

Hearing: May 26, 1994
File Number: CSM-4440
Staff: Steve Zimmerman
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PROPOSED STATEMENT OF DECISION
ADOPTED MANDATE

Health & Safety Code Sections 324.2 and 324.3
Chapter 1208, Statutes of 1976
Chapter 373, Statutes of 1991
Chapter 759, Statutes of 1992
Pupil Health Screenings

Executive Summary

The Commission on State Mandates at its hearing of April 26, 1994, determined that reimbursable state mandated programs exist under certain provisions of Health & Safety Code sections 324.2 and 324.3, enacted by Chapter 1208, Statutes of 1976, Chapter 373, Statutes of 1991, and Chapter 759, Statutes of 1992. In addition, the Commission determined that other changes made to Health & Safety Code sections 324.2 and 324.3, enacted by Chapter 1208, Statutes of 1976, Chapter 373, Statutes of 1991, and Chapter 759, Statutes of 1992, do not impose reimbursable state mandated programs upon school districts.

Member Sherwood moved to adopt the staff recommendation to find that Health & Safety Code sections 324.2 and 324.3, enacted by Chapter 1208, Statutes of 1976, Chapter 373, Statutes of 1991, and Chapter 759, Statutes of 1992, impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California constitution and Government Code section 17514, by requiring school districts to furnish specified notice to parents or guardians of children enrolled in kindergarten; to report specified information to county Child Health and Disability Prevention programs, the Department of Health Services and the State Department of Education; to carry out the administrative processes necessary to exclude certain first grade pupils from school, as specified; to furnish specified notice to parents or guardians of children enrolled in first grade who have not received such notice when enrolled in kindergarten; to take some action in addition to providing the notice required by statute to obtain certificates or waivers from parents or guardians, and to provide payment for the costs of reporting, to the extent that existing reimbursement does not cover the costs of this activity.

Member Dorn seconded the motion. The vote on the motion was unanimous. The motion carried.

Staff has prepared the attached proposed statement of decision

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program or provide a higher level of service in an existing program, within the meaning of section 6, article XIIIIB of the California Constitution and Government Code section 17514?

BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on December 2, 1993, by the San Diego Unified School District.

The elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied.

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Chapter 373/91 amended Health & Safety Code section 324.2 as follows:

"324.2 (a) In cooperation with the county child health and disability prevention program, the governing body of every school district or private school which has children enrolled in kindergarten shall provide information to the parents or guardians of all children enrolled in kindergarten of the provisions of this article. Every school district or private school which has children enrolled in the first grade shall report by January 15 of each year to the county child health and disability prevention program, the State Department of Health Services, and the State Department of Education the following information:

"(1) The total number of children enrolled in first grade.

"(2) The number of children who have had a health screening examination, as evidenced by the certificate required by Section 323.5.

"(3) The number of children whose parents or

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guardian have given written waiver pursuant to Section 323.5 that they do not want their child to receive a health screening examination.

"b) Each county child health and disability prevention program shall reimburse school districts for information provided pursuant to this section. The Superintendent of Public Instruction may withhold state average daily attendance funds to any school district for any child for whom a certification or parental waiver is not obtained."

The Commission noted that the amendments made by Chapter 373/91 to Health & Safety Code section 324.2 of Chapter 1208/76 were technical and nonsubstantive in nature.

The Commission recognized that prior to Chapter 1208/76, Health & Safety Code section 308.5 (later renumbered as Health & Safety

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Code section 323.5) stated that:

And after July 1, 1975, each child eligible for services under this article shall, upon enrollment in the first grade, give evidence satisfactory to the governing body that he has received within the prior two years the appropriate health screening and evaluation services specified in Section 307, unless the child's parents or guardian has given written notice to the governing body that they do not want their child to receive such health screening and evaluation services.@

The Commission observed that Health & Safety Code section 324.2, of Chapter 1208/76, established requirements to provide specified notice to pupils enrolled in kindergarten, established a statistical reporting activity, permitted the Superintendent of Public Instruction to withhold average daily attendance (ADA) funds from school districts which do not receive either a

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certificate or a waiver from every first grade pupil, and to take some action in addition to providing the notice required by statute to obtain certificates or waivers from parents or guardians of first graders.

The Commission found that, even though the notification activity required in Health & Safety Code section 324.2, subdivision (a), is very limited in scope, such notification was not required under prior law when a pupil was enrolled in kindergarten.

The Commission found that, although the statistical reporting activity required in Health & Safety Code section 324.2,

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subdivision (a), contains a self-funding mechanism, which is contained in subdivision (b), the funding provided by this mechanism may be insufficient to cover the actual reporting costs experienced by school districts. The Commission further found that any costs incurred by school districts in excess of reimbursements in the statistical reporting activity are costs mandated by the state.

The Commission found that the loss of ADA revenue which may be experienced by school districts as a result of the discretionary action of the Superintendent of Public Instruction permitted in Health & Safety Code section 324.2, subdivision (b), is not a cost

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mandated by the state.

The Commission found an implied requirement that school districts take some action beyond providing parents or guardians of first graders with the notice required by statute to obtain health screening certificates or parental waivers, and that this action, while limited in scope, was not required under prior law. The Commission further found that the scope of this implied requirement is to be determined when the parameters and guidelines are prepared.

Chapter 759/92 amended Health & Safety Code section 324.3 as

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follows:

"324.3. (a) This section shall be known and may be cited as the AHughes Children=s Health Enforcement Act@.

"(b) The Legislature recognizes the importance of health to learning and to a successful academic career. The Legislature also recognizes the important role of schools in ensuring the health of pupils through health education and the maintenance of minimal health standards among the pupil population. Therefore, it is the intent of the Legislature that schools ensure that pupils receive a health screening before the end of the first grade.

"(c) The State Department of Health Services shall compile district information, using the information reported pursuant to Section 324.2, and report to the Legislature the percentage levels of compliance with Section 323.5 on an annual basis commencing January 1, 1994, utilizing data from the prior school year.

"(d) The governing board of each school district shall exclude from school, for not more than five days, who

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has not provided either a certificate or a waiver, as specified in Section 323.5, on or before the 90th day after the pupil=s entrance into the first grade. The exclusion shall commence with the 91st calendar day after the pupil's entrance into the first grade, unless school is not in session that day, in which event the exclusion shall commence on the next succeeding schoolday. A child shall not be excluded under this section if the pupil=s parent or guardian provides to the district either a certificate or a waiver as specified in Section 323.5.

"(e) The governing board of a school district may exempt any pupil from the exclusion described in subdivision (d) if, at least twice between the first day and the 90th day after the pupil=s entrance into the first grade, the district has contacted the pupil=s parent or guardian and the parent or guardian refuses to provide either a certificate or a waiver as specified in Section 323.5. The number of exemptions from exclusion granted by a school district pursuant to this subdivision may not exceed 5 percent of a school district=s first grade enrollment. It is the intent of the Legislature that exemptions from exclusion be used in extraordinary circumstances, including, but not

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limited to, family situations of great dysfunction or disruption, such as substance abuse by parents or guardians, child abuse, or child neglect.

"(f) It is the intent of the Legislature that, upon a pupil=s enrollment in kindergarten or first grade, the governing board of the school district notify the pupil=s parent or guardian of the obligation to comply with Section 323.5 and of the availability for low-income children of free health screening for up to 18 months prior to entry into first grade through the Child Health Disabilities Prevention Program.

"(g) It is the intent of the Legislature that school districts provide information to parents regarding the requirements of Section 323.5 within the notification of immunization requirements. Moreover, the Legislature intends that the information sent to parents encourage parents to obtain health screenings simultaneously with immunizations."

The Commission recognized that Health & Safety Code section 324.3, of Chapter 373/91, prior to its amendment by Chapter 759/92,

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required immediate exclusion from school for up to five days, rather than exclusion on the 91st day for not more than five days, and that the section as enacted by Chapter 373/91 was in effect from July 1, 1992 to September 21, 1992 (the effective date of Chapter 759/92).

The Commission observed that Health & Safety Code section 324.3, subdivisions (a), (b), and (g) express legislative intent, and do not establish a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514.

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The Commission also observed that Health & Safety Code section 324.3, subdivision (c), directs that specified actions be taken by the Department of Health Services, and does not establish a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514.

The Commission observed that Health & Safety Code section 324.3, subdivisions (d), (e), and (f), of Chapter 759/92, established requirements to exclude pupils who have not provided either a certificate of health screening or a parental waiver from school

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on a schedule specified in each chapter, allowed school districts to exempt pupils from exclusion if attempts to contact the parents were made, as specified, and required school districts to provide specified notice to pupils upon the pupil's enrollment in kindergarten or first grade.

The Commission found that the exclusion of pupils as specified in Health & Safety Code section 324.3, subdivision (d), was not required under prior law, and that the administrative process required to exclude pupils as specified is a new program or higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and

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Government Code section 17514.

The Commission noted that when pupils are excluded as specified in Health & Safety Code section 324.3, subdivision (d), school districts will experience a loss of ADA funding through the operation of the Education Code for those days when the excluded pupils is not in class.

The Commission found that the loss of ADA revenue which may be experienced by school districts as a result of the exclusion of pupils as specified in Health & Safety Code section 324.3, subdivision (d), is not a cost mandated by the state.

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The Commission found that attempting to contact parents in order to avoid or waive the exclusion of the pupil from school, as permitted in Health & Safety Code section 324.3, subdivision (e), is a discretionary activity, and that the costs of making such contacts are not costs mandated by the state.

The Commission found that school districts may exempt some pupils from exclusion subject to numeric limits and expressions of legislative intent in Health & Safety Code section 324.3, subdivision (e), that this exemption of specified pupils from exclusion is a discretionary activity, and that the costs of

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making such exemptions are not costs mandated by the state.

The Commission noted that Health & Safety Code section 324.2, subdivision (a), requires school districts to provide specified notice to pupils enrolled in kindergarten, and that the notice requirement contained in Health & Safety Code section 324.3, subdivision (f), would therefore apply only to first grade enrollees who had not previously received the notice when they were enrolled in kindergarten.

The Commission found that, even though the notification activity required in Health & Safety Code section 324.3, subdivision (f),

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is very limited in scope, such notification was not required under prior law when a pupil was enrolled in first grade, and that the specified notification activity is a new program or higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514.

APPLICABLE LAW RELEVANT TO THE DETERMINATION
OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIII B of the California Constitution and related case law.

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CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a).

The Commission concludes that the provisions of Health & Safety Code sections 324.2 and 324.3, of Chapters 1208/76, 373/91, and 759/92, do not impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIIB of the California Constitution and Government Code section 17514 by permitting the Superintendent of Public

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Instruction to withhold ADA funds for first grade pupils who have not submitted certificates or waivers, by allowing school districts to contact parents or guardians of pupils to be excluded pursuant to Health & Safety Code ' 324.3, subdivision (e), by allowing school district to waive exclusion of pupils who have not submitted a certificate or parental waiver pursuant to Health & Safety Code ' 324.3, subdivision (e), subject to the numeric and reason limits specified, and through ADA revenue loss which results from the operation of the Education Code when pupils are excluded.

The Commission concludes that the provisions of Health & Safety

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Code section 324.2, of Chapter 1208/76 and 373/91, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514 by requiring school districts to furnish specified notice to parents or guardians of children enrolled in kindergarten; to report specified information to county CHDP programs and to the Department of Health Services and State Department of Education; and to take some action beyond providing parents or guardians with the notice required by statute to obtain health screening certificates or parental waivers pursuant to Health & Safety Code ' 324.2, subdivision (a), with the degree to which such action(s) are reimbursable to be

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determined when parameters and guidelines are prepared.

The Commission concludes that the provisions of Health & Safety Code section 324.3, of Chapter 373/91 and 759/92, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514 by requiring school districts to carry out the administrative processes legally necessary to exclude certain first grade pupils from school, as specified; and to furnish specified notice to parents or guardians of children enrolled in first grade who have not received such notice when enrolled in kindergarten.

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Accordingly, costs incurred related to the aforementioned reimbursable state mandated programs contained in Health & Safety Code sections 324.2 and 324.3, are costs mandated by the state and are subject to reimbursement within the meaning of section 6, article XIIIIB of the California Constitution. Therefore, the claimant is directed to submit parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California Code of Regulations, section 1183.1, to the Commission for its consideration.

The foregoing conclusion pertaining to the requirements contained

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in Health & Safety Code sections 324.2 and 324.3, is subject to the following conditions:

The determination of a reimbursable state mandated program does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office.

As provided in Chapter 373/91, if the statewide cost estimate for this mandate does not exceed one million dollars (\$1,000,000) during the first twelve (12) month period following the operative date of the mandate, the Commission shall certify such estimated amount to the State Controller's Office, and the State Controller shall receive, review, and pay claims from the State Mandates Claims Fund as claims are received. (Government Code section 17610.)