

ITEM 14
FINAL STAFF ANALYSIS
PROPOSED ORDER TO SET ASIDE
PARAMETERS AND GUIDELINES

Education Code Section 48900.1
Statutes 1988, Chapter 1284 and Statutes 1989, Chapter 213

Amended By
Statutes 2004, Chapter 895 (Assem. Bill No. 2855)

Pupil Suspension: Parent Classroom Visits
04-PGA-22 (CSM-4474)

EXECUTIVE SUMMARY

In 1996, the Commission on State Mandates determined that the Pupil Suspensions: Parent Classroom Visits program (Ed. Code, § 48900.1) imposed a reimbursable mandate on school districts. The Commission determined that the test claim statutes established costs mandated by the statute by requiring:

1. The governing board to adopt a policy authorizing teachers to require the parent or guardian attend a portion of a school day in their child's classroom, if the child has been classroom-suspended by the teacher for committing an obscene act, engaging in habitual profanity or vulgarity, disrupting school activities or otherwise willfully defying the valid authority school personnel, as specified by subdivisions (i) or (k) of section 48900.
2. Parents and guardians to be notified of this policy prior to its implementation.
3. The principal to send a written notice to the parent or guardian stating that attendance by the parent or guardian is according to law.
4. The principal or principal's designee to contact the parent or guardian who does not respond to the written request.
5. The school administrator to meet with the parent after the classroom visitation and before leaving the school site unless the meeting is the same as the parent-teacher meeting held pursuant to Education Code section 48910, subdivision (a).

In 1999, the Commission adopted new parameters and guidelines to establish the reimbursable activities for *Pupil Suspension: Parent Classroom Visits Program* and amended the *Annual Parent Notification* parameters and guidelines to incorporate the requirement to notify parents or guardians of the policy.

In 2004, AB 2855 amended the test claim statute, by substituting the “may” for “shall,” and other clarifying amendments. This amendment made board adoption of the policy permissive.

On November 8, 2004, the State Controller’s Office requested set-aside of the parameters and guidelines for the *Pupil Suspension: Parent Classroom Visits* program based on AB 2855. On November 1, 2005, the State Controller’s Office requested amendment of the *Annual Parent Notification* program parameters and guidelines to delete all references to the *Pupil Suspensions: Parent Classroom Visits* program (CSM-4474), since the program was made optional by AB 2855.¹

Staff agrees with the State Controller’s Office request. However, this analysis will not address the requested amendment of the *Annual Parent Notification* program. The proposed amendments to the *Annual Parent Notification* program will be considered separately at the January 2006 hearing.

Discussion

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.² To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

In order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

Statutes 2004, chapter 895 (Assem. Bill No. 2855, effective Jan. 1, 2005) amended Education Code section 48900.1, subdivision (a), as follows:

- (a) The governing board of each school district ~~may shall~~ adopt a policy authorizing teachers to ~~provide that~~ require the parent or guardian of a pupil who has been suspended by a teacher pursuant to Section 48910 for reasons specified in subdivision

¹ See Exhibit A.

² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

- (i) or (k) of Section 48900, to attend a portion of a school day in the classroom of his or her child or ward ~~child's or ward's classroom~~. The policy shall take into account reasonable factors that may prevent compliance with a notice to attend. The attendance of the parent or guardian shall be limited to the class from which the pupil was suspended.
- (b) The policy shall be adopted pursuant to the procedures set forth in Sections 35291 and 35291.5. Parents and guardians shall be notified of this policy prior to its implementation. A teacher shall apply any policy adopted pursuant to this section uniformly to all pupils within the classroom.

The adopted policy shall include the procedures that the district will follow to accomplish the following:

- (1) Ensure that parents or guardians who attend school for the purposes of this section meet with the school administrator or his or her designee after completing the classroom visitation and before leaving the schoolsite.
 - (2) Contact parents or guardians who do not respond to the request to attend school pursuant to this section.
- (c) If a teacher imposes the procedure pursuant to subdivision (a), the principal shall send a written notice to the parent or guardian stating that attendance by the parent or guardian is pursuant to law. This section shall apply only to a parent or guardian who is actually living with the pupil.
- (d) A parent or guardian who has received a written notice pursuant to subdivision (c) shall attend class as specified in the written notice. The notice may specify that the ~~parent's or guardian's attendance~~ of the parent or guardian be on the day ~~in which~~ the pupil is scheduled to return to class, or within a reasonable period of time thereafter, as established by the policy of the board adopted pursuant to subdivision (a).

There is no express requirement in Education Code section 48900.1, requiring the governing board of each school district to adopt a policy authorizing teachers to require the parent or guardian of a pupil who has been suspended to by a teacher to attend a portion of a school day in the classroom of his or her child or ward. Rather, the plain language of Education Code section 48900.1, subdivision (a), states that the board “may” adopt a policy. Moreover, Education Code section 75 states that “shall” is mandatory and “may” is permissive. If adoption of the policy is now permissive, so are the specified components of the adopted policy that are detailed in Education Code section 48900.1. Thus, effective January 1, 2005, none of the activities previously found to be a reimbursable state mandate are required because adoption of the policy is no longer mandatory.

This finding is supported by the California Supreme Court’s recent review and affirmation of the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777 in *Kern High School Dist.v. Commission on State Mandates* (2004). The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a

school district elects to participate in or continue participation in any underlying voluntary education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.³

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether claimant's participation in the underlying program is voluntary or compelled.⁴

The Supreme Court left undecided whether a reimbursable state mandate "might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program."⁵ There are no penalties imposed here.

Staff finds that effective, January 1, 2005, Education Code section 48900.1, the test claim statute, does not mandate school districts to adopt a policy, making compliance with the test claim statute discretionary. Therefore, Education Code section 48900.1 does not impose a new program or higher level of service or "costs mandated by the state" on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Therefore, staff finds that effective January 1, 2005, the state is not required to reimburse school districts for the *Pupil Suspension: Parent Classroom Visits* program.

Staff concludes that the parameters and guidelines for this program should be set-aside.

Staff Recommendation

Staff recommends the Commission

- adopt the Proposed Order to Set Aside the Parameters and Guidelines for the *Pupil Suspensions: Parent Classroom Visits* program, CSM-4474 (beginning on page 5); and,
- authorize staff to make any non-substantive, technical corrections to the Order and the Amendments following the hearing.

³ *Kern High School Dist.*, supra, 30 Cal.4th 743

⁴ *Id.* at page 731.

⁵ *Ibid.*

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 48900.1, as added by Statutes 1988, Chapter 1284 and amended by Statutes 1989, Chapter 213;

Filed on March 9, 1994;

By the San Diego Unified School District,
Claimant.

Nos. 04- PGA-17 (CSM-4474)

Pupil Suspensions: Parent Classroom Visits

ORDER TO SET ASIDE PARAMETERS
AND GUIDELINES

(Proposed on December 9, 2005)

ORDER TO SET-ASIDE PARAMETERS AND GUIDELINES

In 1996, the Commission on State Mandates determined that the Pupil Suspensions: Parent Classroom Visits program (Ed. Code, § 48900.1) imposed a reimbursable mandate on school districts. The Commission determined that the test claim statutes established costs mandated by the statute by requiring:

1. The governing board to adopt a policy authorizing teachers to require the parent or guardian attend a portion of a school day in their child's classroom, if the child has been classroom-suspended by the teacher for committing an obscene act, engaging in habitual profanity or vulgarity, disrupting school activities or otherwise willfully defying the valid authority school personnel, as specified by subdivisions (i) or (k) of section 48900.
2. Parents and guardians to be notified of this policy prior to its implementation.
3. The principal to send a written notice to the parent or guardian stating that attendance by the parent or guardian is according to law.
4. The principal or principal's designee to contact the parent or guardian who does not respond to the written request.
5. The school administrator to meet with the parent after the classroom visitation and before leaving the school site unless the meeting is the same as the parent-teacher meeting held pursuant to Education Code section 48910, subdivision (a).

In 1999, the Commission adopted new parameters and guidelines to establish the reimbursable activities for *Pupil Suspensions: Parent Classroom Visits Program* and amended the *Annual Parent Notification* parameters and guidelines to incorporate the requirement to notify parents or guardians of the policy.

In 2004, AB 2855 amended the test claim statute, by substituting the “may” for “shall,” and other clarifying amendments. This amendment made board adoption of the policy permissive.

On November 8, 2004, the State Controller’s Office requested set-aside of the parameters and guidelines for the *Pupil Suspension: Parent Classroom Visits* program based on AB 2855.

Discussion

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.⁶ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

In order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

Statutes 2004, chapter 895 (Assem. Bill No. 2855, effective Jan. 1, 2005) amended Education Code section 48900.1, subdivision (a), as follows:

- (e) The governing board of each school district ~~may shall~~ adopt a policy authorizing teachers to ~~provide that~~ require the parent or guardian of a pupil who has been suspended by a teacher pursuant to Section 48910 for reasons specified in subdivision (i) or (k) of Section 48900, to attend a portion of a school day in the classroom of his or her child or ward ~~child’s or ward’s classroom~~. The policy shall take into account reasonable factors that may prevent compliance with a notice to attend. The attendance of the parent or guardian shall be limited to the class from which the pupil was suspended.
- (f) The policy shall be adopted pursuant to the procedures set forth in Sections 35291 and 35291.5. Parents and guardians shall be notified of this policy prior to its implementation. A teacher shall apply any policy adopted pursuant to this section uniformly to all pupils within the classroom.

⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

The adopted policy shall include the procedures that the district will follow to accomplish the following:

- (1) Ensure that parents or guardians who attend school for the purposes of this section meet with the school administrator or his or her designee after completing the classroom visitation and before leaving the schoolsite.
 - (2) Contact parents or guardians who do not respond to the request to attend school pursuant to this section.
- (g) If a teacher imposes the procedure pursuant to subdivision (a), the principal shall send a written notice to the parent or guardian stating that attendance by the parent or guardian is pursuant to law. This section shall apply only to a parent or guardian who is actually living with the pupil.
- (h) A parent or guardian who has received a written notice pursuant to subdivision (c) shall attend class as specified in the written notice. The notice may specify that the ~~parent's or guardian's~~ attendance of the parent or guardian be on the day ~~in which~~ the pupil is scheduled to return to class, or within a reasonable period of time thereafter, as established by the policy of the board adopted pursuant to subdivision (a).

There is no express requirement in Education Code section 48900.1, requiring the governing board of each school district to adopt a policy authorizing teachers to require the parent or guardian of a pupil who has been suspended to by a teacher to attend a portion of a school day in the classroom of his or her child or ward. Rather, the plain language of Education Code section 48900.1, subdivision (a), states that the board “may” adopt a policy. . Moreover, Education Code section 75 states that “shall” is mandatory and “may” is permissive. If adoption of the policy is now permissive, so are the specified components of the adopted policy that are detailed in Education Code section 48900.1. Thus, effective January 1, 2005, none of the activities previously found to be a reimbursable state mandate are required because adoption of the policy is no longer mandatory.

This finding is supported by the California Supreme Court’s recent review and affirmation of the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777 in *Kern High School Dist.v. Commission on State Mandates* (2004). The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying voluntary education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.⁷

⁷ *Kern High School Dist.*, supra, 30 Cal.4th 743

Thus, the Supreme Court held as follows:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether claimant’s participation in the underlying program is voluntary or compelled.⁸

The Supreme Court left undecided whether a reimbursable state mandate “might be found in circumstances short of legal compulsion—for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program.”⁹ There are no penalties imposed here.

The Commission finds that effective, January 1, 2005, Education Code section 48900.1, the test claim statute, does not mandate school districts to adopt a policy, making compliance with the test claim statute discretionary. Therefore, Education Code section 48900.1 does not impose a new program or higher level of service or “costs mandated by the state” on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Accordingly, the Commission sets aside the attached parameters and guidelines for the *Pupil Suspensions: Parent Classroom Visits* program, effective January 1, 2005.

Paula Higashi, Executive Director

Date

Attachment: Parameters and Guidelines

⁸ *Id.* at page 731.

⁹ *Ibid.*