

**Education Audit Appeals Panel
State of California**

Appeal of Fiscal Year 2003-04 Audit
Finding 04-48 by:

Vallejo City Unified School District,

Appellant.

EAAP Case No. 09-01

OAH No. N2009020634

Decision

The Education Audit Appeals Panel has adopted the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

Effective date: 2/1/2010.

IT IS SO ORDERED.

2/1/2010
Date

Original signed
Diana Ducay, Chairperson
for Education Audit Appeals Panel

BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of the Appeal of Fiscal Year
2003-04 Audit Findings 04-48 and 04-58 by:

VALLEJO CITY UNIFIED SCHOOL
DISTRICT,

Appellant.

Case No. 09-01

OAH No. 2009020634

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 19 and 20, 2009.

Attorney Gary D. Hori represented State Controller John Chiang.

Deputy Attorney General Sarah E. Kurtz represented the Department of Finance, which intervened as a party pursuant to Education Code section 41344.1.

N. Eugene Hill and Richard C. Miadich, Attorneys at Law, Olson, Hagel & Fishburn, LLP, represented appellant Vallejo City Unified School District.

The record remained open to receive written briefs, which were timely filed. Appellant's opening brief was marked as Exhibit H. The response of the State Controller was marked as Exhibit 3 and the response of the Department of Finance was marked Exhibit 4. Appellant's reply brief was timely filed by fax on November 10, 2009; the original filed by mail on November 12 was marked as Exhibit I. The record closed and the matter was submitted on November 10, 2009.

SUMMARY

During the 2003-04 school year, the Vallejo City Unified School District had about 268 students in its independent study program. The State Controller's Office audited a representative sample of 29 of the District's independent study agreements and found that all of the samples failed to comply with state law. Based on that finding, the audit disallowed all of the District's independent study ADA apportionment for the fiscal year, about \$1 million. The evidence presented at hearing established that the audit erred as to one agreement, which complies with state law, and that 10 agreements substantially comply with state law. Thus, 18 of the 29 agreements failed to comply or substantially comply with state

requirements. Accordingly, the disallowance of apportionment will be reduced from \$1,058,367 to \$656,917.

FACTUAL FINDINGS

1. In June 2004, pursuant to Senate Bill 1190 (Stats. 2004, ch. 53) the State of California made a \$60 million emergency loan to appellant Vallejo City Unified School District (District), which was in fiscal crisis. In accordance with the terms of that loan, the State Controller's Office (SCO) conducted a financial and compliance audit of the District for the 2003-04 fiscal year. SCO issued its audit findings in 2005. The District appealed from audit findings 04-48 and 04-58. At hearing, the District withdrew its appeal from audit finding 04-58. The only issue presented in this case is the District's appeal from audit finding 04-48, relating to independent study agreements.

2. Audit finding 04-48 constitutes the statement of issues under Government Code section 11504.

STATE STANDARDS RELATING TO INDEPENDENT STUDY

3. A California school district is authorized to offer independent study to meet the needs of its students. (Ed. Code, § 51745 et seq.¹) Independent study takes place outside the normal classroom environment. An independent study student meets once per week with his or her teacher for a one-on-one meeting. At that meeting, the teacher assigns homework for the next following week, and receives and evaluates the student's work from the prior week.

4. The state makes apportionment payments to a school district based upon the average daily attendance (ADA) of students enrolled in independent study, provided that the district meets certain requirements established by state law.² (§ 51745 et seq.) For example, a district must: meet a certain ratio of independent study students to teachers (§ 51745.6); comply with residency requirements for its independent study students (§ 51747.3); provide independent study students equal rights of access to services and resources (§ 51746); insure that the independent study of each student is coordinated, evaluated and supervised by a certificated teacher (§ 51745.5); adopt policies on the maximum length of time that may elapse between the date an independent study assignment is made and the date the student completes the work, and the number of missed assignments that will be allowed before an evaluation is conducted to determine whether the student should remain in independent study (§ 51747, subds. (a) & (b)); and maintain a current written agreement for each independent study student that contains certain elements (§ 51747, subd. (c)).

¹ All statutory references are to the Education Code unless otherwise stated.

² A district's apportionment is based on the average daily attendance it reports for the second period of apportionment ("P-2"), which runs from July 1 to April 15. (§ 41601.)

5. The written independent study agreement sets forth the instructional plan for the student. (*Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1376.) The written agreements are part of a broad legislative effort to establish quality control standards for independent study programs. (*Ibid.*) Each written agreement must contain all of the required elements so that “all parties – students, teachers, and parents – are aware of the requirements under the statute.” (*Id.* at p. 1377.)

6. A school district is not eligible to receive apportionments for independent study students unless it maintains on file a current written agreement for each student that includes all of the following elements:

- (1) The manner, time, frequency, and place for submitting a pupil’s assignments and for reporting his or her progress.
- (2) The objectives and methods of study for the pupil’s work, and the methods utilized to evaluate that work.
- (3) The specific resources, including materials and personnel, that will be made available to the pupil.
- (4) A statement of the policies . . . regarding the maximum length of time allowed between the assignment and the completion of a pupil’s assigned work, and the number of missed assignments allowed prior to an evaluation of whether or not the pupil should be allowed to continue in independent study.
- (5) The duration of the independent study agreement, including the beginning and ending dates for the pupil’s participation in independent study under the agreement. No independent study agreement shall be valid for any period longer than one semester, or one-half year for a school on a year-round calendar.
- (6) A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil upon completion.
- (7) The inclusion of a statement in each independent study agreement that independent study is an optional educational alternative in which no pupil may be required to participate. . . .
- (8) Each written agreement shall be signed, prior to the commencement of independent study, by the pupil, the pupil’s

parent, legal guardian, or caregiver, if the pupil is less than 18 years of age, [and] the certificated employee who has been designated as having the responsibility for the general supervision of independent study. . . .

(§ 51747, subd. (c); *Modesto City Schools v. Education Audits Appeal Panel*, *supra*, 123 Cal.App.4th at 1376-1378.) Each signature required for an independent study agreement must be dated. (Cal. Code Regs., tit. 5, § 11702, subd. (a).) An independent study agreement is not in effect until it is complete as to all terms, signed, and dated. (*Ibid.*)

THE DISTRICT'S INDEPENDENT STUDY PROGRAM

7. In 2003-04, the District's independent study program served students at all grade levels who, for a variety of reasons, could not successfully participate in the conventional classroom environment. Some students began independent studies at the start of the semester, while others entered the program mid-year after experiencing difficulties in the classroom. Students who participated in independent studies for less than a full semester could earn partial course credit. High school courses typically have a value of five credits. Middle school students do not receive course credits, and thus section 51747, subdivision (c)(6), requires that the agreements for these students state "other measures of academic accomplishment" to be earned by the student.

8. In 2003-04, the District offered independent studies at two locations, one at the Home Outreach Program for Education (HOPE) situated at the Community Day School, and the other located at Peoples Continuation School. The HOPE program served students at all grade levels, elementary school to high school. The Peoples program served only students from the District's high schools. There were six independent studies teachers at HOPE and eight at Peoples, with each teacher serving about 25 students.

AUDIT FINDING 04-48

9. Sandra Foster, a certified public accountant and an auditor for SCO, was the auditor in charge of the 2003-04 audit. She was assisted by a team of auditors from SCO.

10. The Education Audit Appeals Panel (EAAP) has adopted, by regulation, an audit guide. (Cal. Code Regs., tit. 5, § 19810 et seq.) The audit guide sets forth 22 procedures to be performed in an audit of an independent study program. An auditor must follow the procedures set forth in the audit guide "unless, in the exercise of . . . her professional judgment, the auditor determines other procedures are more appropriate in particular circumstances." (Cal. Code Regs., tit. 5, § 19816.) Auditors are expected to always exercise their professional judgment. (Cal. Code Regs., tit. 5, § 19810.)

11. Foster and her team followed the procedures set forth in the audit guide. Foster chose to select a representative sample of student files to review, a procedure authorized by the audit guide. (Cal. Code Regs., tit. 5, § 19819.) The auditors found that

there were 268 students in independent study. Foster chose to select a sample of 28 student files, because 28 exceeded the SCO standard sampling size of 10 percent. One of the students selected at random, Student #10,³ turned out to be a Community Day School student who was not eligible to be placed in independent study. Foster then randomly selected another student file, for a total sample size of 29.

12. Of the 29 student files randomly selected, 17 were middle and high school students who attended HOPE, and the remaining 12 were high school students who came from various District schools and attended independent studies at Peoples.

13. The District was unable to supply the auditors with the files for Student #2 or Student #11. Thus, the District could not satisfy any of the audit procedures as to these two students, or as to Student #10, who was ineligible for independent study.

14. For the remainder of the students in the sample, the District satisfied all of the audit procedures except those relating to independent study agreements.

15. The auditors found that none of the independent study agreements for HOPE students identified the duration of the agreement, as required by section 51747, subdivision (c)(5). HOPE used a preprinted master agreement which called for the entry of various data concerning the student and his or her independent study program, including the student's "Entry Date to the HOPE Program" and "Exit Date from HOPE." These dates, however, reflect the student's participation in HOPE, not the duration of the independent study agreement. Nowhere on the master agreement did the form call for entering the duration of the agreement.

16. The auditors found that, with two exceptions, the independent study agreements for Peoples students did not set forth the duration of the agreement. The master agreement for the Peoples students had preprinted blocks in which to enter the student's "Entry to IS date" and "Exit date." It appears that the auditors treated these dates as the beginning and ending dates of the student's participation in independent study under the agreement. The auditors found that 10 of the 12 agreements for Peoples students contained only one date or none. Both dates were entered in the agreements for Students #21 and #23. The agreement for Student #21, however, was found deficient on the ground that it was for an entire school year, "9/01" to "6/17/04." The agreement for Student #23 was found deficient because it was from November 21, 2003, to March 10, 2004, but was not signed by the student or the student's parent until February 3, 2004. (§ 51747, subd. (c)(8).) The auditors concluded that none of the Peoples independent study agreements complied with state law.

17. Based on these deficiencies in the HOPE and Peoples master agreements, the audit disallowed all of the District's ADA apportionment for its independent study program. In its P-2 report in May 2004, the District had reported an average daily attendance in

³ All students are identified by the number assigned to them by the auditors.

independent study of 226.57 (29.65 for HOPE middle school, 110.39 for HOPE high school and 86.53 for Peoples). The total amount of the disallowance is \$1,058,367 (\$4,671 per unit of ADA).

18. In some of the agreements, the audit found other deficiencies, in addition to those described above. The audit findings regarding additional deficiencies are summarized as follows:

Student #1, HOPE middle school:
No measure of academic accomplishment
Not signed or dated by student

Student #3, HOPE middle school:
No measure of academic accomplishment

Student #4, HOPE middle school:
No courses stated
No measure of academic accomplishment
Not signed or dated by teacher

Student #5, HOPE high school:
No courses stated
No course credits stated
Not signed or dated by student
Not signed or dated by teacher
Not signed prior to commencement of independent study

Student #6, HOPE high school:
Not signed or dated by student
Not signed or dated by teacher
Not signed prior to commencement of independent study

Student #7, HOPE high school:
No course credits stated
Not signed prior to commencement of independent study

Student #8, HOPE high school:
No courses stated
No course credits stated
Not signed or dated by student
Not signed or dated by teacher
Not signed prior to commencement of independent study

Student #9, HOPE high school:
Not signed or dated by teacher

Student #12, HOPE high school:
No course credits stated
Not signed agreement prior to commencement of independent study

Student #13, HOPE high school:
No course credits stated
Not signed prior to commencement of independent study

Student #14, HOPE high school:
No course credits stated

Student #15, HOPE high school:
No courses stated
No course credits stated
Not signed prior to commencement of independent study

Student #16, HOPE high school:
No course credits stated
Not signed prior to commencement of independent study

Student #17, HOPE high school:
No written agreement provided to auditors
Not signed prior to commencement of independent study

Student #18, Hogan High School:
Not signed prior to commencement of independent study

Student #26, Vallejo High School:
No course credits stated
Not signed prior to commencement of independent study

Student #27, Vallejo High School:
Student signature not dated

Student #28, Vallejo High School:
Student signature not dated

Student #29, Vallejo High School:
Student and parent signatures not dated

Because the audit disallowed all of the District's independent study ADA, the audit did not impose any disallowance of ADA for these additional deficiencies.

19. During the 2003-04 school year, the District had 17 elementary school pupils in its independent study program, but it did not claim apportionment for those students. The

auditors decided to analyze a representative sample of the agreements for the elementary school students in the event the District chose to claim apportionment. The auditors examined three agreements and found that none of them stated the duration of the agreement or the measures of academic accomplishment that would be applied. None of the agreements was signed by all parties prior to commencement of independent study. The auditors' findings did not result in a disallowance of any apportionment, however, because the District had not reported to the state any attendance for its elementary school independent study pupils.

20. At hearing, auditor-in-charge Foster testified that, in her opinion, internal controls concerning the District's independent study program were "nonexistent" and that the deficiencies in the agreements were "systemic." Her testimony on this point was credible and persuasive.

THE DISTRICT'S EVIDENCE

21. The District asserts that SCO requires its auditors to use a sample size of 10 percent when selecting a representative sample, a requirement that constitutes an invalid "underground regulation" because it was not adopted in accordance with the public review procedures set forth in the Administrative Procedure Act. (Gov. Code, § 11346 et seq.) The District argues that the representative sample cannot be used to assess its compliance with state requirements because the auditors relied on the SCO's invalid regulation instead of exercising their professional judgment.

The District relies on *Grier v. Kizer* (1990) 219 Cal.App.3d 422. At issue in *Grier* was a random sampling audit procedure, developed by the Department of Health Services, to examine physicians' claims for reimbursement from Medi-Cal. The method was not expressly authorized by statute nor was it adopted by regulation. The court held that the department's audit method was "a standard of general application to all Medi-Cal providers" and therefore should have been promulgated as a regulation.

Grier is inapposite to this case. The EAAP audit guide, which expressly authorizes an audit of independent study by representative sample, has been adopted by regulation. Even if *Grier* applies to audit procedures that in turn implement the EAAP audit guide, the evidence does not establish that SCO's standard sample size of 10 percent is a standard of general application that eliminates the exercise of auditor judgment. The facts of this case demonstrate that it is not such a rigid standard. Auditor-in-charge Foster chose to examine 28 student files, a figure that slightly exceeded 10 percent of the number of students in independent study. When one of the students in the representative sample was found ineligible to participate in independent study, Foster elected to increase the sample size, an exercise of auditor judgment that could only benefit the District. The evidence fails to establish that SCO's standard sample size of 10 percent is generally applied in all audits, or that auditor-in-charge Foster failed to exercise auditor judgment in selecting the sample size.

22. The District argues that the sample of student agreements is flawed because it combines HOPE and Peoples students. The District asserts that there are important differences between the two programs. HOPE, the District argues, was designed to include greater parental involvement and served a K-12 student population, while Peoples served only high school students.

No expert evidence was offered to support the proposition that the sample is flawed, and the District's argument is unpersuasive. While the HOPE and Peoples programs may differ in many ways, their legal obligations with respect to independent study agreements are identical. The evidence does not establish that the auditors erred in selecting a random sample from all of the students in the District's independent study program.

23. The District contends that its independent study program substantially complies with the requirements of state law. Section 41344.1, subdivision (c), defines "substantial compliance" to mean:

nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local educational agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding. The [EAAP] may further define "substantial compliance" by issuing regulations or through adjudicative opinions, or both. . . .

EAAP has not further defined "substantial compliance" by regulation or precedential decisions.

The District advances two theories to support its claim of substantial compliance.

The District asserts first that it has satisfied almost all of the requirements that govern independent study. The District notes that, under the audit guide, its independent study program was subjected to 22 audit procedures and found to be deficient as to only one procedure, the procedure for independent study agreements. Even as to that procedure, the District argues, the agreements were found to be deficient in only three of the eight required elements.

The District's argument is not persuasive. Under section 41344.1, the District must show "nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose." A complete independent study agreement is a material requirement of independent study. Indeed, it is the fundamental requirement of independent study, because the written

agreement specifies the student's instructional plan. The District did not demonstrate that all of its agreements met the standard set by section 41344.1.

The District argues next that all of the required elements for independent study agreements were satisfied in orientation sessions conducted by the teacher on the first day that a student entered independent study. The orientation sessions were described in testimony from Susan Craig, Ph.D., Teresa Morgan, Leonard John Cayabyab, and Robert McKinney. In 2003-04, Craig was the principal of HOPE; she was also the principal of the District's Community Day School, located on the same campus. Morgan and Cayabyab were independent study teachers at HOPE and McKinney was an independent study teacher at Jesse Bethel High School. In substance, these individuals testified that, during their first meeting with the student and the parent, they went over the student's transcript to make sure the student was assigned the correct classes; discussed the course credit that the student would earn or the measure of performance that would be applied; gave the student his or her textbooks; discussed the duration of the independent study agreement; and then went over all of the terms of the agreement with the student and the student's parent.

While the testimony of Dr. Craig, Morgan, Cayabyab and McKinney is undisputed, it is of little probative value on the issue of substantial compliance. Under state law, every student must have a written independent study agreement, and that written agreement must contain certain elements. The value of a written agreement is evident: it promotes a clear expression of the parties' agreement; it impresses upon the parties the serious nature of their commitment; and it provides a record of the agreement. Even assuming that the District's other independent study teachers conducted the same orientation sessions described by the witnesses at hearing, an orientation session is not "nearly complete satisfaction" of the requirement for a complete written agreement.

24. Although the evidence fails to establish that, as a whole, the District's independent study program substantially complies with state law, the evidence establishes that certain independent study agreements comply, or substantially comply, with state requirements.

a. Student #18: The audit found that this agreement did not set forth the duration of the agreement, presumably because there are blank spaces for "Entry to IS date" and "Exit date." On the first page of the agreement, however, it states that it is the master agreement for "Sp. 04," which must mean "spring semester 2004." The only other deficiency noted for this agreement is that it was signed by the student and parent on February 10, 2004, one day after what the auditors understood to be the first day of the spring semester. (The audit found that spring semester began on February 9, although other evidence suggests that it actually began on February 2.) The date of signature is a minor instance of noncompliance. This agreement substantially complies with the requirements of section 51747, subdivision (c).

b. Students #19, #20, #24 and #25: The only deficiency in the agreements for these students is the failure to state the duration of the agreement. However, each of these agreements was signed just before or just after the start of the 2004 spring semester, and each

agreement identifies the courses the student will take and assigns each course a value consistent with a full semester of work. The agreements recite as their objective that "the student will complete the courses listed below during the semester" It is reasonable to infer that when the parties entered into these agreements, they understood that the agreement was for one semester, notwithstanding the fact that the agreement does not expressly state that its duration is for the spring semester of 2004. These agreements substantially comply with the requirements of section 51747, subdivision (c).⁴

c. Student #21: The audit found this agreement deficient on the ground that its term is longer than one semester. This finding is based upon the entries on the master agreement which state that the student's "Entry to IS date" is "9/01" and his or her "Exit date" is "6/17/04."

This audit finding rests on two assumptions that are not supported by the evidence. The first assumption is that the "Entry to IS date" and "Exit date" refer to the duration of the agreement. The evidence established that these dates were intended to reflect the date the student entered and left the independent study program, not the duration of the particular agreement. The second assumption is that "9/01" refers to September 1, 2003, rather than September 2001.

It is true that, even if these assumptions are disregarded, the agreement for Student #21 still fails to expressly state the duration of the agreement. The agreement, however, was signed by the teacher on January 29, 2004, and by the student and his or her parent on February 2, 2004. These dates coincide with the start of the spring semester. The agreement identifies the courses that Student #21 will take and assigns each course a value consistent with a full semester of work. The agreement recites as its objective that "the student will complete the courses listed below during the semester." It is reasonable to infer that when the parties entered into this agreement, they understood that the agreement was for one semester. This agreement substantially complies with the requirements of section 51747, subdivision (c).

d. Student #22: The only deficiency associated with this agreement is the failure to set forth the duration of the agreement. Like the audit finding relating to Student #18, this finding appears to be based on blank spaces for "Entry to IS date" and "Exit date." On the first page of the agreement, however, it states that it is the master agreement for "Sp. semester 2004," which must mean "spring semester 2004." SCO acknowledges that this agreement properly sets forth the duration of the agreement. This agreement complies with the requirements of section 51747, subdivision (c).

e. Student #23: The only deficiency associated with this agreement is that it was signed after the student commenced independent study. As in the case of Student #21, the audit assumed that the "Entry to IS date" and "Exit date" were intended to state the duration

⁴ In its closing brief, SCO acknowledges that the agreements for Students #24 and #25 are not deficient.

of the agreement. The "Entry to IS date" in this case is November 21, 2003, but Student #23 and his or her parent did not sign the agreement until February 3, 2004. The "Exit date" is March 10, 2004.

As noted above, the evidence establishes that the "Entry to IS date" refers to the date the student entered the independent study program, not the beginning date of the particular contract. The agreement for Student #23 was signed by the teacher on January 30, 2004, by the student and the student's parent on February 3, 2004, and by what appears to be another school official on February 4, 2004, all dates that coincide with the start of the spring semester. The agreement reveals that the student is to receive partial course credit for his or her courses, and that the student is to exit from independent study on March 10, 2004. It is reasonable to infer that the parties intended the duration of this agreement to be from the beginning of the spring semester to March 10, 2004. Although this interpretation means that the student and the student's parent may have signed the agreement one day after the spring semester began, that is a minor instance of noncompliance. This agreement substantially complies with the requirement of section 51747, subdivision (c).

f. Students #27, #28 and #29: The audit identifies two deficiencies in these agreements, failure to state the duration of the agreement and undated signatures by the student and/or parent. The agreement for Student #27 was signed by the teacher and parent on February 12, but the student's signature is not dated. The agreement for Student #28 was signed by teacher and parent on February 2, but the student's signature is not dated. The agreement for Student #29 was signed by the teacher on February 1, but neither the student's signature nor the parent's signature is dated.

With respect to the duration of the agreement, each of these agreements was signed by at least one party just before or just after the start of the 2004 spring semester, and each agreement identifies the courses the student will take and assigns each course a value consistent with a full semester of work. The agreements recite as their objective that "the student will complete the courses listed below during the semester" It is reasonable to infer that when the parties entered into these agreements, they understood that the agreement was for one semester. The failure of Students #27 and #28 to date their signatures, and the failure of Student #29 and his or her parent to date their signatures, are minor or inadvertent errors. These agreements substantially comply with the requirements of section 51747, subdivision (c).

25. None of the other independent study agreements in the representative sample comply or substantially comply with state requirements.

26. The District argues that the audit erred in finding that the agreements for Students #16 and #26 were not signed before the students commenced independent study. Even if the District is correct on that point, however, both agreements fail to state the course credits to be earned by the students, and thus the duration of the agreements is not clear.

27. In its closing brief, SCO asserts other deficiencies that it has found in the agreement for Student #18. However, these deficiencies are not set forth in audit finding 04-48, which constitutes the statement of issues in this case, and therefore cannot be asserted as evidence of noncompliance.

28. The District asserts, and the evidence establishes, that it has made substantial progress in many areas since the 2003-04 school year. As a condition of the state's emergency loan to the District, the state superintendent of public instruction appointed Richard Damelio, Ed.D., as the administrator/trustee for the District. The powers of the District's board were suspended and vested in Damelio, along with the powers of the District's superintendent. Dr. Damelio testified that, when he arrived at the District in July 2004, it was "in chaos." It was running an annual deficit of approximately \$31 million, 13 of its 16 or 17 central administrative positions were vacant, a state financial crisis management team was conducting a fraud audit, student achievement was low, and there were no accurate enrollment projections for the following school year. Since then, Dr. Damelio and his team have made substantial progress in restoring the District to a more sound financial footing and restoring management controls. As a result of those efforts, the state has restored the District's control in various areas, including student achievement, community relations/governance, human resources, and facilities management.

All of this is to the District's credit. No evidence was offered, however, relating to changes in the independent study agreement, to training those persons responsible for completing independent study agreements, or to establishing quality control procedures to insure that agreements are completed properly.

29. The District asserts, and the evidence establishes, that any disallowance of ADA will have a significant fiscal impact on the District. To repay the state, the District will have to either use the money it has already borrowed from the state, thereby increasing the amount of its loan payments, or reduce services.

LEGAL CONCLUSIONS

1. The District bears the burden of proving that the audit findings are based on "errors of fact or interpretation of law." (§ 41344, subd. (d); Evid. Code, § 500.)

2. The evidence establishes that the independent study agreement for Student #22 complies with state law. (Finding 24d.)

3. Section 41344.1, subdivision (c), states that "[c]ompliance with all legal requirements is a condition to the state's obligation to make apportionments." That section goes on to state, however, that EAAP may waive or reduce the reimbursement if it finds that there has been "substantial compliance" with all legal requirements. The evidence establishes that the independent study agreements for Students #18, #19, #20, #21, #23, #24, #25, #27, #28, and #29 substantially comply with state law. (Findings 24a, 24b, 24c, 24e & 24f.)

4. In its closing brief, SCO acknowledges that some of the independent study agreements comply with state requirements, and proposes two different methods of determining the ADA to be disallowed. SCO's first proposal is to determine the error rates separately for middle and high school students, and then apply that error rate to the District's apportionment for each class of student. SCO's second proposal, which it recommends, is to separately calculate and apply the error rates for HOPE middle school students, HOPE high school students, and non-HOPE high school students. This method, SCO argues, is appropriate because it recognizes the 100 percent error rate in HOPE's agreements, including the agreements for its elementary students. The District argues, in essence, that the availability of such alternatives demonstrates that the audit's representative sampling method is flawed and that any disallowance should be limited to the agreements that were actually reviewed.

Neither party's argument is persuasive. The audit is properly based on a representative sample of all the District's independent study agreements from the HOPE and Peoples programs. It was appropriate for the audit to extrapolate the results from its analysis of the sample to all of the District's independent study agreements. The evidence, however, does not support the audit's finding that 100 percent of the agreements were deficient. Eleven of the 29 agreements complied or substantially complied with state requirements, while 18 did not. The District should not be deprived of the ADA apportionment associated with students whose independent study agreements met or substantially complied with legal standards. The only apportionment that should be disallowed is that which reflects the percentage of independent study agreements, 18 of 29, that did not comply or substantially comply with state requirements. That disallowance is \$656,917 ($18/29 \times \$1,058,367 = \$656,917$).

ORDER

The appeal of the Vallejo City Unified School District is granted to the extent that the disallowance of state funding is reduced from \$1,058,367 to \$656,917. In all other respects, the District's appeal is denied.

DATED: December 9, 2009

Original signed

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings