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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Application by:)
San Diego Unifed)
School District,)
Claimant)

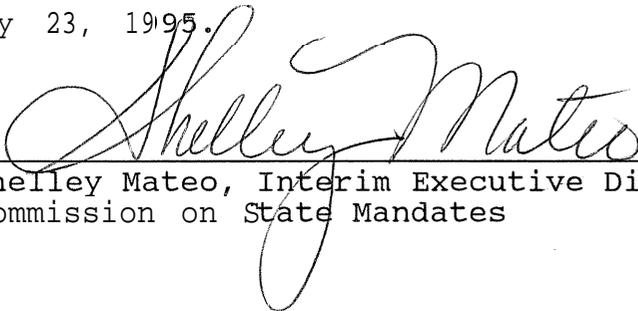
) No. CSM-4451
) Education Code
) Sections 48209.1
) 48209.2, 48209.7
) 48209.10, 48209.13,
) 48209.14, and 48209.15
) Chapter 160, Statutes of 1993
) **School District of Choice**

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on February 23, 1995.

IT IS so ORDERED February 23, 1995.



Shelley Mateo, Interim Executive Director
Commission on State Mandates

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:)
San Diego Unified)
School District,)
Claimant)

No. CSM-445 1
Education Code
Sections 48209.1,
48209.2, 48209.7,
48209.10, 48209.13,
48209.14, and 48209.15
Chapter 160, Statutes of 1993
School District of Choice

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on February 23, 1995, in Sacramento, California, during a regularly scheduled hearing.

Mr. Keith Petersen appeared on behalf of the San Diego Unified School District, Ms. Carol Berg appeared on behalf of the Education Mandated Cost Network, and Mr. James Apps appeared on behalf of the Department of Finance. Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Education Code sections 48209.1, 48209.2, 48209.7, 48209.10, 48209.13, 48209.14, and 48209.15, as added by Chapter 160, Statutes of 1993 (Chapter 160/93), require school districts to implement a new program or provide a 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 175 14?

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BACKGROUND AND FINDINGS OF FACT

1
2 The test claim was filed with the Commission on February 22, 1994, by the San Diego
3 Unified School District.

4
5 The elements for filing a test claim, as specified in section 1183 of Title 2 of the California
6 Code of Regulations, were satisfied.

7
8 Chapter 160/93 added Education Code sections 48209.1, 48209.2, 48209.7, 48209.10,
9 48209.13, 48209.14, and 48209.15 as follows:

10 48209.1:

11 “(a) The governing board of any school district may accept interdistrict transfers. No school district that receives
12 an application for attendance under this article is required to admit pupils to its schools. If, however, the
13 governing board elects to accept transfers as authorized under this article, it shall, by resolution, elect to accept
14 transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure
15 that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation
16 of whether or not the pupil should be enrolled based upon his or her academic or athletic performance. Any
17 pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204.

18 “(b) Either the pupil’s school district of residence or the school district of choice may prohibit the transfer of a
19 pupil under this article or limit the number of pupils so transferred if the governing board of the district
20 determines that the transfer would negatively impact any of the following:

21 “(1) The court-ordered desegregation plan of the district.

22 “(2) The voluntary desegregation plan of the district that meets the criteria of Section 42249.

23 “(3) The racial and ethnic balance of the district. ”

24 48209.2:

25 “School districts are encouraged to hold informational hearings during the spring semester of 1994 on the current
26 educational program the district is offering so that parents may provide input to the district on methods to
27 improve the current program and so that parents may make informed decisions regarding their children's
28 education. ”

48209.7:

“(a) A school district of residence with average daily attendance greater than 50,000 may limit the number of
pupils transferring out each year to 1 percent of its current year estimated average daily attendance.

“(b) A school district of residence with average daily attendance less than 50,000 may limit the number of pupils
transferring out to 3 percent of its current year estimated average daily attendance and may limit the maximum
number of pupils transferring out for the duration of the program authorized by this article to 10 percent of the
average daily attendance for that period. ”

1 48209.10:

2 “(a) Any school district of choice that admits any pupil under this section shall accept any completed coursework,
3 attendance, and other academic progress credited to that pupil by the school district or districts previously
4 attended by that pupil, and shall grant academic standing to that pupil based upon the district’s evaluation of that
5 academic progress.

6 “(b) Any school district of choice that admits a pupil under this section may revoke the pupil’s transfer if the
7 pupil is recommended for expulsion pursuant to Section 48918. ”

8 48209.13:

9 “Each school district shall make information regarding its schools, programs, policies, and procedures available
10 to any interested person upon request.”

11 48209.14:

12 “(a) Pursuant to this article, each school district shall keep an accounting of all requests made for alternative
13 attendance and records of all disposition of those requests that shall include, but are not to be limited to, all of the
14 following:

15 “(1) The number of requests granted, denied, or withdrawn. In the case of denied requests, the records shall
16 indicate the reasons for the denials.

17 “(2) The number of pupils transferred out of the district.

18 “(3) The number of pupils transferred into the districts.

19 “(b) The information maintained pursuant to subdivision (a) shall be reported to the governing board of the
20 school district at an open meeting of the governing board. After the information is reported to the governing
21 board of the school district, the information shall be reported to the Superintendent of Public Instruction no later
22 than January 1, 1996, and annually thereafter, and the superintendent shall make the information available to the
23 Governor, the Legislature, and the public.” (Section 48209.14, as amended by Chapter 915, Statutes of 1993,
24 which extended the date from 1995 to 1996 and made a typographical correction.)

25 48209.15:

26 “(a) It is the intent of the Legislature that every parent in this state be informed of their opportunity for currently
27 existing choice options under this article regardless of ethnicity, primary language, or literacy.

28 “(b) Notwithstanding Section 48980, before the beginning of the first semester or quarter of the regular school
term, each county board of education shall, to the extent that funding is provided for the purposes of this section,
adopt a plan to conduct an aggressive, focused outreach program that meets the intent of this section.”

By way of background, the Commission noted that the statutory provisions, commencing with
Education Code section 48209 of Chapter 160/93, create another pupil attendance alternative
or method under which interdistrict transfers may occur. The Commission observed that there
are two additional options that allow pupils to transfer between districts. Education Code
sections 46600 *et seq.* allows two or more districts to enter into an agreement for the
interdistrict transfer of pupils [the subject of another test claim entitled *Interdistrict Attendance
Permits* (CSM-4442) scheduled to be heard April, 1995]. In addition, the Commission

1 observed that Education Code section 48204, subdivision (f), provides for interdistrict
2 transfers based on the location of the parent's place of employment [the subject of a test claim
3 entitled *Interdistrict Transfer Requests: Parent's Employment* (CSM-4445) which the
4 Commission heard on January 19, 1995 , which was determined to contain a state-mandated
5 program].

6
7 The Commission noted that the school district of choice program does not supersede or revoke
8 either of the other previously mentioned interdistrict methods of pupil transfer.

9
10 Regarding Education Code section 48209.1, subdivision (a), the Commission observed that
11 this subdivision provides that a school district may elect to accept pupils from another district,
12 subject to conditions set forth therein. Thus, the Commission found that the election to
13 become a school district of choice, pursuant to subdivision (a), is a voluntary act and,
14 accordingly, does not impose a reimbursable state mandated program upon school districts of
15 choice. However, the Commission noted that school districts *of residence* (sending districts)
16 do not have a similar choice for participation. When pupils from a school district of residence
17 transfer to a school district of choice, a school district of residence must, under limited
18 circumstances, comply with certain statutory requirements. Thus, subdivision (a) establishes
19 the foundation of a state-reimbursable program for school districts of residence, the specific
20 duties of which are created in other subsections and subdivisions of Education Code section
21 48209.

22
23 Regarding Education Code section 48209. 1, subdivision (b), the Commission observed this
24 subdivision states that either the pupil's school district of residence or the school district of
25 choice may prohibit the transfer of a pupil if the transfer negatively impacts a court-ordered
26 desegregation plan of the district, a voluntary desegregation plan of the district, or the racial
27 and ethnic balance of the district. The Commission found there are no state mandated
28 activities imposed upon the school district of choice under subdivision (b) because the election

1 to become a school district of choice is a voluntary act and, therefore, such a district accepts
2 all of the terms and related conditions. Moreover, the statutory language under subdivision (b)
3 uses permissive language: "*may prohibit.*" Thus, the act of accepting or rejecting a transfer is
4 voluntary, regardless of the impact on the court-ordered or voluntary desegregation plan, or
5 the racial and ethnic balance of the district.

6
7 The Commission noted this permissive language also applies to a school district of residence
8 (sending districts). However, the Commission also recognized that a district of residence
9 operating under a court-ordered desegregation plan has little option but to manage that plan
10 assertively, despite the permissive wording of subdivision (b). The Commission therefore
11 found that Education Code section 48209.1, subdivision (b), does impose a state mandated
12 program limited to school districts of residence operating under or subject to a court-ordered
13 desegregation plan. To the extent that a school district of residence is otherwise prepared to
14 approve a transfer request to a school district of choice, the provisions of the test claim
15 legislation implicitly require the district of residence to confirm that the proposed transfer does
16 not negatively impact its court-ordered desegregation plan. The Commission found that there
17 was no prior law affecting this matter.

18
19 With respect to Education Code section 48209.2, the Commission observed that this section
20 evidences the Legislature's intent to enhance parental opportunity to contribute to improvement
21 of educational programs. Further, the Commission noted that school districts are *encouraged*
22 but not *required* to hold informational hearings. Therefore, the Commission found that
23 informational hearings held in the spring semester of 1994 pursuant to section 48209.2 are
24 optional and *not* required for school districts.

25
26 Regarding Education Code section 48209.7, subdivisions (a) and (b), the Commission
27 observed that these provisions describe attendance conditions under which a district of
28 residence may limit the number of pupils transferring out. The limitation varies with district

1 size, as measured by average daily attendance. Further, under this section, the Commission
2 noted that districts of residence *may* limit, rather than *shall* limit. The Commission therefore
3 found that the activities set forth in Education Code section 48209.7 are permissive and do not
4 require a school district of residence to establish mandatory limits on transfers to school
5 districts of choice.

6
7 Regarding Education Code section 48209.10, subdivision (a), the Commission observed that
8 this subdivision directs school districts of choice to accept records of transfers and that
9 subdivision (b) authorizes districts of choice to revoke a transfer if the pupil is recommended
10 for expulsion. With respect to school districts of choice, the requirement set forth in
11 subdivision (a) results from the election to become a school district of choice. Further, the
12 authorization in paragraph (b) is permissive in execution. Therefore, the Commission found
13 the activities under Education Code section 48209.10, subdivisions (a) and (b), are not
14 required upon school districts of choice.

15
16 However, the Commission did find that subdivision (a) of Education Code section 48209.10
17 implicitly requires school districts of residence to send the transferring pupil's coursework and
18 other records to the school district of choice. Further, the Commission found that
19 subdivision (b) implicitly requires school districts of residence to accept back pupil records
20 when a recommendation to expel results in revocation of transfer by the school district of
21 choice. This workload is not optional for school districts of residence. Although the
22 Commission noted that prior law (former Education Code section 49068, as amended by
23 Chapter 1010/76) required a pupil's records to be transferred by the former district to the new
24 district of attendance, the activities under subdivision (b) impose a higher level of service.

25
26 In summary, the Commission found that subdivisions (a) and (b) of Education Code section
27 48209.10 impose an increased level of service on school districts of residence to provide the
28 pupil's completed coursework, attendance, and other academic progress to the school district

1 of choice. Further, if a transfer is revoked based upon a recommendation to expel, school
2 districts of residence are required to accept the pupil back, along with any completed
3 coursework, attendance, and other academic progress. In addition, the Commission noted that
4 any activities performed by the school district of residence related to further review or
5 implementation of an expulsion recommended by the school district of choice, will be
6 addressed in the test claim entitled *Pupil Expulsions* (CSM-4455).

7
8 Regarding Education Code section 48209.13, the Commission observed that this section is
9 worded broadly, covering many types of information already required under other statutory
10 provisions. For example, a request for a copy of the annual notification to parents falls within
11 the broad categories set forth in section 48209.13, but such a request includes the same
12 information described under Education Code section 48980. The Commission found the only
13 difference is that section 48290.13 stipulates the information be provided upon request, which
14 implies maintaining a supply of the annual parental notification on hand.

15
16 The Commission also found that the requirement to make information available upon request
17 applies to all school districts, not just school districts offering alternative pupil attendance
18 choices.

19
20 The Commission found that there is a higher level of service imposed upon school districts to
21 the extent that such requests are specifically related to alternative pupil attendance choices.
22 Further, the Commission recognized that Education Code section 48209.13 does not specify
23 how the information is to be conveyed and, therefore, found that it is a reasonable presumption
24 that this information could be conveyed by phone, in person, or via a mailed request. Lastly,
25 the Commission found that some of the reimbursable costs for this limited mandated activity
26 would be offset or reduced by the amount of fees that may be charged by school districts as
27 authorized under the California Public Records Act (Government Code section 6250 and
28 following).

1 With respect to Education Code section 48209.14, the Commission observed this section
2 48209.14 provides that each school district is required to keep an accounting of all requests
3 and to report such information as specified in the statute. Under prior law (Education Code
4 section 46600, derived from Chapter 2, Statutes of 1959), attendance reporting was required
5 for school funding, among other purposes. Moreover, county boards of education have been
6 granted the right to adopt reporting requirements for transfers between school districts under
7 their jurisdiction (Education Code section 48202, added by Chapter 1009, Statutes of 1965,
8 and amended by Chapter 125, Statutes of 1970, and Chapter 1253, Statutes of 1975). In
9 addition, data on interdistrict transfers had to be maintained for physically handicapped,
10 mentally handicapped or multiple handicapped pupils (Education Codes section 48203, added
11 by Chapter 598, Statutes of 1973.) However, the Commission did not identify any state
12 requirements under prior law that directed the accounting and reporting of school of choice
13 interdistrict transfers.

14
15 The Commission observed that the accounting and reporting requirements pursuant to
16 Education Code section 48209.14 can be subdivided into two categories. In the first category
17 are all transfer requests to enter a “school district of choice.” Because a school district elects
18 to become a school district of choice, the accounting and reporting requirements by a school
19 district of choice for transfer requests into that district stems from that voluntary election.
20 Therefore, such statutory conditions do not impose a reimbursable state mandated program.

21
22 In the second category are all transfer requests to leave a district of residence. The
23 Commission found that when pupils transfer from their school district of residence, the
24 accounting and reporting of this information are now required of the school district of
25 residence. (The Commission noted that a school district of choice is also regarded as a school
26 district of residence for the pupils living within its boundaries).

27
28

1 Further, the Commission found the statutory language at hand implicitly requires that school
2 districts adopt cost effective methods of assembling and maintaining the data as specified in
3 section 48209.14, subdivisions (a) and (b).
4

5 In view of the foregoing, the Commission found that a higher level of service is imposed upon
6 school districts of residence to account for all requests made to a school district of choice and
7 record the disposition of those requests including the number granted, denied or withdrawn.

8 In the case of denied requests, the records shall indicate the reasons for the denials. Also the
9 records shall disclose the number of pupils transferred out of these districts. In addition, the
10 information maintained shall be reported to the governing board of the school district and to
11 the Superintendent of Public Instruction no later than January 1, 1996, and annually thereafter.

12 The Commission also found that school districts of residence are required to adopt cost
13 effective methods of assembling and maintaining the information described section 48209.14.
14

15 Lastly, the Commission found that the provisions of Education Code section 48209.14,
16 subdivisions (a) and (b), do not impose upon school districts of choice a reimbursable state
17 mandated program because these districts voluntarily elected to participate as a school district
18 of choice to receive new pupils.
19

20 Regarding subdivision (a) of Education Code section 48209.15, the Commission observed that
21 while the language does evidence legislative intent, it does not mandate a duty on school
22 districts. With respect to subdivision (b), the Commission noted that, despite the "shall adopt"
23 language, the adoption of a plan for an outreach program is not required unless funding is
24 provided specifically for the purpose of section 48209.15. The Commission found that
25 Education Code section 48209.15, subdivisions (a) and (b), does not impose a reimbursable
26 state mandated program .
27
28

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

3
4 Government Code section 17500 and following, and section 6 of article XIII B of the California
5 Constitution and related case law.

6
7 CONCLUSION

8
9 The Commission determines that it has the authority to decide this claim under the provisions
10 of Government Code sections 17500 and 1755 1, subdivision (a).

11
12 In view of all of the foregoing, the Commission concludes that Education Code sections
13 48209.1, subdivision (b), 48209.10, subdivisions (a) and (b), and 48209.14, as added by
14 Chapter 160, Statutes of 1993, do impose a new program or higher level of service in an
15 existing program within the meaning of section 6 of article XIII B of the California
16 Constitution and Government Code section 17514 by requiring school districts of residence
17 (sending districts) to:

- 18
19 1) Determine whether the transfer will negatively impact the district's applicable court-
20 ordered desegregation plan (to the extent that a school district of residence is otherwise
21 prepared to approve a transfer request to a school district of choice).
- 22
23 2) Upon notification from the school district of choice, provide the district of choice
24 information regarding the transferring pupil's completed coursework, attendance, and
25 other academic progress. Additionally, upon revocation of a transfer based upon
26 expulsion, accept back from the school district of choice any completed coursework,
27 attendance, and other academic progress of the pupil.
- 28

2 3) Keep an account of all requests to transfer to a school district of choice and records of
3 all disposition of those requests including the number of requests granted, denied or
4 withdrawn. In the case of denied requests, the records shall indicate the reasons for the
5 denials. Also, the records shall disclose the number of pupils transferred out of these
6 districts. In addition, the information maintained shall be reported to the governing
7 board of the school district and to the Superintendent of Public Instruction no later than
8 January 1, 1996, and annually thereafter .

9 4) Adopt cost effective methods of assembling and maintaining the information described
10 in Education Code section 48209.14.

11
12 Further, the Commission concludes that Education Code section 48209.13, as added by
13 Chapter 160/93, imposes a new program or higher level of service in an existing program
14 within the meaning of section 6 of article XIII B of the California Constitution and Government
15 Code section 17514 by requiring all school districts to make information specifically related to
16 alternative pupil attendance choices available to any interested person upon request. However,
17 this limited mandated activity would not apply to such requests already provided for elsewhere
18 in the law. Further, some of the reimbursable costs for this mandated activity would be offset
19 or reduced by the amount of fees that may be charged by school districts as authorized under
20 the California Public Records Act (Government Code section 6250 and following).

21
22 And finally, the Commission concludes, except as specified above, the remainder of Education
23 Code sections 48209.1, subdivisions (a) and (b), 48209.10, 48209.13, 48209.14, and all of
24 Education Code sections 48209.2, 48290.7, and 48209.15, do not impose a new program or
25 higher level of service in an existing program upon school districts within the meaning of
26 section 6 of article XIII B of the California Constitution and Government Code section 17514.

27
28

1 Accordingly, costs incurred related to the aforementioned reimbursable state mandated
2 programs contained in Education Code sections 48209.1, subdivision (b), 48209.10,
3 subdivisions (a) and (b), 48209.13 and 48209.14 are costs mandated by the state and are
4 subject to reimbursement within the meaning of section 6 of article XIIB of the California
5 Constitution. Therefore, the claimant is directed to submit parameters and guidelines,
6 pursuant to Government Code section 17557 and Title 2, California Code of Regulations,
7 section 1183.1, to the Commission for its consideration.

8
9 The foregoing conclusions pertaining to the requirements contained in Education Code
10 sections 48209.1, subdivision (b), 48209.10, subdivisions (a) and (b), 48209.13 and 48209.14,
11 are subject to the following conditions:

12
13 The determination of a reimbursable state mandated program does not mean that all
14 increased costs claimed will be reimbursed. Reimbursement, if any, is subject to
15 Commission approval of parameters and guidelines for reimbursement of the mandated
16 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.

17 If the statewide cost estimate for this mandate does not exceed one million dollars
18 (\$1 ,000,000) during the first twelve (12) month period following the operative date of the
19 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).

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