a free appropriate public education (FAPE) to a student with exceptional needs. Situations arise in which parents determine that the only way their child can receive a FAPE is to make a private placement without the consent of a school district or the county in a private school, or to contract for related services with a private agency (i.e., psychologist, social worker, physical therapist, assistive device consultant, etc.). Typically, parents pay for these services themselves. Prior to the 1997 amendments to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 - 1485), the United States Supreme Court recognized that parents had the right to make such "unilateral" placements under IDEA, but at their own risk [Burlington School Committee v. Depart. of Educ., 471 U.S. 359, 368; 105 S.Ct. 1996, 2002 (1985). Carter v. Florence County School Dist. 4, 950 F.2d 156, 163 (4th Cir. 1991), aff'd., 114 S. Ct. 361, 365 (1993).].

As has been stated by the California Department of Education, if the parents request a school district to reimburse them for tuition or related services costs and the school district and county refuses, believing that they either had an appropriate placement or the parents' placement was not "appropriate," parents are likely to petition for a due process hearing. The risk inherent in making a unilateral placement is that the hearing officer and/or a court might rule against the parents, thereby negating the parents' entitlement to be reimbursed. This public policy has been codified in IDEA at 20 U.S.C. § 1412 (a) (10) (C) [Amended by P.L. 105-17, The Individuals with Disabilities Education Act Amendments of 1997, signed June 4, 1997.]. [A reference to a school district includes county offices of education and special education local plan areas (SELPA's).].

In many cases, the parents and district and county settle such disputes in IEPs called by the parents after the placement. If a child is determined to be severely emotionally disturbed by the IEP team, and the child is subsequently determined to be doing better in the for profit residence/school the parents had placed the child in, there is no provision in the IDEA for removing that child simply because the business structure of the facility is not one that has been sanctioned by a California administrative regulation. If the IEP team, including the school district and the county believe it is detrimental to the child to force the child to relocate facilities simply because of its for profit status, it is forced into the untenable position of having its costs disallowed by the State Controller.

Jim L. Spano  
Chief, Mandated Cost Audits Bureau  
January 4, 2008  
Page 3 of 3

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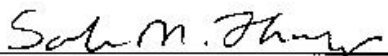
No California statute or regulation addresses the situation where the parent has made the initial placement unilaterally in a for profit facility, therefore the State Controller's disallowance of those costs is inappropriate and without authority to justify such action. Placer County agrees that, when the IEP team designates the initial placement, CCR 60100 controls and a non-profit facility must be chosen. However, in the cases we have  
\* numbered on the attached page, and in the amounts specified, neither the IEP team, nor the County of Placer had any authority to require the removal and relocation of the child determined seriously emotionally disturbed simply due to the profit status of the facility, when the move is determined by the IEP team to harm the interests of the demonstrably vulnerable child.

The State Board of Education has determined in a parallel situation that it is not necessary for a school district to seek a State Board of Education (SBE) waiver of state contracting and certification requirements, under *Education Code* Section 56101, once a school district acknowledges in mediation that the parent's unilateral placement provided the child with an appropriate education. It is not necessary to seek such waivers in situations in which the child has already received either private school and/or private agency related services that the school district subsequently, and in the context of "due process," has concluded were necessary to meet FAPE standards under IDEA. Likewise, since the instruction and related services had been provided and deemed by the school district to have been appropriate, state certification standards are inapplicable, and a waiver of these standards is not required.

In light of the foregoing, please amend your audit findings accordingly.

Sincerely,

PLACER COUNTY COUNSEL'S OFFICE

By:   
Sabrina M. Thompson, Deputy County Counsel

/smt

Cc: Kathy Martinis, Placer County Auditor



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