

**DEPARTMENT  
OF  
DEVELOPMENTAL SERVICES  
AUDIT  
OF  
KERN ASSISTIVE TECHNOLOGY CENTER**

**Services:**

Communication Aides Services – PK3809, PK5291, PK5342, PK5344

Money Management Services – PK5342

Audit Period: July 1, 2010, through June 30, 2013

**Audit Branch**

**Auditors:** Mike Masui, Chief of Vendor Audits  
Alton Kitay, Supervisor  
Ermas Teclé, Lead Auditor  
Christopher Lee, Auditor

**KERN ASSISTIVE TECHNOLOGY CENTER**

**TABLE OF CONTENTS**

	Page(s)
Executive Summary .....	1-2
Background .....	3
Objective, Scope, and Methodology .....	3-5
Conclusion .....	6
Views of Responsible Officials.....	6
Restricted Use .....	6
Findings and Recommendations .....	7-13
Attachment A – Summary of Billings.....	14-15
Attachment B – Summary of Overbillings .....	16
Attachment C – KATC’s Response.....	17-19
Attachment D – DDS’s Evaluation of KATC’s Response .....	20-25

## EXECUTIVE SUMMARY

The Audit Branch of the Department of Developmental Services (DDS) audited Kern Assistive Technology Center (KATC). The audit was performed on the Communication Aides and Money Management services for the period of July 1, 2010, through June 30, 2013.

The audit disclosed the following issues of non-compliance:

**Finding 1: Communication Aides and Money Management Services – Ineligibility for Vendorization due to Conflict of Interest**

The review of KATC's Communication Aides services, Vendor Numbers PK3809, PK5291, PK5342, and PK5344, and Money Management services, Vendor Number PK5342, revealed that KATC was ineligible for vendorization due to KATC's Executive Director's conflict of interest with Kern Regional Center (KRC). Therefore, the services provided by KATC from July 1, 2010, through August 31, 2012, were not provided in accordance with California Code of Regulations (CCR), Title 17. As a result, KATC billed a total of \$536,431.88 to KRC, while it was ineligible for vendorization; thus, not allowed to provide services to any DDS consumers.

**Finding 2: Communication Aides Services – Overbilling**

The review of KATC's Communication Aides services, Vendor Number PK3809, revealed that KATC overbilled KRC by charging consumers more than the general public for comparable services. As a result, KATC had a total of \$103,745 that it overbilled to KRC from September 1, 2012, through June 30, 2013. (Note: This Finding does not conflict or overlap with Finding 1, since, during this period, he was no longer an employee of KRC.)

**Finding 3: Communication Aides and Money Management Services – Unsupported Billings**

The review of KATC's Communication Aides services, Vendor Numbers PK5342 and PK5291, and Money Management services, Vendor Number PK5342, revealed that some of KATC's billings were unsupported. The audit revealed that KATC had a total of \$50,900 of unsupported billings during the period of September 1, 2012, to June 30, 2013. (Note: This Finding does not conflict or overlap with Finding 1, since, during this period, he was no longer an employee of KRC.)

**Finding 4: Communication Aides Services – Double-Billing**

The review of KATC's Communication Aides services, Vendor Number PK5344, revealed that KATC double-billed KRC for administrative expenses. KATC received an hourly rate for Communication Aides services which included a portion of overhead costs. However, under Vendor Number PK5344, KATC also received a

separate and additional administrative cost reimbursement which resulted in double-billing in the total amount of \$33,000 during the period of September 1, 2012 to June 30, 2013. The double-billing amount is due back to DDS. (Note: This Finding does not conflict or overlap with Finding 1, since, during this period, he was no longer an employee of KRC.)

**Finding 5: Communication Aides Services – Subcontracting of Services**

The review of KATC's Communication Aides services, Vendor Number PK5291, revealed that KATC subcontracted its services without prior permission from KRC. CCR, Title 17 and KATC's vendor contract with KRC requires a vendor to obtain permission from a regional center prior to the vendor subcontracting its services.

The total of the findings identified in this audit amounts to \$724,076.88 and is due back to DDS. A detailed discussion of these findings is contained in the Findings and Recommendations Section of this final audit report.

## **BACKGROUND**

DDS is responsible, under the Lanterman Developmental Disabilities Services Act, for ensuring that persons with developmental disabilities receive the services and supports they need to lead more independent, productive, and normal lives. DDS contracts with 21 private, nonprofit regional centers that provide fixed points of contact in the community for serving eligible individuals with developmental disabilities and their families in California. In order for regional centers to fulfill their objectives, they secure services and supports from qualified service providers and/or contractors. Pursuant to the Welfare and Institutions (W&I) Code, Section 4648.1, DDS has the authority to audit those service providers and/or contractors that provide services and supports to persons with developmental disabilities.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

### **Objective**

The audit was conducted to determine whether KATC's Communication Aides and Money Management services were compliant with the W&I Code, CCR, Title 17, and the regional center's contracts with KATC for the period of July 1, 2010, through June 30, 2013.

### **Scope**

The audit was conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. The auditors did not review the financial statements of KATC, nor was this audit intended to express an opinion on the financial statements. The auditors limited the review of KATC's internal controls to gain an understanding of the transaction flow and invoice preparation process as necessary to develop appropriate auditing procedures. The audit scope was limited to planning and performing audit procedures necessary to obtain reasonable assurance that KATC complied with W&I Code and CCR, Title 17. Also, any complaints that DDS' Audit Branch was aware of regarding non-compliance with laws and regulations were reviewed and followed up during the course of the audit.

The audit scope was determined by reviewing the services provided to KRC during the audit period. Based on an internal control questionnaire and a risk analysis, it was determined that a two-month sample period, for the original audit period of July 1, 2012, through June 30, 2013, would be sufficient to fulfill the audit objectives. However, due to significant billing discrepancies and an identified conflict of interest for KATC's Executive Director, the testing of the two-month sample was expanded to include the entire period of July 1, 2010, through June 30, 2013.

### **Communication Aides Services**

During the audit period, KATC operated four Communication Aides services, Service Code 112, under Vendor Numbers PK3809, PK5291, PK5342, and PK5344. The audit included the review of all four of KATC's Communication Aides services, and testing was completed for the months

of July and December 2012. However, due to KATC's Executive Director's conflict of interest from July 1, 2010, through August 31, 2012, all four services were reviewed for any conflict of interest issues during that period. Additionally, due to billing discrepancies identified in the sample month of December 2012, testing for billing discrepancies was expanded to include September 1, 2012, through June 30, 2013, for all four services.

### **Money Management Services**

During the audit period, KATC operated one Money Management service, which was reviewed. Testing was completed for the months of July and December 2012. However, due to KATC's Executive Director's conflict of interest from July 1, 2010, through August 31, 2012, this program was reviewed for any conflict of interest issues during that period. Additionally, due to billing discrepancies identified in the sample month of December 2012, testing for billing discrepancies was expanded to include September 1, 2012, through June 30, 2013. The service and vendor number audited is Money Management services, Service Code 034, Vendor Number PK5342.

### **Methodology**

The following methodology was used by DDS auditors to ensure the audit objectives were met. The methodology was designed to obtain a reasonable assurance that the evidence provided was sufficient and appropriate to support the findings and conclusions in relation to the audit objectives. The procedures performed included, but were not limited to the following:

- Review of vendor files for contracts, rate letters, program designs, Purchase of Service (POS) authorizations, and correspondence pertinent to the review.
- Interview of regional center staff for vendor background information and to obtain insight into the vendor's operations.
- Review of vendor's service/attendance records to determine if the vendor had sufficient and appropriate evidence to support the direct care services billed to the regional center.
- Interview of the vendor's Executive Director and Business Administrator for vendor background information and to gain understanding of accounting procedures and financial reporting processes for regional center billing.
- Review of KRC's personnel file for KATC's Executive Director to determine his tenure with KRC and his role as an employee of KRC.
- Review of Developmental Services Support Foundation (DSSF) for Kern, Inyo, and Mono Counties general ledgers to determine if KATC's Executive Director received payment for his services to that vendor while he was still an employee of KRC.

- Analysis of the vendor's payroll and attendance/service records to determine if payroll substantiated the audited hours.

## **CONCLUSION**

Based upon items identified in the Findings and Recommendations Section, KATC did not comply with the requirements of CCR, Title 17.

## **VIEWS OF RESPONSIBLE OFFICIALS**

The DDS issued the draft audit report on May 13, 2015. The findings in the audit report were discussed at an exit conference with Mr. Markovits, KATC's Executive Director on May 18, 2015. Subsequent to the meeting, Mr. Markovits responded on June 12, 2015 that KATC did not agree with the audit report.

## **RESTRICTED USE**

This audit report is solely for the information and use of DDS, Department of Health Care Services, KRC, and KATC. This restriction is not intended to limit distribution of this audit report, which is a matter of public record.



## FINDINGS AND RECOMMENDATIONS

### **Finding 1: Communication Aides and Money Management Services – Ineligibility for Vendorization due to Conflict of Interest**

The review of KATC's Communication Aides services, Vendor Numbers PK3809, PK5291, PK5342, and PK5344, and Money Management services, Vendor Number PK5342, for the period of July 1, 2010, through August 31, 2012, revealed that these services were not provided in accordance with CCR, Title 17 regulations because KATC was ineligible for vendorization. KATC was ineligible for vendorization due to its Executive Director's conflict of interest with KRC. CCR, Title 17 prohibits vendorization of any regional center employee. Per regulations during the audit period, a conflict of interest exists when a regional center employee simultaneously holds "any position of management within the vendor's business entity." KATC's Executive Director started and operated KATC's services in the KRC office building while he was an employee of KRC from December 22, 2003, through August 31, 2012.

In addition, DDS never received a Request for Waiver pursuant to CCR, Title 17, Section 54523 for the vendorization of the KRC employee.

Due to the conflict of interest, KATC's programs and services were ineligible for vendorization; thus, not allowed to provide services to any DDS consumers.

Furthermore, in accordance with the W&I Code, DDS may recover funds paid for services from the provider, if the services were not provided in accordance with applicable state laws or regulations.

As a result, \$536,431.88 is due back to DDS for the services that were not provided in accordance with CCR, Title 17 regulations. (See Attachment A)

CCR, Title 17, Section 54314(a)(3) states:

- “(a) The following applicants shall not be vendored:
  - (3) Employees and board members of any regional center with a conflict of interest pursuant to Title 17, Sections 54500 through 54525, unless the conflict is eliminated or a waiver is obtained pursuant to Title 17, Section 54522 through 54525;”

CCR, Title 17, Sections 54521(a)(1) and (2) states: <sup>1</sup>

- “(a) The following constitute conflicts of interest for regional center employees:

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<sup>1</sup> California Code of Regulation, Title 17 for a Conflict of Interest in effect prior to August 15, 2012 revisions.

- (1) A conflict of interest exists when a regional center employee or a family member of such person is a governing board member, director, officer, owner, partner, shareholder, trustee, or employee of any business entity or provider, holds any position of management in any business entity or provider . . .
- (2) A conflict of interest exists when a regional center employee devotes less than his or her full-time attention and effort to his or her regional center employment for that period for which he or she is being reimbursed.”

CCR, Title 17, Section 54326(a)(15) states:

“(a) All vendors shall:

- (15) Comply with conflict of interest requirements as determined by the criteria established by Title 17, Sections 54500 through 54525 and the Welfare and Institutions Code, Sections 4626 through 4628.”

W&I Code, Section 4648.1(e)(1) states:

- “(e) A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines either of the following has occurred:
- (1) The services were not provided in accordance with the regional center’s contract or authorization with the provider, or with applicable state laws or regulations.”

**Recommendation:**

KATC must reimburse to DDS \$536,431.88 for the billings of services which were not provided in accordance to CCR, Title 17 Regulations due to the conflict of interest with KRC. In addition, KATC should develop and implement policies and procedures to ensure that it is compliant with applicable conflict of interest standards.

**KATC’s Response:**

Mr. Markovits, KATC’s Executive Director, stated in his response, dated June 12, 2015, that KATC disagreed with the Finding. A copy of the response is enclosed as Attachment C and DDS’ evaluation of the response is in Attachment D.

**Finding 2: Communication Aides Services – Overbilling**

The review of KATC’s Communication Aides services, Vendor Number PK3809, for the period of September 1, 2012, through June 30, 2013, revealed that KATC overbilled KRC for services provided. (During this period, KATC’s Executive Director was no longer an employee of KRC.)

During this period of time, KATC was receiving a monthly contract rate for the services it was providing. The supporting documentation that was reviewed showed sufficient detail to determine the type of service provided, the length of service time, and the number of employees involved. This information regarding the services billed was compared to the usual and customary rate charged to the general public. Based on the public rates, KATC should have billed \$6,255 for the 75.75 hours of service. However, KATC was paid \$11,000 per month based on the monthly contract rate with KRC, for a total of \$110,000 for the period of September 1, 2012, through June 30, 2013. As a result, KATC needs to remit \$103,745 (\$110,000 - \$6,255) back to DDS for the amount it over charged KRC consumers. For the 75.75 hours of service for which KATC could provide appropriate support, KATC received an average hourly rate of \$1,452.15. (See Attachment B)

CCR, Title 17, Section 54326(a)(10) states:

- “(a) All vendors shall:
  - (10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center.”...

CCR, Title 17, Section 57210(a)(19) states:

- “(19) “Usual and Customary Rate” means the rate which is regularly charged by a vendor for a service that is used by both regional center consumers and/or their families and where at least 30% of the recipients of the given service are not regional center consumers or their families. If more than one rate is charged for a given service, the rate determined to be the usual and customary rate for a regional center consumer and/or family shall not exceed whichever rate is regularly charged to members of the general public who are seeking the service for an individual with a developmental disability who is not a regional center consumer, and any difference between the two rates must be for extra services provided and not imposed as a surcharge to cover the cost of measures necessary for the vendor to achieve compliance with the Americans With Disabilities Act . . .”

CCR, Title 17, Section 57300(b) states:

“(b) Vendors shall not charge regional centers more for services to consumers than they charge for comparable services to any other person served by the vendor, solely because the consumer is a person with a developmental disability whose services are publicly rather than privately funded.”

**Recommendation:**

KATC must reimburse to DDS \$103,745 for overbilling KRC for the services provided. In addition, KATC must cease its current contract with KRC and develop policies and procedures to ensure that the amounts billed to KRC do not exceed the amount that KATC would have charged the general public for comparable services.

**KATC’s Response:**

Mr. Markovits, KATC’s Executive Director, stated in his response, dated June 12, 2015, that KATC disagreed with the Finding. A copy of the response is enclosed as Attachment C and DDS’ evaluation of the response is in Attachment D.

**Finding 3: Communication Aides and Money Management Services – Unsupported Billings**

The review of KATC’s Communication Aides services, Vendor Numbers PK5342 and PK5291, and Money Management services, Vendor Number PK5342, for the period of September 1, 2012, through June 30, 2013, which was after the conflict of interest period noted in Finding 1, revealed that KATC had unsupported billings to KRC.

Unsupported billings occurred due to a lack of appropriate documentation to support the units of service billed. It was found that KATC billed KRC for the full negotiated monthly amount each month regardless of how many units or hours of services were provided. KATC was not able to provide appropriate supporting documentation to verify that any service was provided for 8 months out of 10 months reviewed. This resulted in unsupported billings for the entire monthly flat rate.

For Vendor Numbers PK5291 and PK5342, there were eight months in which there was no support for the monthly billing. This resulted in unsupported billings for Vendor Numbers PK5291 and PK5342 for a total of \$50,900 (\$12,000 + \$38,900), which is due back to DDS. (See Attachment A)

W&I Code, Section 4648.1(e)(1) states:

“(e) A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines either of the following has occurred:

(1) The services were not provided in accordance with the regional center’s contract or authorization with the provider, or with applicable state laws or regulations.”

CCR, Title 17, Sections 54326(a)(3) and (10) states:

“(a) All vendors shall:

(3) Maintain records of services provided to consumers in sufficient detail to verify delivery of the units of service billed:

(10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center . . .”

CCR, Title 17, Sections 50604(d) and (e) states:

“(d) All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program . . .

(e) All service providers’ records shall be supported by source documentation.”

**Recommendation:**

KATC must reimburse DDS \$50,900 for the unsupported billings. In addition, KATC must develop and implement policies and procedures to ensure that proper documentation is maintained to support the amounts billed to KRC.

**KATC’s Response:**

Mr. Markovits, KATC’s Executive Director, stated in his response, dated June 12, 2015, that KATC disagreed with the Finding. A copy of the response is enclosed as Attachment C and DDS’ evaluation of the response is in Attachment D.

**Finding 4: Communication Aides Services – Double-billing**

The review of KATC’s Communication Aides services, Vendor Number PK5344, for the period of September 1, 2012, through June 30, 2013, revealed that KATC double-billed KRC for administrative expenses.

The review revealed that KATC has four separate vendor numbers, all providing miscellaneous service code 112, Communication Aides services. However, it was found that only three of the four vendored services were used to provide services to consumers. The fourth vendor, Vendor Number PK5344, was used to bill KRC for administrative expenses tied to the other three services only.

Under CCR, Title 17, the maximum rate of reimbursement for miscellaneous services shall be a negotiated rate if the vendor does not have an established usual and customary rate and the Schedule of Maximum Allowance (SMA) does not apply. All of KATC's programs are negotiated rates, therefore all expenses, including administrative expenses, are a part of the negotiated rate. KATC had no authority to bill KRC separately for administrative expenses. As a result, \$33,000 is due back to DDS for the double-billing of administrative expenses. (See Attachment A)

CCR, Title 17, Section 57300(c) states:

- “(c) Regional centers shall not reimburse vendors:
- (1) Unless they have a rate established pursuant to these regulations which is currently in effect; nor
  - (2) For services in an amount greater than the rate established pursuant to these regulations.”

CCR, Title 17, Section 57336(a)(3) states:

- “(a) The maximum rates of reimbursement for Miscellaneous Services shall be established in accordance with the following:
- (3) A negotiated rate pursuant to Section 57300 (e) if the vendor does not have an established usual and customary rate, as defined in Section 57210 (a)(19), and the SMA does not apply to the services provided.”

**Recommendation:**

KATC must reimburse DDS \$33,000 for the double-billed administrative expenses. In addition, KATC must cease billing under Vendor Number PK5344.

**KATC's Response:**

Mr. Markovits, KATC's Executive Director, stated in his response, dated June 12, 2015, that KATC disagreed with the finding. A copy of the response is enclosed as Attachment C and DDS' evaluation of the response is in Attachment D.

**Finding 5: Communication Aides Services – Subcontracting of Services**

The review of KATC’s Communication Aides services, Vendor Number PK5291, revealed that KATC subcontracted its services without prior permission from KRC.

The Communication Aides’ services require a licensed Speech and Language Pathologist (SLP) to perform the duties set forth in the contract with KRC. To fulfill this requirement, KATC subcontracted the required duties to a licensed SLP. However, KATC did not obtain written permission from KRC prior to subcontracting this service to a licensed SLP which is not in compliance with CCR, Title 17.

CCR, Title 17, Sections 56710(b)(1) and (2) states:

- “(b) A community-based day program vendor may subcontract for provision of a portion of the direct service if both of the following conditions are met:
  - (1) The unique needs of the consumer(s) require an intermittent service for a portion of the direct service day which can only be provided by a licensed professional not available within the program staff; and
  - (2) Written approval of the regional center is obtained.”

KRC’s contract with Vendor Number PK5291, Section XII states:

“Contractor shall not assign, transfer, or subcontract any of its rights, burdens, duties, or obligations pursuant to this Contract without prior written permission from KRC.”

**Recommendation:**

KATC must obtain written approval from KRC to continue subcontracting its service to a licensed SLP or provide the service with its own licensed personnel.

**KATC’s Response:**

Mr. Markovits, KATC’s Executive Director, stated in his response, dated June 12, 2015, that KATC hired the Speech Therapist. A copy of the response is enclosed as Attachment C and DDS’ evaluation of the response is in Attachment D.

**Kern Assistive Technology Center  
Summary of Billings  
Audit Period: July 1, 2010 through June 30, 2013**

**Attachment A**

Finding #	Vendor	Svc Code	Description	Unit Type	Unit Rate	Ineligibility for Vendorization		Unsupported Billings		Duplicate Billing		NET TOTAL
						Units	Amount	Number of Months	Amount	Units	Amount	Amount
<b>1</b>	<b><u>Miscellaneous Programs</u></b>											
	PK3809	112	Communication Aides	<b>July 2010-Aug 2012</b>								
				Monthly	\$ 11,000.00	26.00	\$ 286,000.00	-	-	-	-	\$ 286,000.00
	PK5342	034,112	Communication Aides	<b>July, Sep-Oct 2010</b>								
				Monthly	\$ 5,000.00	3.00	15,000.00	-	-	-	-	\$ 15,000.00
				<b>Aug 2010</b>								
				Monthly	\$ 10,000.00	1.00	10,000.00	-	-	-	-	\$ 10,000.00
				<b>Nov-Dec 2010</b>								
				Monthly	\$ 4,787.50	2.00	9,575.00	-	-	-	-	\$ 9,575.00
				<b>Jan 2011</b>								
				Monthly	\$ 1,196.88	1.00	1,196.88	-	-	-	-	\$ 1,196.88
				<b>Feb 2011-June 2012</b>								
				Monthly	\$ 4,787.50	17.00	81,387.50	-	-	-	-	\$ 81,387.50
				<b>July-Aug 2012</b>								
				Monthly	\$ 4,937.50	2.00	9,875.00	-	-	-	-	\$ 9,875.00
	PK5344	112	Communication Aides	<b>July 2010-Aug 2012</b>								
				Monthly	\$ 3,300.00	26.00	85,800.00	-	-	-	-	\$ 85,800.00
	PK5291	112	Communication Aides	<b>July 2010</b>								
				Monthly	\$ 1,417.50	1.00	1,417.50	-	-	-	-	\$ 1,417.50
				<b>Aug-Sep2010</b>								
				Monthly	\$ 1,436.25	2.00	2,872.50	-	-	-	-	\$ 2,872.50
				<b>Oct 2010</b>								
				Monthly	\$ 1,455.00	1.00	1,455.00	-	-	-	-	\$ 1,455.00
				<b>Nov 2010-April 2012</b>								
				Monthly	\$ 1,436.25	18.00	25,852.50	-	-	-	-	\$ 25,852.50
				<b>May-August 2012</b>								
				Monthly	\$ 1,500.00	4.00	6,000.00	-	-	-	-	\$ 6,000.00
				<b>Total Ineligible for Vendorization **</b>		104.00	\$ 536,431.88					\$ 536,431.88



**Kern Assistive Technology Center  
Summary of Billings  
Audit Period: July 1, 2010 through June 30, 2013**

**Attachment A**

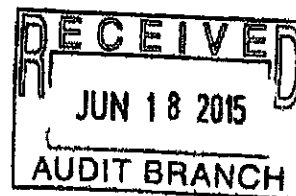
Finding #	Vendor	Svc Code	Description	Unit Type	Unit Rate	Ineligibility for Vendorization		Unsupported Billings		Duplicate Billing		NET TOTAL
						Units	Amount	Number of Months	Amount	Units	Amount	Amount
<b>3</b>	<b>Miscellaneous Programs</b>		Sample Period:	<b>September 2012 - June 2013</b>								
	PK5342	112	Communication Aides	Monthly	\$ 4,937.50			4.00	\$ 19,750.00	-	-	\$ 19,750.00
	PK5342	034	Money Managemnt	Monthly	\$ 4,787.50			4.00	\$ 19,150.00	-	-	\$ 19,150.00
						-	-	8.00	38,900.00			38,900.00
	PK5291	112	Communication Aides	Monthly	\$ 1,500.00	-	-	8.00	\$ 12,000.00	-	-	\$ 12,000.00
			<b>Total Unsupported Billings</b>					16.00	\$ 50,900.00			<b>\$ 50,900.00</b>
<b>4</b>	<b>Miscellaneous Program</b>		Sample Period:	<b>September 2012 - June 2013</b>								
	PK5344	112	Communication Aides	Monthly	\$ 3,300.00	-	-	-	-	10.00	\$ 33,000.00	\$ 33,000.00
			<b>Total Double Billings</b>							10.00	\$ 33,000.00	<b>\$ 33,000.00</b>
<b>GRAND TOTAL:</b>											<b>\$ 620,331.88</b>	

\*\* The units from finding 1 are representative of the total monthly billings from July 2010 through August 2012

**Kern Assistive Technology Center  
Summary of Overbillings  
Audit Period: September 1, 2012 through June 30, 2013**

**Attachment B**

<i>Finding #</i>	<i>Vendor</i>	<i>Svc Code</i>	<i>Month</i>	<i>POS</i>	<i>Type of Service</i>	<i>Audited Hours</i>	<i>Public Rate / Hour</i>	<i>Billing at Public Rate</i>	<i>Overbilling</i>
<b>2</b>	<b>Communication Aides</b>		<b>September 2012 - June 2013</b>	<b>(A)</b>				<b>(B)</b>	<b>(C = A - B)</b>
	PK3809	112							
			<b>Sep-12 :</b>		OA1	6.75	\$65.00	\$438.75	
					OA2	1.00	\$120.00	\$120.00	
					OFA2	2.25	\$150.00	\$337.50	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>10.00</b>		<b>\$896.25</b>	<b>\$10,103.75</b>
			<b>Oct-12</b>		OA1	3.25	\$65.00	\$211.25	
					OA2	0.75	\$120.00	\$90.00	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>4.00</b>		<b>\$301.25</b>	<b>\$10,698.75</b>
			<b>Nov-12</b>		OA1	3.25	\$65.00	\$211.25	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>3.25</b>		<b>\$211.25</b>	<b>\$10,788.75</b>
			<b>Dec-12</b>		OA1	6.50	\$65.00	\$422.50	
					OA2	1.25	\$120.00	\$150.00	
					OFA2	3.00	\$150.00	\$450.00	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>10.75</b>		<b>\$1,022.50</b>	<b>\$9,977.50</b>
			<b>Jan-13</b>		OA1	2.50	\$65.00	\$162.50	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>2.50</b>		<b>\$162.50</b>	<b>\$10,837.50</b>
			<b>Feb-13</b>		OA1	0.25	\$65.00	\$16.25	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>0.25</b>		<b>\$16.25</b>	<b>\$10,983.75</b>
			<b>Mar-13</b>		OA1	12.00	\$65.00	\$780.00	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>12.00</b>		<b>\$780.00</b>	<b>\$10,220.00</b>
			<b>Apr-13</b>		OA1	7.75	\$65.00	\$503.75	
					OA2	3.50	\$120.00	\$420.00	
					OFA2	4.75	\$150.00	\$712.50	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>16.00</b>		<b>\$1,636.25</b>	<b>\$9,363.75</b>
			<b>May-13</b>		OA1	9.25	\$65.00	\$601.25	
					OA2	1.25	\$120.00	\$150.00	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>10.50</b>		<b>\$751.25</b>	<b>\$10,248.75</b>
			<b>Jun-13</b>		OA1	5.50	\$65.00	\$357.50	
					OA2	1.00	\$120.00	\$120.00	
			<b>Subtotals:</b>	<b>\$11,000.00</b>		<b>6.50</b>		<b>\$477.50</b>	<b>\$10,522.50</b>
			<b>Overbilling Subtotals:</b>	<b>\$110,000.00</b>		<b>75.75</b>		<b>\$6,255.00</b>	<b>\$103,745.00</b>



## Kern Assistive Technology Center

Respectfully promoting independence and enhancing lives through technology and partnerships.

June 12, 2015

Edward Yan, Manager  
 Department of Development Services  
 Audit Branch  
 1600 Ninth Street, Room 230, MS 2-10  
 Sacramento, Ca, 95814

Dear Mr. Yan,

The Kern Assistive Technology Center has received the draft audit report dated May 13<sup>th</sup>, 2015 and discussed the findings with two managers at our exit interview held on Monday May 18<sup>th</sup>, 2015 at our facility located. The Board and Executive Director of Kern Assistive Technology are writing this response to identify discrepancies and clarify issues.

### Corrections:

Contrary to what was stated in the audit report, the contract for Vendor #PK3809 was originally negotiated in 2006 and later re-written to consolidate services in July 2007. This contract was not changed since then.

The contract for Vendor #PK5291 was negotiated and agreed to in November 2009 and was amended only once to allow for more hours to be provided to Kern Regional Center clients. The rate did not change.

The contract for Vendor #PK5342 was negotiated in December 2009 and was not changed.

The contract for Vendor #PK5344 was negotiated in January 2010 and was not changed.

The Kern Assistive Technology Center negotiated contracts with Kern Regional Center and fully complied with the terms of those contracts. The rates and terms were agreed to by both parties with full understanding of what was negotiated. A flat rate was paid to Kern Assistive Technology for services provided in the program description and contract. All the contracts in question were negotiated prior to current rate setting methodologies and were renewed each year without increase. The only contract that contains any administrative costs associated with it is the one for Vendor #PK5344.

### Finding 1:

The audit entrance letter, dated January 23, 2014, stated the audit period was July 1, 2012 to June 30, 2013, not July 1, 2010-June 30, 2013 as indicated in the draft audit report. Therefore the findings contained in the audit report are for period outside the scope of the audit investigation.

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## Kern Assistive Technology Center

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No records were reviewed by your audit team while working on this audit. Further, there was not a conflict of interest at any time during or after the Executive Director's employment at Kern Regional Center.

The conclusion that a conflict of interest existed is negated by the following:

- 1) The contracts in question are between the Kern Regional Center and Kern Assistive Technology Center, two private non-profit corporations doing business in the state of California. The Executive Director of Kern Assistive Technology Center who was an employee of Kern Regional Center, was not the vendor, the corporation Kern Assistive Technology Center was the vendor.
- 2) The Executive Director was not paid by Kern Assistive Technology Center during his employment at Kern Regional Center. Further, when the Executive Director left his employment with Kern Regional Center no additional increase in any contracts with Kern Regional Center or any other agency was provided to Kern Assistive Technology Center. All of the contract amounts remained the same.
- 3) The contracts in question were negotiated prior to the current rate setting methodologies. All the contracts were reviewed and simply renewed each year.

### **Finding 2:**

The rates and terms of the contract in questions were negotiated and agreed to by both parties for services provided within the program description. We had no other clients paying for the unique services that were being provided to Kern Regional Center as negotiated in this contract. The rate table provided during the audit was shared for information purposes only as was shared with the audit team at the time of the audit. The only customer KATC had for these unique services provided was the Kern Regional Center. A number of services that had been provided to the community were bundled together into this vendor#, which is the primary reason the rate was negotiated in the way it was. The services provided were outlined in the program design which was presented to Kern Regional Center. A flat rate was charged to the Regional Center based on the payment agreement agreed to for this vendor #PK3809. The rate negotiated between Kern Regional Center and Kern Assistive Technology was mutually agreed. KATC provided the services as outlined in the contract and billed for those services as agreed.

### **Finding 3:**

The rates and terms were negotiated and agreed to by both parties for services provided in the program description, contract, and payment agreement. A flat rate was charged to the Regional Center based on the payment agreement for the services outlined in the program design. The contract is a flat rate regardless of the number of clients served. Services were provided to clients during the entire time the contracts were in force. The contracts for vendor#PK5342 and vendor #PK5291 were negotiated and agreed to prior to the current rate setting methodology in use and renewed without any raise in payment amount for the duration of the contract.

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## Kern Assistive Technology Center

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**Finding 4:**

The rates and terms were negotiated and agreed to by both parties for services provided in the program description, contract, and payment agreement. A flat rate was charged to the Regional Center based on the payment agreement for this vendor#PK5344. Further, no administrative costs were built into any other contracts Kern Assistive Technology Center had with Kern Regional Center. This contract was negotiated prior to any current rate setting methodology in use and renewed without any raise in payment amount for the duration of the contract.

**Finding 5:**

After consulting with Kern Regional Center, Kern Assistive Technology hired the speech therapist as an employee in February 2014. This issue was addressed.

Based on the above information, it is requested DDS reconsider its findings and resulting penalties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aaron', with a long horizontal flourish extending to the right.

Aaron Markovits  
Executive Director

cc: Robert Riddick, KRC  
Evie Correa, DHCS  
Shun Tong, DHCS  
Jean Johnson, DHCS  
Nancy Bargmann, DDS  
Brian Winfield, DDS  
Debie Pritchard, DDS  
Michael Masui, DDS

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## **THE DEPARTMENT OF DEVELOPMENTAL SERVICES' EVALUATION OF KATC'S RESPONSE**

The Department of Developmental Services (DDS) evaluated Kern Assistive Technology Center (KATC)'s written response to the draft audit report and determined that KATC disagreed with all five findings. Below is a summary of the vendor's response as well as the DDS' evaluation of the vendor's response.

KATC's response had a section called "Corrections," followed by sections that were specific to each of the audit report findings.

### **Corrections:**

KATC states that it "negotiated contracts with KRC and fully complied with the terms of those contracts. The rates and terms were agreed to by both parties with the full understanding of what was negotiated. A flat rate was paid to Kern Assistive Technology for services provided in the program description and contract. All contracts in question were negotiated prior to the current rate setting methodologies and were renewed each year without increase. The only contract that contains any administrative costs associated with it is the one for Vendor Number PK5344."

### **DDS Evaluation:**

One of the four elements to a contract is legality. Contracts that are not in compliance with State or Federal Law are not enforceable and are void as to the sections of the contract that are in violation of law. As it has been determined by the audit, portions of the contract are illegal and thus severable into its legal and illegal parts. Consequently, the payment of purchase of service funds for administrative expenses and not for the direct hands-on services to consumer is a violation of law. Therefore, no corrections are warranted.

### **Finding 1: Communication Aides and Money Management Services – Ineligibility for Vendorization due to Conflict of Interest**

KATC states that "the audit entrance letter, dated January 23, 2014, stated the audit period was July 1, 2012, to June 30, 2013, not July 1, 2010, through June 30, 2013, as indicated in the draft audit report. Therefore, the findings contained in the audit report are for a period outside the scope of the audit investigation." Additionally, KATC states that "no records were reviewed" by DDS.

KATC also states "there was no conflict of interest at any time during or after the Executive Director's employment at KRC", and that the "conflict of interest is negated" because "the contracts in question are between KRC and KATC, two private, non-profit corporations doing business in the State of California". In addition, KRC refutes the conflict of interest since the "Executive Director of KATC, who was an employee of KRC, was not the vendor" as "the corporation KATC was the vendor". Furthermore, the Executive Director of KATC "was not

## **THE DEPARTMENT OF DEVELOPMENTAL SERVICES' EVALUATION OF KATC'S RESPONSE**

paid by KATC during his employment at KRC”, and “the contracts in question were negotiated prior to the current rate setting methodologies”.

### **DDS Evaluation:**

During the entrance conference, the auditee is advised that, if necessary, the audit period may and often will be expanded to cover the issue(s) identified. This was the case with KATC, and is stated in the audit report under the scope and methodology section. The serious conflict of interest issue required the auditors to expand the audit period. DDS reviewed and tested the records such as the employee’s detailed time records, Customer Relationship Management system notes, detailed billing reports, and the rate table that was made available during the audit.

KATC’s statement that the contracts were between KRC and KATC does not negate the conflict of interest because the Executive Director of KATC, who was an employee of KRC, also held a position of authority at KATC as the Director. In addition, payment that was or was not made within the scope of the contracts and the statement that the contracts in question were negotiated prior to the current rate setting methodologies has no bearing on the fact that a conflict of interest was present.

CCR, Title 17, Section 54526(a)(3) states:

- (a) “A conflict of interest exists when a regional center employee with decision or policy making authority, or contractor, agent or consultant with authority to act on behalf of the regional center, or family member of such person, is any of the following for a business entity, entity, or provider as defined in these regulations:
  - (3) a director;”

This Section clearly defines a conflict of interest that prohibits vendorization. CCR, Title 17, Section 54526(a)(3), defines the existence of a conflict of interest when a position of authority is held in both organizations and is filled by the same person.

### **Conclusion:**

KATC did not provide any supporting evidence that would result in a reduction of Finding 1.

## **THE DEPARTMENT OF DEVELOPMENTAL SERVICES’ EVALUATION OF KATC’S RESPONSE**

### **Finding 2: Communication Aides Services – Overbilling**

KATC argues the following in response to this Finding:

KATC again states “the rates and terms of the contract were negotiated and agreed to by both parties”. KATC also states, “We had no other clients paying for the unique services that were being provided to KRC as negotiated in this contract. The rate table provided during the audit was shared for information purposes only as was shared with the audit team at the time of the audit.” KATC further states, “The only customer KATC had for these unique services provided was the KRC. A number of services that had been provided to the community were bundled together into this vendor number, which is the primary reason the rate was negotiated in the way it was.”

#### **DDS Evaluation:**

During the audit, there was evidence KATC provided services to non-KRC consumers. The statement that KATC provided these unique services only to KRC consumers appears to be unreliable since DDS obtained documentation that contained a number of individuals that were served by KATC, which were not KRC consumers. Also, there doesn’t appear to be a purpose to have a rate table for “informational purposes,” if no consumers were to be served under those rates. In addition, KATC’s statement is contradictory due to the fact KATC states only KRC consumers are served, but then continues to state that a number of services that had been provided to the community were bundled together into this vendor number. This leads DDS to ascertain that KATC is providing services to non-KRC consumers. Further, it is unreasonable for KATC to bill an average hourly rate of \$1,452.15 for communication aides services as compared to KATC’s listed general public hourly rates between \$65 to \$150 and KRC’s median rate of \$20 per hour for communication aides services.

#### **Conclusion:**

KATC did not provide any supporting evidence that would result in a reduction of Finding 2.

### **Finding 3: Communication Aides and Money Management Services – Unsupported Billings**

KATC states “the rates and terms were negotiated and agreed to by both parties”, and that “services were provided to clients the entire time the contracts were in force”.

#### **DDS Evaluation:**

It is not reasonable for KATC to bill for a monthly rate when no services are provided to KRC consumers. KATC did not provide any documentation to refute or amend this Finding.



**THE DEPARTMENT OF DEVELOPMENTAL SERVICES’  
EVALUATION OF KATC’S RESPONSE**

CCR, Title 17, Section 54326(a)(10) states:

“(a) All vendors shall:

- (10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center . . .”

**DDS Conclusion:**

KATC did not provide any supporting evidence that would result in a reduction of Finding 3.

**Finding 4: Communication Aides Services – Double-Billing**

KATC states that Communication Aides Services, Vendor Number PK5344, was negotiated to provide administrative support for all Communication Aides Services contracted with KRC and that no other administrative support costs were included into the other three Communication Aides Services, Vendor Numbers PK3809, PK5291, and PK5342. Further, KATC states the contract “was negotiated prior to any current rate setting methodology” and those “rates and terms were negotiated and agreed to by both parties”.

**DDS Evaluation:**

KATC has four separate vendor numbers to provide Communication Aide Services, Service Code 112. However, the audit revealed that only three of the four vendored services were used to provide actual services, i.e. hands-on training. The fourth, Vendor Number PK5344 was used to bill and receive reimbursement for administrative expenses incurred by all of KATC’s programs rather than for providing communication aides services to consumers. Section I of KATC’s PK5344 vendor contract states that the purpose of the contract, “. . . shall provide for Administrative Support to CONTRACTOR (KATC) including clerical duties, organization of a loan library, scheduling appointments, coordinating training, and assisting with alternative communication/assistive technology services.”

CCR, Title 17, Section 54326(a)(10) states:

“(a) All vendors shall:

- (10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center.

**THE DEPARTMENT OF DEVELOPMENTAL SERVICES’  
EVALUATION OF KATC’S RESPONSE**

W&I Code, Section 4648(a)(1) states that:

“In order to achieve the stated objectives of a consumer’s individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

- (a) Securing needed services and supports.
  - (1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices . . .”

The service billed by vendor PK5344 does not include any type of service or support for consumers or individuals with developmental disabilities.

Additionally, KATC’s three Communication Aides Services all have negotiated rates. Expenses related to negotiated rates are included in the rate itself, including administrative expenses. Thus, by KATC using Vendor Number PK5344 to bill for administrative expenses, KATC is double billing for administrative expenses.

CCR, Title 17, Section 57300(c)(2) states:

- “(c) Regional Center shall not reimburse vendors:
  - (2) For services in an amount greater than the rate established . . .”

**DDS Conclusion:**

KATC did not provide any supporting evidence that would result in a reduction of Finding 4.

**THE DEPARTMENT OF DEVELOPMENTAL SERVICES'  
EVALUATION OF KATC'S RESPONSE**

**Finding 5: Communication Aides Services – Subcontracting of Services**

KATC informed DDS that it has hired the Speech Therapist as an employee of KATC in February 2014.

**DDS Evaluation:**

During the audit period, KATC subcontracted Speech Therapy services without prior approval of KRC. The contract for Vendor Number PK5291, Section XII states:

“Contractor shall not assign, transfer, or subcontract any of its rights, burdens, duties, or obligations pursuant to this Contract without prior written permission from KRC.”

In order to correct this finding KATC hired the former Speech Therapist who was an independent contractor as an employee, thus not having to obtain approval from KRC. However, no documentation was provided to sufficiently and adequately prove the actual hiring by KATC.

**DDS Conclusion:**

KATC's stated corrective action appears to address this Finding.