

**BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA**

In the Matter of the Audit Appeal of:

OAH No. 2010120888

JAMES D. P. III,

Appellant,

And

REGIONAL CENTER OF ORANGE  
COUNTY,

Respondent.

**PROPOSED DECISION**

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard the above-captioned matter on October 18 and 19, 2011, and June 7, 2012, at Santa Ana, California.

Appellant James D. P. III represented himself.<sup>1</sup> Respondent Regional Center of Orange County (RCOC or regional center) was represented by Christina M. Petteruto, Woodruff, Spradlin & Smart.

Since the record closed on June 7, 2012, the ALJ has reviewed numerous documents submitted by Appellant to the Department of Developmental Services (Department or DDS) during the first phase of his appeal. Such was necessary, in part, to establish the events leading up to this proceeding, and to verify what had been submitted to the Department, and therefore could be considered in this proceeding.

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<sup>1</sup> An initial is used for Appellant's surname in order to protect the family's privacy. It should be noted that papers filed by Appellant often are captioned with the name of an attorney, and at first blush may be misread to imply that Appellant is an attorney, which he is not. He holds himself out as a paralegal in the attorney's firm. The attorney, Mr. Collisson, did not appear in the case.

As described further below, two large binders containing documents had been transmitted by the Department to OAH, and they in turn contain documents submitted by Appellant to the Department, apparently in 2008. Each binder holds several hundred pages of exhibits, which were not tabbed, and were divided by blank paper only. Those binders are labeled numbers 1 and 2 within, and will be Exhibits 1 and 2, respectively. Page numbers used hereafter in connection with Exhibits 1 and 2, often cited as binder 1 or 2, will be to the handwritten page number typically found at the bottom, center of a page. Other handwritten page numbers, often found in the lower right-hand corner are not cited.

OAH also received, from the Department, several hundred loose pages of documents which had been placed in a “redwell” expandable file holder. The documents included copies of fair hearing decisions, newspaper articles regarding RCOC or Appellant and his son, and other items. Collectively, they will be labeled Exhibit 3, though no further effort has been made to organize them. However, in some cases documents from Exhibit 3 were cited hereafter, but in those cases, copies were made, and those excerpts were assigned their own exhibit numbers, for ease of reference.

Prior to the hearing, RCOC had created an exhibit book, and had labeled its exhibits with both numerals and letters, i.e., Exhibit 1/A, Exhibit 5/E, not being sure of which to use. During the hearing the ALJ looked to alphabetical identification, and that is followed in citations hereafter.

This matter having been submitted for decision on June 7, 2012, the ALJ hereby makes his factual findings, legal conclusions, and orders.

#### STATEMENT OF THE CASE

This proceeding arises out of an audit by RCOC of Appellant, a parent-vendor of an RCOC client. The audit period was for some 20 months between June 2006 and February 2008. Appellant failed to provide any documentation in response to the regional center’s audit, and RCOC therefore issued a final audit report that found Appellant obligated to reimburse the regional center \$18,620, as he had not supported the billings he had previously made to RCOC for the parent-vendored services. Appellant appealed to the Department, seeking an administrative review. When the Department eventually upheld the audit, Appellant then sought a formal hearing, and this proceeding ensued.

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## FACTUAL FINDINGS

### *The Parties and the Vendor Relationship*

1. Appellant James D. P. III is the father of a young man entitled to receive services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.<sup>2</sup>

2. RCOC is a non-profit organization and a regional center organized to provide services and supports to developmentally disabled people pursuant to the Lanterman Act. Regional centers such as RCOC do not provide services directly, except in very rare circumstances. Instead, they use funds allocated to them by the state to pay third party vendors to provide the services. Thus, for example, if a consumer required occupational therapy, it would not be provided by an RCOC staff person, but would instead be provided by a therapist who was paid by RCOC. In some cases, a consumer's parent or family member can become qualified to provide a service as a vendor of a regional center.

3. (A) Appellant has been vendored by RCOC to provide Personal Assistance (PA) services to his son. Essentially, this means that RCOC had agreed that one of the services to be provided to Appellant's son was PA, but, rather than pay one of its third-party vendors to provide those services, RCOC agreed to pay Appellant to provide the services. In order for that agreement to be carried out, Appellant had to apply to become a vendor; in that regard he would be treated as any other regional center vendor. Once Appellant was made a vendor, he would be allowed to employ persons to provide the PA services to his son, paying them at a rate allowed by the regional center. Appellant then billed RCOC for those services, and was reimbursed "in arrears" by RCOC.

(B) In years prior to the audit period, Appellant has also been vendored to provide respite services for his son. As described further below, RCOC conducted an audit of those services as well, at another time. While this proceeding is not a review of that audit, some aspects of that audit became relevant to this case, as described hereafter.

4. Appellant submitted documentation each month stating how much PA service had been provided and paid for. The monthly documentation contained a minimum amount of information. RCOC then paid Appellant the amount billed, but not over the amount authorized by the Individual Program Plan (IPP), which governs services for Appellant's son. While the IPP may not set out the rate of payment—a rate set by the Department—it would specify the number of hours of service to be provided each month. There has been no claim that Appellant billed for or was paid for hours exceeding the number authorized by the IPP.

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

5. (A) Regulations promulgated by the Department govern much of the activity of a vendor, including a parent vendor such as Appellant, especially concerning payment and record keeping. While those regulations are covered in further detail in the Legal Conclusions, several pertinent regulations follow.

(B) The vendor must retain records of services provided to consumers in detail sufficient to verify delivery of the services that are billed (17 Cal. Code of Regs. [CCR] § 54326, subd. (a)(3).)<sup>3</sup>

(C) The vendor must only bill for services actually provided and which have been authorized for the consumer. (CCR, § 54326, subd. (a)(10).)

(D) The records kept by a vendor must specify the date, actual service time, location, and nature of the services provided, and each unit of service provided pursuant to CCR section 50604, subdivision (d)(3)(A), (B), (C), and (E), as applicable. (CCR, § 54326, subd. (a)(3)(B).)

(E) The vendor must maintain complete service records to support all billing or invoicing for each consumer. Such records shall include, but not be limited to information identifying the consumer. Furthermore, all records shall be supported by source data. (CCR, § 50604, subd. (d), (e).)

(F) The vendor shall make available any books and records pertaining to the vendored service, including those of the management organization and disclosure information required in Section 54311, if applicable, for audit and inspection. (CCR, § 54326, subd. (a)(4).)

#### *The Subject Audit of PA Services Billings*

6. (A) On April 21, 2008, Marsha Wayman, then a fiscal monitor for RCOC, wrote Appellant and informed him that RCOC was conducting an audit to verify the delivery of PA services by him to his son, for the period June 1, 2006 to February 29, 2008 (the audit period). The letter goes on to describe the sort of supporting documentation sought in the audit, which included sign in/sign out sheets, the name of the person providing the service, the start and stop time of the service provided, and proof of payment for services supported by time cards. The latter category was described, parenthetically, to include payroll registers, payroll records, and copies of paychecks.

(B) The April 21, 2008 letter went on to inform Appellant that he had 30 days to provide the documentation, and that “if supporting documentation is not submitted by the 30-day deadline, RCOC will proceed with the Draft Audit Report and note all service billings paid during the audit period as audit findings and monies will need to be reimbursed to RCOC.” (Ex. A.)

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<sup>3</sup> All citations to the CCR are to title 17 thereof.

7. Appellant provided no documentation of any type to RCOC in response to the letter of April 21, 2008. There is no evidence of any letter or other document requesting an extension of time to respond to the audit notice, nor is there any documentation in any of the internal (to RCOC) communications that such a request was made.<sup>4</sup>

8. On May 30, 2008, RCOC, through Ms. Wayman, wrote to Appellant, transmitting a draft audit report to him. He was informed in that letter that pursuant to CCR section 50606, subdivision (d)(2), he had 30 days to respond to the draft audit report.

9. (A) The draft audit report stated that Appellant had failed to provide any records or documentation for review, and that the audit request letter had given him notice that if such documentation was not provided, then the draft audit report would be generated. After recapping the various billings during the audit period, and the lack of documentation from Appellant, the draft audit report stated that 1,810 hours of services had been paid for, but that there was no support for such billings.

(B) On the last page of the draft audit report, it states: "If supplemental documentation, which will satisfy Title 17 requirements, cannot be shown, RCOC shall recover for periods not meeting the standards." (Ex. B, p. 9.)<sup>5</sup>

10. Despite the warning quoted above, Appellant did not submit any documentation of any kind to RCOC that would justify his billing the regional center for any PA services during the audit period.

11. On July 9, 2008, Ms. Wayman transmitted the Final Audit Report from RCOC to Appellant. The Final Audit Report found that \$18,620 had been billed to, and paid by, RCOC during the audit period. Noting that Appellant had failed to provide any documentation for the billings, the Final Audit Report found that RCOC was entitled to recover the total billings from Appellant, i.e., \$18,620.

12. In her July 9, 2008 transmittal letter to Appellant, Ms. Wayman informed him that if he disagreed with the Final Audit Report, he was entitled to file a written "Statement of Disputed Issues" with the Department's Audit Appeals Unit in Sacramento. Appellant was further informed that any such appeal must be filed in accordance with CCR section 50730, and that Appellant had 30 days to file the appeal. Ms. Wayman provided the address

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<sup>4</sup> Appellant submitted hundreds of pages of such internal communications, including a few that pertain to the audit and subsequent appeal to the Department, mainly as part of Exhibits 1 and 2. None of those documents show that he orally requested additional time to respond to the audit letter of April 21, 2008.

<sup>5</sup> The page number refers to hand-numbering internal to the exhibit, which is made up of Ms. Wayman's letter and the draft audit report itself.

where such an appeal could be sent, which included the name of the Chief Deputy Director of the Department who then dealt with appeals, Mr. Hutchinson. Ms. Wayman's letter and the Final Audit Report were sent to Appellant by certified mail, return receipt requested. The return receipt establishes that both were delivered to Appellant on July 11, 2008. (Ex. C, p. 9.)

### *The Administrative Review of the Final Audit Report*

13. Appellant took steps to start the appeal process. According to a letter from the Department, written by Chief Deputy Director Mark Hutchinson on August 11, 2008, Appellant had sought an extension of time to file his appeal with the Department, telephonically, on that date. Mr. Hutchinson informed Appellant that an extension of 30 days time was granted, and that his Statement of Disputed Issues—the document by which someone appealing a regional center audit institutes the proceeding—had to be mailed within 30 days of August 11, 2008 (September 10, 2008). The letter went on to warn Appellant that if the Statement of Disputed Issues was not received by the Department, or if it was not postmarked, within that deadline, then Appellant would be deemed to have waived administrative review, and the Final Audit Report would become the final administrative decision.<sup>6</sup>

14. Appellant failed to meet the deadline set out in Mr. Hutchinson's August 11, 2008 letter. Therefore, on October 9, 2008, a month after Appellant's filing was due, Mr. Hutchinson issued his Letter of Findings. (Ex. E.) In that document, Mr. Hutchinson noted the extension of time to file the Statement of Disputed Issues, and the failure by Appellant to take that step. Mr. Hutchinson then found that the July 11, 2008 Final Audit Report was final. However, the matter of the administrative review did not end there, as it should have.

15. (A) On November 18, 2008, Mr. Hutchinson sent a letter to RCOC which stated that on October 21, 2008—after Hutchinson's Letter of Findings had issued—Appellant made a written request for “an administrative review . . . disagreeing with the findings of the final audit report issued on July 11, 2008 . . . . Please find enclosed the Statement of Disputed Issues and accompanying documentation submitted by [Appellant] in support of the appeal. In order to render a decision, DDS is requesting a copy of the final audit report and your written response to the Statement of Disputed issues. Please submit your response by December 17, 2008 . . . or DDS will make a decision solely on information already received” (Ex. E.)

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<sup>6</sup> The letter states the final audit report was issued on July 11, 2008, but that is incorrect. It was issued on July 9 and received by Appellant on July 11. (Ex. D; Ex. C, pp. 2 and 9.)

(B) Absent from Mr. Hutchinson's November 18 letter is any justification for not treating the October 9, 2008 Letter of Findings as final, which is what CCR section 50732 requires.<sup>7</sup> Likewise, there is no explanation as to why the request for review could be considered several weeks after the deadline to file the request had run out, and after what was legally a final ruling.<sup>8</sup>

16. Although OAH and the ALJ have received more than 1,500 pages of documents in this case, a copy of the October 21, 2008 "written request" (apparently the Statement of Disputed Issues), referred to by Mr. Hutchinson in his November 18, 2008 letter, has not been provided. This document was not supplied by Appellant despite an order by the ALJ to do so, which order issued between the hearing dates.

17. What followed Mr. Hutchinson's November 18, 2008 letter was, ostensibly, an administrative review of the Final Audit Report by Mr. Hutchinson, even though Appellant was no longer entitled to one, a matter lost on RCOC as well, who seemed to have believed that Mr. Hutchinson could give an extension after a letter of findings had issued. (See Footnote 8.) Thus, on December 17, 2008, RCOC responded to Mr. Hutchinson's letter of November 18. The essence of the regional center's response was that the Statement of Disputed Issues and the accompanying documentation did not include or address such matters as documenting the name of the person who provided the service or the location of the service, dates of service were not provided, proof of payment was not presented, sign-in and sign-out logs did not accompany the Statement of Disputed Issues, and start and stop times were not provided. RCOC stated its position that since Appellant did not submit any supporting source documentation in response to the audit request or the draft audit report, and had submitted irrelevant information in his statement of disputed issues, and that he did not comply with the applicable regulations.

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<sup>7</sup> As discussed further in the Legal Conclusions, the October 9, 2008 Letter of Findings could not be superseded, and should have been binding on the parties. Appellant's later communications should have been treated as a request for a formal hearing, as that is, under CCR section 50732, the only way to supersede a Letter of Findings.

<sup>8</sup> Between the two sessions of hearing in this matter, Appellant filed a brief in response to the ALJ's order for briefing regarding the admissibility of certain documents. As part of that response, Appellant submitted a copy of an RCOC internal memorandum or e-mail, labeled "Resource Transaction." That document, separately copied for ease of reference and made Exhibit 4 hereto, states, in part, that Cynthia Bosco from the Department had called RCOC staff on December 4, 2008. She told Ms. Wayman that "the day after DDS issued the Letter of Findings dated October 9, 2008 in which all Regional Center of Orange County findings were upheld, [Appellant] contacted Mark Hutchinson who agreed to an extension." There is no evidence that Mr. Hutchinson shared that communication with RCOC staff prior to Ms. Bosco's telephone call.

18. (A) Appellant thereafter sent numerous documents to the Department. In a letter dated December 31, 2008, Mr. Hutchinson wrote RCOC, stating that on December 18, 2008, the Department had received the “enclosed additional documentation from [Appellant].” (Ex. AA.)

(B) Transmitted to RCOC along with the Hutchinson letter was a letter faxed by Appellant to the Department on December 15, 2008. In that letter, Appellant cites copies of RCOC internal communications which he claimed showed that the audit had been conducted to harass him because he had been asserting his son’s right to services and because he had filed for a Fair Hearing on RCOC’s refusal to provide certain services. Appellant made other claims of harassment that did nothing to support his billings as a vendor. The faxed letter transmitted eight pages of e-mails.

(C) On the last page of his December 15, 2008 letter to Mr. Hutchinson, Appellant states: “In closing, I have included the timecards for that period and the list of assistants. The bank is forwarding the cancelled checks for that time period. I’ve asked them to deliver a copy directly to you because time is of the essence. I am requesting that this audit decision be determined *after* a complete investigation of how this audit came about . . . .” (Emphasis added.)

(D) Appellant’s letter goes on to state that Appellant had provided copies of additional information, but had not placed it in binders. He asked Mr. Hutchinson not to notify RCOC until after December 18th, because he did not want them to know he had read their e-mails before their testimony in the then-pending Fair Hearing scheduled for that week. Finally, he closed the letter by stating that “UPS will deliver documents to you tomorrow, because of the volume (over a thousand we did not fax).”

19. Accompanying the two letters—Hutchinson’s of December 31, and Appellant’s of December 15, 2008—was over one-half inch of documents. But, they do not contain timecards of the type sought in the audit. Instead, Appellant transmitted the monthly attendance sheets and related documents that he had submitted to RCOC each month for payment. No source documents were included that would show payment by him for the PA services, despite the fact that RCOC first requested such documents in April 2008.

20. (A) It appears that two binders of documents were delivered to the Department later in December; these are the binders marked as Exhibits 1 and 2. This is inferred because the Department transferred two large binders to OAH when the formal proceeding started two years later, in December 2010. The contents of the binders, along with a large stack of loose documents, jibe with a written “table of contents” that is referenced at the end of Exhibit AA, the December 2008 transmittal from Hutchinson to RCOC. Further, some of the loose documents received when the matter was transferred to OAH (Ex. 3) include reprints of newspaper articles regarding RCOC, which documents show reprint dates in December 2008, either on the fifth or ninth days of that month.

(B) There are no cancelled checks among those documents that have become Exhibits 1 through 3. There are no time sheets, no cash receipts. There are no W-2 forms or 1099 forms for the purported employees. Although well over 1,200 pages of documents were shipped to the Department, none prove any payment to anyone allegedly providing PA services to Appellant's son. Rather, the documents are, with the exception of a handful of pages, entirely irrelevant to the matter then at hand. For example, Appellant submitted notes from his son's chart, commonly referred to as ID Notes, for a 10-year period leading up to 2008; those documents amount to 314 pages in Exhibit 2. The balance of that binder, pages 845 to 937, is made up of copies of various scholarly articles, such as "Positive Effect of Improving Relative Fusional Vergence on Reading and Learning Disabilities" (pp. 847-850) or "Role of Visual Attention in Cognitive Control of Oculomotor Readiness in Students with Reading Disabilities," which takes up the last 13 pages of Binder 2.

(C) As previously noted, several hundred pages were submitted without a binder, which group of documents has been labeled Exhibit 3. Again, many pages of Exhibit 3 are copies of newspaper articles about RCOC, which articles are generally critical of that organization. Scores of pages from Exhibit 3 are copies of newspaper articles about Appellant's ongoing battle with his son's school district, from the time when his son was in kindergarten or elementary school, which was many years before the audit period. Copies of various OAH decisions in fair hearings involving various regional centers were sent to the Department as well. None pertain to audits at all. However, Appellant did forward a copy of a decision issued by Judge Ruiz of OAH following the fair hearing that took place in late 2008, which involved RCOC and Appellant's son.

21. (A) To be sure, there are some documents of marginal relevancy to the review of the audit. At page 538 of Exhibit 2, Appellant provided a copy of an ID Note dated August 8, 2008, or three days before his Statement of Disputed Issues was due. That document memorializes a telephone call that an Area Manager of RCOC, Ms. Radford, received from Appellant on August 7, 2008. It states, in part, that "[Appellant] wanted a copy of the paperwork needed for an appeal to DDS for his audit. . . . AM [area manager] received a call from Marsha Wayman in Accounting about the audit paperwork. Marsha e-mailed a copy of the paperwork so that AM could forward it to [Appellant]. Marsha Wayman pointed out that [Appellant] signed for the certified letter in mid July and that attempts had been made to fax the document as well as e-mail before this time."

(B) Likewise, a copy of the July 9, 2008 letter transmitting the Final Audit Report and the Report are found at pages 488-495 of Exhibit 2. The letter does not have a letterhead; this may be the copy transmitted by e-mail in August 2008, referenced in the ID Note above.

22. On January 28, 2009, RCOC sent a letter to Mr. Hutchinson, titled "2<sup>nd</sup> Response to Statement of Disputed Issues." (Ex. I.) Reiterating that Appellant had never made a response to the audit request, RCOC stated that it had reviewed the further documentation, and it asserted that the documents provided did not address the issues raised, i.e., did not provide the names of persons providing the services, the location and dates of

service, sign-in and out logs, proof of payment. The RCOC position was essentially unchanged from that asserted in October, that Appellant had not provided any documentation during the audit, and had thereafter failed to provide relevant documentation to the Department.

23. Nearly two years passed before the Department acted on the second administrative review. Finally, on November 12, 2010, the Department, through Mr. Hutchinson issued a second “Letter of Findings.” Mr. Hutchinson stated, in part:

Although volumes of documents were provided with the Statement of Disputed Issues, the documents provided do not support the billings to RCOC. Source documentation for the billings was not provided. Additionally, it appears that similar audit findings have been identified in the past which are still unpaid, and vendor training was offered to reduce prior audit findings but was not attended.  
(Ex. J, p. 1.)

24. In the “Findings” portion of his second Letter of Findings, Mr. Hutchinson found that Appellant did not support the services he had billed to RCOC and that the findings of the Final Audit Report were upheld. Accompanying that Letter of Findings was a photocopy of a letter transmitting an earlier Final Audit Report from May 2006.<sup>9</sup>

#### *The Formal Hearing Request*

25. Thereafter, Appellant filed a request for a formal hearing. That document, Exhibit S, was dated December 17, 2010, and is titled “Petitioner’s Formal Hearing Request Petitioner’s Due Process Request.” It identifies five categories of evidence that Appellant expected to offer. This included the “audit package provided to DDS,” “additional evidence provided with this filing,” sworn testimony at the formal hearing, the request for stay of liquidation, and declarations of employees. (Ex. S, p. 3.) The document then goes on to list, month by month, information about hours allegedly worked and payments allegedly made. It is asserted that for each month “supporting documentation” was provided. As will be seen, that was not accurate.

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<sup>9</sup> A copy of a return receipt card was also part of that document. While drafting the Proposed Decision the ALJ noticed that Exhibit J was missing the second page of the letter. A copy of it, made from the OAH file, has been added to Exhibit J to make it complete.

26. On December 17, 2010, Appellant faxed approximately 200 pages of documents to the Department which purport to support the billings made to RCOC during the audit period. Those documents are found in Exhibit L. It is clear that those documents had not been provided to RCOC or the Department prior to the issuance of either the first or second Letter of Findings.<sup>10</sup>

27. Following briefing by the parties, the ALJ deemed that Exhibit L was not admissible in the formal proceeding, because the documents had not previously been offered to the Department. The legal basis of that ruling is discussed in the Legal Conclusions below. The documents found in Exhibit L will hereinafter be referred to as the late-submitted documents.

### *The Late-Submitted Documents*

28. Notwithstanding the evidentiary ruling regarding Exhibit L, the late-submitted documents do not satisfy the audit request, even if they were admissible. Appellant provided copies of cancelled checks, calendars that appeared to serve as schedules, some time cards, handwritten documents indicating cash payments, and some documents that showed money had been withdrawn from a bank account held at Well Fargo Bank. He also provided copies of the monthly invoices and other documents given to RCOC to obtain payment.

29. (A) Regarding the cancelled checks, all but two are drawn from an account in the name of “the [P.] Foundation,” that redacted name being the surname of Appellant and his son. That bank account number ends in 611, and will sometimes hereinafter be referred to as “the Foundation account.” The two checks that were not drawn from the Foundation account were shown to be on the account of “[J.D.P.] POD [J.D.P. IV],” the latter indicating Appellant’s son. It is inferred that POD stands for “payable on death.” The first of the two “POD” checks does not have a clear date, but the second was issued on December 2, 2007. (Ex. L, pp. 172, 173.)

(B) At the hearing, both in October 2011 and June 2012, the issue of the status of the [P.] Foundation was raised, as RCOC had contracted with Appellant, and not an entity, as the vendor. At the first session of the hearing, Appellant could not clearly define the

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<sup>10</sup> The documents found in Exhibit L were reviewed by RCOC staff and were the subject of testimony at this hearing. They do not bear fax banners. However, the same documents were transmitted to OAH by the Department after the request for formal hearing. Those documents include a fax cover page showing transmission from Appellant to the Department, and all bear a fax banner of December 17, 2010. The Department did not transfer the case to OAH until December 28, 2010. The fax banner is substantially similar to the fax banner appearing on other documents transmitted by Appellant to the Department. The ALJ takes notice of the documents in the OAH file, and copies of several pages, including the fax cover sheet are excerpted from the OAH file, to show the fax banners and to otherwise clarify the record. That excerpt is made Exhibit 5.

Foundation's status, at one point saying it was a "dba," but being unable to find any evidence to support that claim within the boxes of documents that he had brought to the hearing. At the second session, he asserted that he was the Foundation, that they were one and the same, but that claim was not corroborated with any documentation either, even though months had passed between the two hearing sessions.

(C) Two of the checks that Appellant provided in December 2010 contradict Appellant's claim that he is the [P.] Foundation. That is because two of the checks show that the account holder is "Linda M. Hartson DBA [P.] Foundation." One such document is check number 1001, dated July 1, 2006. (Ex. L, p. 9.) The other, check number 1006, was dated April 30, 2007. (*Id.*, p. 131.)<sup>11</sup> These two checks carry the account number ending in 611, i.e., the Foundation account. Why two sets of checks exist for the same account is not clear, and Ms. Hartson's relationship to Appellant's son and RCOC can not be established. But, the fact can not be ignored that Appellant's own evidence shows that someone besides him uses "[P.] Foundation" as a fictitious name.

(D) Furthermore, in other documents submitted to the Department at the administrative review level, Appellant asserted that the Foundation was a firm that provided advocacy and consultation services. That assertion is found in a letter to the Director of DDS, written in October 2007. Found within Exhibit 3, the letter was originally sent to the Department after Appellant lost an appeal from a 2006 audit of his parent-vendored respite services, an issue covered in more detail below. That letter, which will be made Exhibit 6, indicates that the Foundation is more than a fictitious business name for Appellant, because in that document, Appellant stated:

information about myself and the [P.] Foundation is below.

James D [P.] III is the Executive Director of [P.] Foundation Group. They Specialize in Autism Educational Law and are one of the top Educational and Legal Consultants in the country. The Foundation has assembled Psychologist [sic], Marriage and Family Therapists, and Professors from around the country. The [P.] Foundation is a firm that helps families and advises Congressional members of Congress [sic] regarding Disabilities. They specializes [sic] in representing students with disabilities and their parents in special education and civil rights disputes with school districts and school district officials who fail to comply with the Individuals with Disabilities Education Act ("IDEA"), and comparable provisions of state law. The firm is dedicated to assisting individuals with disabilities . . . . The firm is comprised of lawyers, paralegals and advocates, most of whom are also parents of

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<sup>11</sup> As noted by an RCOC witness, the second check was also out of numerical order when compared to the other checks.

individuals with learning disabilities. (Ex. 6, p. 3. Capitalizations in original.)

(E) As noted by RCOC during the hearing in this matter, there is no way, based on the late-submitted records, to know if the Foundation was paying someone to provide PA services to Appellant's son, or was paying for some other services connected to that "firm." And, given Appellant's description of the Foundation quoted above, it is reasonably inferred that the Foundation does not exist to assist Appellant's son; instead, it exists to help others, to advise Congress, and to represent the disabled in legal disputes.

(F) The problem of not being able to clearly discern who the [P.] Foundation was paying and why it paid them is illustrated by a check written to someone named "Lucy" in July 2007. (Ex. L, p. 144.) The payee is not identified with a surname,<sup>12</sup> but the check was deposited into the account of Lucy's Cleaning Services. As Appellant illustrated through cross examination of an RCOC witness, Lucy might have provided PA services as a sideline to another business, and simply put the paycheck in her business account. However, RCOC has no way of knowing from the check if that is the case, or if the Foundation was paying to have its offices cleaned. The balance of the documents provided as part of Exhibit L do not clarify the situation, and even where purported timecards have been provided, the endorsement tends to contradict them.

(G) At bottom, a series of checks written from a firm that is a stranger to the RCOC-Appellant vendor contract, payable for purposes unknown—the checks often do not have a memo entry—do not support Appellant's billings to RCOC during the audit period.<sup>13</sup>

30. (A) As to the purported evidence of cash payments, RCOC noted, after finally receiving the documents in late 2010 or early 2011, that no cash receipts were signed by a person allegedly working for Appellant. All such documents submitted by Appellant amount to a handwritten note that a certain amount of money was paid to someone for a certain time period, on a certain date. All of these notes appear to be in the same hand, and none are countersigned by a worker showing receipt of the money. (E.g., Ex. L, pp. 24, 136, 158,

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<sup>12</sup> This is not the only occasion that the Foundation paid someone without a surname. An earlier check to "Lucy" was issued on May 14, 2007 (Ex. L, p. 137), and three issued to "Keith," in January, and March 2007. (*Id.*, pp. 85, 103, & 114.) While this person is likely Keith Presswood, as that person was paid on February 12, 2007 (*Id.*, p. 102), such business practices hardly inspire confidence or provide certainty that Appellant has complied with the applicable agreements and regulations.

<sup>13</sup> Many of the memo entries just refer to the number of hours worked, not the purpose of the work. Indeed, one of the checks that identifies Ms. Marston as the person behind the [P.] Foundation has a memo entry for "baby sitting" and "meds." The former implies the provision of respite care, and not personal assistance. (Ex. L, p. 9.) That check was written to a Christy McDaniel, but there does not appear to be a time card for that person.

167.) Thus, for example, a note is found at page 143 of Exhibit L, which states: “Lucy 6-7, 8, -07 Paid by cash \$400 check short.” While this note may pertain to the Lucy of the cleaning company referenced in Factual Finding 29(F), such can not be ascertained with any degree of confidence.

(B) In several instances, such cash notes are tied to a document showing a withdrawal from the Foundation bank account. In virtually every case, it appears that the note has been written, after the fact, to account for the money withdrawn. In one case, a note found at page 158 of Exhibit L, states:

August 2007  
Skyeler 80 hours \$1,600  
Zelda 80 hours \$800  
Luz 68 hours \$1,360  
Keith 80 hours \$800  
paid cash from withdraw 2312.

The next page of the exhibit is a copy of a withdrawal slip showing \$4,800 was withdrawn from the Foundation account at the bank on August 31, 2007. (Ex. L, p. 159.)

(C) While in most cases the cash note amount conforms with the withdrawal amount, that is not the case with the August 2007 note quoted above. That note shows a total of \$4,560 being paid out; and the balance of the \$4,800 withdrawal is not accounted for in that document or any other.

(D) There are a number of the cash notes for dates later in the audit period that refer to cash payments to a person named “Donna,” no surname being stated. Found at pages 163, 167, 174, 181, and 197 of Exhibit L, the documents purport to memorialize payments made between September 2007 and February 2008. They do not match up with any withdrawal documents. The payments total \$5,840. The documents appear to have been created to justify billings to the RCOC. Thus, for example, Appellant had invoiced RCOC the sum of \$1,440 in March 2008, and then a cash statement was made for “Donna.” (See Ex. L, pp. 195, 197.)<sup>14</sup>

31. While there are some time sheets, they do not account for all the hours allegedly worked. Some give every appearance of having been created after the fact. The timesheets available do not tie to the payments in an adequate manner. In many instances, a page from a calendar had been submitted, with a person’s name on the top and a series of times on various days. But, that may be no more than a schedule. And, there are no sign-

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<sup>14</sup> As found, there is no surname stated for this purported caregiver. It should be noted however, that Appellant was assisted during the hearing by a Donna Kohatsu, who is identified in some of Appellant’s documents as an assistant at the law firm he is associated with. (See, e.g., Factual Finding 40(B) and exhibit cited.)

in/sign-out sheets of the types requested by RCOC in April 2008 when the audit began. Finally, none of the time sheets indicate what the hours claimed are for. That is, the sheets do not show that the hours provided were for PA services, as opposed to respite hours, or any other services that might be provided to Appellant's son, or the [P.] Foundation.<sup>15</sup> (E.g., Ex. L, pp. 80, 126.)

32. Glaringly absent from Appellant's late submitted documents is any indication that any steps were taken to withhold and account for taxes, social security, or disability insurance. There are no W-2 forms. There are no 1099 forms. These standard indicia of an employment or independent contractor relationship do not exist, and when questioned about the matter, Appellant appeared to think that such were not necessary.<sup>16</sup>

33. RCOC noted other problems with the late-submitted documents in its Exhibit M and during testimony. In the final analysis, even if those documents were admissible, the late-submitted documents do not support the billings in question.

#### *Appellant's Prior Audit and Appeal*

34. (A) As part of his claim in this proceeding, Appellant complained that Mr. Hutchinson's second Letter of Findings stated that "additionally, it appears that similar audit findings have been identified in the past which are still unpaid, and vendor training was offered to reduce prior audit findings but was not attended." (Ex. J, p. 1.) Appellant asserted in his written request for a stay of liquidation and in his brief regarding the admissibility of the late-submitted documents, that he had completed the training. While he is correct, he did not do so until mid-2009, after being presented with several opportunities to complete the training. And, there is no evidence that Mr. Hutchinson was apprised of that fact prior to the issuance of the second Letter of Findings.

(B) While this proceeding was not instituted to review the prior audit of Appellant's respite services, a review of the evidence from that matter, all proffered by Appellant during the Administrative Review, has become relevant to this case. In part this is because Appellant raised the issue with the Department when he filed his numerous documents. Furthermore, he has claimed that the subject 2008 audit amounts to harassment, as it followed a prior audit. And, it becomes relevant because the prior audit and subsequent appeal process should have forcibly reminded Appellant of his record-keeping obligations, obligations he voluntarily undertook when he became a vendor. Further, the prior audit and

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<sup>15</sup> The checks and cash notes are devoid of such details as well. (E.g., Ex. L, p. 80A, 81, 96, 136, 143.)

<sup>16</sup> Given the amount of control that a parent vendor would need to assert over persons working with a developmentally disabled child, it appears quite unlikely that the workers could qualify as independent contractors, even if they received a 1099 form.

appeal should have instructed him regarding his obligations to the regional center when audited, and what was required of a person appealing to the Department from an adverse audit report.

35. It must be understood that the filings made by RCOC with the Department during the Administrative Review phase of this matter did not raise the issue of the prior audit of respite service billings, although RCOC did offer documents about it, and the training class, at this formal proceeding. As shown in Factual Findings 17 and 22, RCOC's responses to Appellant's filings in this audit review simply asserted that Appellant did not justify the PA service billings; neither prior audits or training are not mentioned. (Ex. G, Ex. I.) Instead, it was Appellant who opened the door on the issue by including documentation about the 2006 respite services audit in Exhibits 1 through 3. Such included an earlier Letter of Findings by the Department, Appellant's complaint to the Department about the result of his prior appeal, the Department's response, and documents from RCOC and himself pertaining to the training class that RCOC offered, along with a substantial financial incentive for Appellant to take the training.

36. (A) Turning to the specifics, the record establishes that Appellant's parent-vendored respite hours were audited by RCOC in 2006, regarding a six-month period between January and June 2005. On May 31, 2006, RCOC issued a Final Audit Report in that matter. (Hereafter the 2006 FAR.)

(B) According to the 2006 FAR, in January 2006 RCOC sent Appellant an audit letter, substantially similar to the one that commenced the 2008 audit. Appellant did not comply with the 30-day deadline to respond, failing to submit any source documentation. He provided no documents until after the draft audit report issued, and the response he made was deemed insufficient. Therefore, he was found liable for \$5,120, which was to be deducted from subsequent checks. (Ex. 2, pp. 498-502.) The letter that transmitted the 2006 FAR was very clear about what steps Appellant would have to take to have the matter reviewed by the Department. Indeed, the text of that 2006 transmittal letter is virtually identical to the text of the letter that transmitted the 2008 Final Audit Report. (See Factual Finding 12.)

37. (A) Appellant took steps to appeal the 2006 FAR to the Department, but failed to comply with the applicable regulations, and he failed to meet numerous deadlines, even after being granted several extensions of time. According to a letter issued by the Department on October 16, 2006, he submitted a statement of disputed issues on July 12, 2006. Because he failed to provide any supporting documentation with the statement of disputed issues, the Department contacted Appellant and gave him an additional 30 days to do so, giving notice by a letter issued on July 20 of that year. (Ex. 1, p. 446.)

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(B) The Department’s letter recounts that on September 7, 2006, Appellant phoned the Department, stating he had moved and just received the extension letter on that date, so the Department gave him an additional time to submit documentation, i.e., by October 13, 2006. Subsequent documentation established that two extensions were made to give Appellant a chance to support his appeal by mid-October 2006.

(C) Lamentably, Appellant did not meet the last extended deadline, failing to submit any supporting documentation. The Department therefore ruled that the 2006 FAR was final, and that Appellant would have to make reimbursement to RCOC. (Ex. 1, p. 446.)

38. (A) The Department’s letter of October 16, 2006 amounted to a Letter of Findings, though it was not labeled as such. It has that status because the letter concluded the administrative review of the 2006 FAR. Appellant was apparently not satisfied, but instead of seeking a formal hearing, he eventually submitted a letter of complaint to the Department. This can be discerned from a responsive letter sent by the Department to Appellant in November 2007. That November 2007 letter, written by Mr. David Temme, clearly responds to a letter of complaint sent by Appellant to DDS in October 2007—a year after the Letter of Findings upheld the 2006 FAR. The letter of complaint is the same document that contains the description of the [P.] Foundation referenced in Factual Finding 29(D), i.e., Exhibit 6.<sup>17</sup>

(B) Mr. Temme clearly and concisely laid out the sequence of events pertaining to the appeal of the 2006 FAR. Mr. Temme’s letter establishes that Appellant had numerous extensions of time to provide documentation to support his claims, but that he failed to do so. Indeed, the letter makes it clear that the extension of time to October 13, 2006, had in fact been an extension from a deadline earlier in that month. In at least one instance the Department contacted Appellant to inquire about his overdue filing. On behalf of the Department, Mr. Temme reiterated that the 2006 FAR stood. (Ex. 1 p. 450-451.)

39. In November 2007, 18 months after the 2006 FAR issued, RCOC offered to forgive one-half of the amount owing on the 2006 FAR—\$2,296.76—if *Appellant* would attend a parent vendor training class within three months. That offer was memorialized in a letter from Janis White, then Chief Operating Office of RCOC, on November 19, 2007. (Ex. 1, p. 449.)

40. (A) Appellant did not reply to the offer and did not take the class within the three month period. A year later, the training had not been taken, as is established by another document that Appellant later submitted to Mr. Hutchinson. On October 1, 2008, RCOC wrote Appellant, pointing out that he had not acted on the November 2007 offer referenced in Factual Finding 39. Pointing out that RCOC still had not recovered the amount owed, RCOC again offered to forgive one-half of the 2006 audit debt if Appellant would take the

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<sup>17</sup> Appellant’s letter was addressed to “Ms. Delallo,” but should have been addressed to Ms. Delgadillo, on whose behalf Mr. Temme was acting.

class within 30 days, or by November 3, 2008. A schedule of training classes was enclosed with the letter. (Ex. N, p. 2.)<sup>18</sup> Thus, RCOC unilaterally made a second offer to, in essence, pay Appellant nearly \$2,300 to take a training class, which RCOC had no obligation to do.

(B) On November 21, 2008, Ms. Kohatsu, Appellant's assistant, wrote RCOC regarding the training, responding to the October 1, 2008 letter. After claiming that the RCOC letter was not received until November 5, too late to meet the deadline, Ms. Kohatsu stated that

[Appellant] *and/or his representative* can attend [the parent vendor class] . . . As you know [Appellant and his son] have been invited to the Presidential Inauguration and Ball which is January 20, 2008 [sic], and with the Thanksgiving and Christmas Holidays, not to mention the super bowl the first week in February, that they will be attending in Florida, it would be inconvenient for [Appellant] *and or his representative* to attend this class before the end of February 2009. (Ex. 2, p. 827; Ex. P, p. 4. Emphasis added.)

(C) Thus, one year after an offer to reduce indebtedness, essentially an offer to pay Appellant to take training, he was too busy to do so. And, he was attempting to change the proffered agreement to one wherein he would not actually take the class, but would instead have his "representative" do so.

(D) Thereafter, RCOC agreed that Appellant could have until February 2009 to take the training course, although RCOC made it clear that Appellant, and no one else, had to take the training. (Ex. N, p. 5.) Appellant did not do so, and on February 25, 2009, and again on April 9, 2009, RCOC made unilateral offers to further extend the deadline for Appellant to take the course, because he had not done so.

41. It is undisputed that Appellant finally completed the class in June 2009, three years after the 2006 FAR issued, 18 months after the compromise offer was made by RCOC, and some six months after he submitted his hundreds of pages of documents to the Department in support of his appeal of the 2008 audit. Thus, he had an opportunity to obtain training during the latter part of the 2008 audit period, and before the 2008 audit was initiated, in that the offer was made in November 2007.<sup>19</sup> (Factual Findings 6(A), 39.)

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<sup>18</sup> A copy of the October 1, 2008 letter is contained in Exhibit 3, but not copied in light of its inclusion in Exhibit N. Some other letters pertaining to this issue are found in both parties' exhibits, though the later letters are only found in Exhibit N.

<sup>19</sup> RCOC provided testimony to the effect that training is offered to new vendors, but that Appellant had not taken the training.

### *Other Issues and Ultimate Findings of Fact*

42. In his numerous papers and during the hearing sessions, Appellant made various claims, none of which were substantiated, even if relevant. Thus, he cited RCOC ID notes or internal emails, asserting they proved that RCOC instituted the audit as a reprisal because he was taking them to a Fair Hearing over his son's services, and that they had conducted more audits of him than was normal. However, the evidence does not support such a finding. At bottom, RCOC is obligated to conduct audits, and it put him on notice that further audits would follow. (Ex. 2, p. 502.) After the regional center's experience in auditing respite care services in 2006, prudence would dictate an audit of Appellant's PA services two years later, if for no other reason than to ascertain if Appellant had rectified his record keeping problems after being assessed more than \$5,000 in reimbursement.

43. By the third day of the hearing, Appellant was claiming that he had sought extensions of time to respond to the 2008 audit request and to the Department's deadlines. He had, in the first session of the hearing, made a claim that the documents had been lost in a move, and then later claimed that they had been destroyed in a fire, two seemingly incompatible stories. When pressed for documentation of these events, or of the requests for extensions, none were forthcoming. Such documentation is not found in the record.

44. (A) When RCOC initiated the 2008 audit, Appellant had already been audited, and he knew what to expect. The 2006 audit should have reminded him of his obligations. Despite that practical knowledge and regulatory notice of his obligations—readily accessible to a veteran paralegal and legal advocate such as Appellant—he failed to comply with the law. Put another way, Appellant was on actual and legal notice of his obligation to keep specific records and to make them available for inspection, but he failed to discharge those obligations.

(B) When Appellant sought review of the 2008 audit by the Department, he had already been told by RCOC, in writing, of what he would have to do, and where to find the controlling regulations. He had already been through an administrative review of a regional center audit, and should have learned, the hard way, that there were deadlines and procedures to comply with. Yet, as the initial deadline to file for review of the 2008 Final Audit Report approached, he was on the phone to RCOC asking for the paperwork to do an appeal. (Factual Finding 21(A).) Thereafter, his noncompliance with the deadlines led to the first Letter of Findings. Relieved of that ruling, he finally submitted documents to the Department in support of his appeal, but he submitted no source documentation. His effort to provide source documentation, through the late-submitted documents, occurred over two years after the audit was initiated, and the documents did little or nothing to support his claims of payment, and in some ways they contradicted his claims.

45. The record establishes that Appellant failed to comply with numerous regulations governing vendors. He failed to maintain records and he failed to make them available for inspection (audit). He failed to avail himself of training in his duties, where RCOC was, essentially, going to pay him nearly \$2,300 to take the training. He failed to

submit source documents to the Department prior to either Letter of Findings, attempting to submit them as part of the formal review, more than two years after starting the audit process. He has failed to support over \$18,000 in billings submitted to RCOC.

## LEGAL CONCLUSIONS

1. Jurisdiction was established in this matter pursuant to CCR section 50750, based on Factual Finding 25.

2. (A) A service provider, which includes a parent such as Appellant who has been vendored by a regional center, is obligated to maintain records of transactions connected to service provision. Hence, CCR section 50604, subdivision (a), provides that “Service providers shall maintain financial records which consistently use a single method of accounting. These financial records shall clearly reflect the nature and amounts of all costs and all income. All transactions for each month shall be entered into the financial records within 30 days after the end of that month.” This rule is amplified in subdivision (d) of the regulation, which provides that “all service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program”

(B) Subdivision (d) of section 50603 goes on to specify the types of records to be maintained, which include, but are not limited to the following:

(1) Information identifying each regional center consumer including the Unique Consumer Identifier and consumer name;

[¶] . . . [¶]

(D) For all other services, the date, the start and end times of service provided to the consumer, street address where service was provided, and daily or hourly units of service provided.

(E) For goods and/or services purchased utilizing a voucher or Participant-Directed Services, as described in California Code of Regulations, Title 17, Section 58884(a)(1), in addition to the information specified above, the name of the actual provider of the goods and/or services. For services provided by an individual selected by the consumer or family member, the date of birth, social security number (or a copy of any document accepted by the federal government which establishes identity and employment eligibility which has been compared to the original by the vendored family member and declared under penalty of perjury to be a true and correct copy), address, and telephone number of the individual who actually provided the service must also be maintained.

3. All records of a service provider such as Appellant are to be supported by source documentation. (CCR, § 50603, subd. (f).)

4. (A) The vendor must not only keep extensive records, it must do so for at least five years, and often longer. (CCR, § 50605, subd (a).) And, critical to this case, the vendor must make the records available for inspection by the vendoring regional center. Thus, CCR section 50603, subdivision (a)(1), provides that the service provider shall permit right of access to “any books, documents, papers, computerized data, source documents, consumer records, or other records of the service provider pertaining to the service program and/or provision of services to persons with developmental disabilities. All consumer records shall be treated as confidential.” This right of access is held by the Department, the regional center, authorized representatives of those entities, and certain other state and federal agencies. (*Id.*, subd. (b).) At the same time, the vendor must provide access to the premises used by the vendor to provide the paid-for services. (*Id.*, subd. (a)(2).)

(B) The right of access shall be used to audit, review, examine, excerpt, reproduce, and/or make transcripts. (CCR § 50603, subd. (d).) All service provider records, “including corporate records, shall be made *immediately* available” to the Department or regional center for the purposes specified in section 50603, subdivision (d), above. (Emphasis added.)

5. Based on Legal Conclusions 2 through 4, it is clear that RCOC, or the Department, had an absolute right to come to Appellant’s facility, and inspect it, and to inspect all pertinent financial records, at any time during the audit period, or for a period of years thereafter. Instead of appearing unannounced on Appellant’s doorstep, demanding the immediate production of the records, RCOC sent a letter to Appellant, providing a period of 30 days to produce the required records. Appellant failed to make any records available for review. Thus, in connection with the 2008 audit, Appellant failed to comply with the provisions of the California Code of Regulations governing the maintenance and production of records.

6. (A) The Letter of Findings issued by Mr. Hutchinson on behalf of the Department, on October 9, 2008, should have terminated the Administrative Review phase of the audit review. The Department should not have considered the filings made by Appellant after that date, and it had no authority to issue a second Letter of Findings.

(B) The Legal Conclusion set forth above flows inexorably from CCR section 50732, which states:

The results of the administrative review shall be submitted to the parties, within 60 days after the close of the administrative review record, in the form of a written document entitled “Letter of Findings.”

*The Letter of Findings shall be final unless a timely request for a formal hearing is made.* Upon becoming final, the Letter of Findings has the legal effect of amending the audit report and supersedes it to the extent there are any inconsistencies. (Emphasis added.)

(C) The ALJ's independent research has failed to unearth any regulation or statute that would allow the Department to re-open an administrative review after issuance of a Letter of Findings, whether upon request of a party or on the Department's own initiative. Thus, section 50732 should control; the October 2008 Letter of Findings was the final decision in that phase of review. Even if some provision allowed the Department to set aside a Letter of Findings upon some showing of "good cause," there is no evidence that Appellant showed any cause to reopen the matter and there is no evidence that the Department found such cause, and the second Letter of Findings is silent about the matter.<sup>20</sup>

(D) As described in Footnote 8, a Department staff person reported to RCOC staff, some weeks after the event, that Appellant had obtained an "extension" *after* the Letter of Findings issued. Nothing in the record shows that there was good cause for such an extension, even if the law made that a basis for setting aside a Letter of Findings. Under CCR section 50732, the Department could not ignore the final effect of the October 2008 Letter of Findings and start over again, and the fact that RCOC did not object on these grounds does not create jurisdiction to proceed where none is authorized. The filing that Appellant made after the issuance of the Letter of Findings amounted to a nullity, or should have been treated as a request for a formal hearing.

(E) The events surrounding the grant of the October 2008 "extension" highlight problems that have plagued this appeal, and to some extent the 2006 appeal. That is, Appellant has been allowed to communicate with the Department, apparently by phone, without notice to RCOC, and without providing RCOC an opportunity to respond before some sort of decision was made as to how the matter would proceed further. (See Factual Findings 13, 37(B); Footnote 8.)<sup>21</sup> While the general provisions of the Administrative Procedure Act may not control here, the rules provided therein to avoid *ex parte*

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<sup>20</sup> CCR section 50730, subdivision (b), provides that a late request for administrative review can be considered, and granted if good cause is shown. However, this does not establish authority to ignore a Letter of Findings. And, as noted above, there was no finding of good cause to reopen the matter in the second Letter of Findings.

<sup>21</sup> Given Appellant's complaints about RCOC in both this matter and the 2006 appeal, to the effect that he and his son were being harassed or discriminated against (e.g., Factual Findings 18(B), 42), one can imagine how he might have reacted *if* RCOC had been almost routinely communicating with the Department in a unilateral manner to alter deadlines, or if it had managed, to have an unfavorable Letter of Findings set aside without prior notice to him. To be clear, RCOC did not act in that way; this hypothetical is meant to put the shoe on the other foot, so to speak.

communications provide a useful model for handling such matters in the future. They are found at Government Code sections 11430.10 through 11430.80.<sup>22</sup> Finally, it should be apparent that the numerous phone contacts often left little or no record to assist in determining what happened, and when. The ALJ recognizes that the Administrative Review phase is meant to be a fairly informal proceeding, but a subsequent formal hearing is tied to that prior matter, and a clear record is useful. It follows then that requests for extensions of time should be in writing, supported by evidence of good cause, and shared with the other party so a response might be obtained, before such requests are acted upon. Such requests do not need to be formal pleadings or motions, but some documentation appears in order.

7. (A) The purported source documents submitted on or after December 17, 2010, were not admissible in this proceeding.

(B) CCR section 50730, subdivision (f), provides that when filing for an administrative review—the first level of appeal—the complaining party must attach the documents upon which they rely to their Statement of Disputed Issues. The regulation goes on to state that “An appellant that is unable to locate, prepare, or compile such documents within the appeal period specified in Subsection (a) above, *shall include a statement to this effect in the Statement of Disputed Issues.*” (*Id.*, emphasis added) Then, an appellant may have an additional 30 days to submit such documents. “Documents that are not submitted within this period shall not be accepted into evidence at any stage of the appeal process unless good cause is shown for the failure to present the documents within the prescribed period.” (*Id.*)

(C) There is no evidence that Appellant, who was obligated to have his records available for *immediate review* by RCOC or the Department,<sup>23</sup> complied with section 50730, subdivision (f). And, it does not appear that the Department followed the rule quoted above during the “second” administrative review. Notwithstanding this procedural failing, the record is clear that Appellant did not submit the documents that became Exhibit L until December 2010, more than two years after the first Letter of Findings issued, and, for that matter, two years after he submitted some 1,500 pages of documents that did not substantiate his billings. Furthermore, Exhibit L was not submitted until after the second Letter of Findings issued; they did not come into the administrative review phase even if the second Letter of Findings is valid.

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<sup>22</sup> The provisions may not apply because although the Department is a state agency, bringing it within the ambit of Government Code section 11410.20, the Administrative Review phase does not necessarily require an evidentiary hearing, a precondition for applicability of Chapter 4.5 (Govt. Code, § 11400 et seq.). (See also CCR § 50731; Govt. Code, §§ 11445.10 through 11445.60.)

<sup>23</sup> Legal Conclusion 4(B).

(D) CCR section 50750, which controls the formal hearings—this proceeding—does not allow a party to supplement the record made at the administrative review level, which is, essentially, what Appellant attempted to do here. As the formal hearing is part of the appeal process, the submission of documents must be controlled by section 50730, subdivision (f).

(E) Nothing in the record established good cause for a delay of years in presenting documents. Appellant's claims of lost or destroyed documents defied credulity, having never been set out in prior filings with the Department, or shared with RCOC in the audit process or thereafter. To be sure, he had used the excuse of a move to justify his dilatory conduct during his 2006 audit (Factual Finding 37(B)). However, he did not document any excuse or cause in this matter. And, given his prior audit, Appellant knew that there were filing deadlines that he must comply with. And, while the copies of the checks in Exhibit L indicate they were reproduced in February 2009, there is no justification for first presenting them in December 2010, after the second Letter of Findings issued. Nor is there any justification for waiting so long to offer the other documents in Exhibit L.

8. The reason for the rules set forth above, including section 50732, and the provisions of sections 50730, subdivision (f), and 50750, is clear. Such rules exist to provide for an orderly and reasonably prompt resolution of disputes over vendor audits. The rules exist to avoid the process that occurred in this case. Appellant's position regarding his late-submitted records is akin to that of a taxpayer, who, audited by the IRS, gives no excuse for not producing any documents in the audit, and who then wishes to produce documents years later in an appellate court, after not producing them in the tax court. The regional centers and the Department, who are working with the taxpayers' money and are obligated to provide services that are cost-efficient, are entitled to prompt responses to audit requests. Those entities are also entitled to a more orderly and speedy resolution of claims of this type. The protracted process that led to this proposed decision has allowed Appellant to have the continued use of monies that he could not account for, and therefore was not entitled to, for a period of years. RCOC and its other consumers have been deprived of the use of such funds. And, Appellant's tactics have imposed additional expense upon RCOC and the Department. To be sure, some of that delay resulted from the Department's failure to honor its first Letter of Findings, but at bottom only Appellant has benefited from the delays in the process.

9. The ALJ was empowered to resolve the matter by finding that the late-submitted documents were not admissible, and that Appellant therefore could not supersede either Letter of Findings, or the 2008 Final Audit Report. CCR section 50752 provides that the ALJ may, on his or her own motion, hear particular issues that might bring a resolution of the issue or abate the proceedings, and may even issue an interlocutory proposed decision. To be clear, this proposed decision is not meant to be interlocutory, but to resolve the entire matter. Simply put, given that his original filings contained no source documents, if his late-submitted documents were not admissible, he would have no case, and he does not.

10. Even if the late-submitted documents were received in evidence, they did not justify the billings, based on Factual Findings 28 through 33. As set out in the findings, the documents do not show that Appellant paid for the services with his checks, or with cash. There are few timecards, and those that were submitted, more than two and one-half years after the audit request, are suspect at best. The documents do not meet the requirements set out in the Code of Regulations. (See Factual Findings 5(A)-(F) and Legal Conclusion 2-5.)

11. This audit started more than four years ago. In all of that time, Appellant has managed to offer a motley collection of documents, nearly two thousand pages of mostly irrelevant papers, including some of questionable provenance. This is not the first time that Appellant failed to comply with an audit request, filed for review, and then acted in a dilatory fashion, and after failing to undo the audit results, claimed that the entire process was part of scheme to harass him or his disabled son, and to retaliate against him. The evidence supports none of those claims.<sup>24</sup> The 2008 Final Audit Report must be upheld in its entirety, and Appellant's appeal denied. To the extent that a stay of liquidation issued—a matter not disclosed in the record—it is dissolved.

#### ORDER

1. The Final Audit Report issued by Regional Center of Orange County regarding Appellant's Personal Assistance billings is hereby upheld, and Appellant's appeal there from denied.

2. RCOC may recover the sum of \$18,620 from Appellant through any means authorized by law. Any stay of liquidation previously issued is dissolved.

August 3, 2012

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>24</sup> Indeed, RCOC's unilateral efforts to pay Appellant to take training, illustrated in Factual Findings 39 and 40, contradict Appellant's claims of ill-will against him..