

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM ON:

Education Code Section 48204, Subdivision (d), Family Code Sections 6550 and 6552, as added by Chapter 98, Statutes of 1994;

Filed on December 8, 1995

By the San Diego Unified School District and
The Tustin Unified School District, Co-Claimants

NO. CSM-4497

*Caregiver Affidavits to Establish
Residence for School Attendance*

**STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7**

(Adopted on May 28, 1998)

STATEMENT OF DECISION

The attached Proposed Statement of Decision is hereby adopted by the Commission on State Mandates on May 28, 1998. The decision is effective on June 5, 1998.

Dated: June 5, 1998



PAULA HIGASHI
Executive Director

ITEM # 3

PROPOSED STATEMENT OF DECISION

Chapter 98, Statutes of 1994
Education Code Section 48204, Subdivision (d)
Family Code Section 6550
Family Code Section 6552

Caregiver Affidavits to Establish Residence for School Attendance

Executive Summary

Test Claim Hearing

On April 23, 1998, the Commission unanimously approved the staff recommendation to find a reimbursable state mandated program.

Since the test claim statute adds a new method for students to enroll in school, the Commission found that it is a "new program." The Commission approved the following reimbursable state mandated activities:

- The one-time activity of preparing and adopting policies, procedures, and forms (other than the caregiver affidavit form) to implement the mandated program;
- The continuing activity of accepting and reviewing for completeness the caregiver affidavit form submitted by the caregiver on an annual basis;
- The continuing activity of monitoring and tracking students enrolled under a caregiver affidavit for annual expiration and renewal; and
- The continuing activity of performing administrative tasks associated with enrollment and transfer of students to the extent these activities have increased as a result of the caregiver affidavit program.

The Commission also authorized an amendment to the parameters and guidelines after initial claims are filed to include a uniform cost rate for administrative activities pursuant to Government Code section 17557.

The Proposed Statement of Decision accurately reflects the Commission's action taken on April 23, 1998. (See following pages.)

Staff Recommendation

Staff recommends the Commission adopt the attached Proposed Statement of Decision.

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Caregiver Affidavits to Establish Residence for School Attendance

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on April 23, 1998, during a regularly scheduled hearing. Mr. James A. Cunningham appeared for the San Diego Unified School District, Mr. Brad Lantz appeared for the Tustin Unified School District, Ms. Cindy S. Chan appeared for the Department of Finance, and Dr. Carol A. Berg appeared for the Education Mandated Cost Network.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken, The Commission unanimously approved the staff recommendation to find a state mandated program.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., section 6, article XIII B of the California Constitution, and related case law,

BACKGROUND AND FINDINGS OF FACT

Each person between the age of 6 and 18 years, unless specifically exempted by certain statutory provisions, is subject to compulsory full-time education.¹ Generally, students must attend the school district in which their parents or legal guardians reside. However, the Legislature has provided alternative methods for complying with the residency requirements

¹ Education Code section 48200.

for school attendance in a school district. (Ed. Code, § 48204.) For example, before the enactment of the test claim statute, residency could be established by the following methods:

- ≡ The parent’s work address;
- The address of a licensed foster home in which the student is placed,
- The address of a guardian’s residence within the district in which the student is placed; or
- The address of a group or foster home licensed by the State Department of Social Services in which a student is placed .²

Issue:

Does the test claim legislation, which allows a caregiver’s affidavit to establish residency for school attendance, impose upon school districts a reimbursable state mandated program under section 6, article XIII B of the California Constitution?³

During the 1980s, there was a 40-percent increase in the number of children who lived with a nonparent relative. To ensure that “minors living with nonparent caregivers will have unhindered access to public education and essential medical care,” the Legislature added a simpler method to establish the residency requirement for enrollment in a school district. The test claim legislation establishes residency with a standardized, one-page affidavit, to be completed and signed under the penalty of perjury by the adult caregiver living in the school district. Under the test claim legislation, enrollment of students living with nonparent caregivers is easier since the adult caregiver is not required to establish legal guardianship or obtain a foster care or group home license from the Department of Social Services.

² Before the enactment of Chapter 98, Statutes of 1994, Education Code section 48204 provided, “a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is:

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- (d) A pupil whose parent or guardian has established the residence of the pupil in a home located within the boundaries of that school district, provided such home is properly licensed as required by law. The person maintaining such a home shall provide evidence to the school that a current license is in effect or that a license is not required under the law.”

³ Section 6, article XIII B of the California Constitution provides: “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 to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

Education Code section 48204, subdivision (d), as amended by Chapter 98, Statutes of 1994, specifically provides :

“Notwithstanding’ Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is any of the following:

.....

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district, Execution of an affidavit under penalty of perjury pursuant to [Sections 6550 and 6552] of the Family Code by the caregiving adult shall be a sufficient basis for a determination that the pupil lives in the caregiver’s home, unless the school district determines from actual facts that the pupil is not living in the caregiver’s home. ”

In addition, sections 6550 and 6552 were added to the Family Code to describe the scope of the test claim legislation and provide school districts with the caregiver affidavit form. These sections provide that:

- The caregiver affidavit shall not be valid for more than one year after the date on which it is executed (Fam. Code, §§ 6550, subd. (b), and 6552 (Notices));
- If the minor stops living with the caregiver, the caregiver shall notify the school (Fam. Code, § 6550, subd. (g));
- The caregiver affidavit constitutes a sufficient basis for a determination of residency, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver (Fam. Code § 6552, (Notices));
- The school district may require additional reasonable evidence that the caregiver lives at the address provided in the affidavit (Fam. Code, § 6552, (Notices)); and
- A person who relies on the caregiver affidavit has no further obligation to make any further inquiry or investigation (Fam. Code , §§ 6550, subd. (e), and 6552 (Notices)).

On September 12, 1994, the California Department of Education (CDE) issued Management Advisory 94-09 summarizing the test claim legislation and providing master forms of the caregiver affidavit to each school district.

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language (1) must direct or obligate an activity or task upon local governmental entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately

prior to the enactment of the test claim legislation. Finally, (3) the newly required activity or increased level of service must be state mandated.⁴

Since the test claim legislation adds a new method for students to enroll in school, the Commission found that it represents a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14.

Preparation and Adoption of Policies, Procedures and Forms

The Commission found that development of the caregiver affidavit form itself is not a required activity since the form was provided by the Legislature in Family Code section 6552. In addition, CDE issued a master affidavit form to school districts for duplication and issuance to caregivers.

Although the Department of Finance asserted that the test claim legislation does not specifically state that school districts are required to adopt policies, procedures and other necessary forms to implement the program, the Commission agreed with the claimants that these activities are required in order to comply with the test claim legislation? For example, policies are required to establish procedures for acceptance or rejection of the caregiver affidavit. (Ed. Code, § 48204, subd. (d); Fam. Code, § 6552, (Notices); CDE Management Advisory 94-09, pg. 1.)

Additionally, policies and procedures regarding expiration and renewal of caregiver affidavits are required. The Commission recognized that school districts were required to verify the address of the student on an annual basis before the enactment of the test claim legislation.⁶ However, caregiver affidavits expire "one year after the date on which it is executed," which may occur before or after the district's annual student address verification. (Fam. Code, §§ 6550, subd. (b), and 6552 (Notices).)

Thus, school districts are required to notify caregivers and obtain renewal affidavits before the date of expiration. In addition, policies and procedures are necessary to accept a notice from the caregiver that the student no longer resides with the caregiver. (Fam. Code, §§ 6550, subd. (g), and 6552, (Notices).)

Accordingly, with the exception of developing the caregiver affidavit form, the Commission found that preparation and adoption of policies, procedures, and forms to implement the mandated program constitute reimbursable state mandated activities.

⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Camel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁵ Education Code section 35161 provides that "[t]he governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board. . . and may delegate to an officer or employee of the district any of those powers or duties, "

⁶ 5 C.C.R., § 432

Annual Acceptance and Approval of Caregiver Affidavits and Monitoring Students

The Commission determined that acceptance on an annual basis is a reimbursable state mandated activity, *unless the school district determines from actual facts that the pupil is not living in the caregiver's home*, (Ed. Code, § 48204, subd. (d); Fam. Code, § 6552, (Notices).) CDE has interpreted this provision to mean that school districts “can reject the affidavit as a basis for establishing residency only if the district ‘determines from actual facts that the minor is not living with the caregiver. ’”

However, the Commission found that investigation and review of actual facts that the pupil is not living in the caregiver's home is *not* required by the test claim legislation. The test claim legislation specifically provides that “a person who relies on the affidavit *has no further obligation to make any further inquiry or investigation.*” (Fam. Code, §§ 6550, subd. (e), and 6552, (Notices).) Although the test claim legislation states that school districts “*may*” require additional evidence that the minor lives with the caregiver, or that the caregiver lives at the address provided in the affidavit, such investigation is permissive and not state mandated and, therefore, falls within the discretion of the district. (Fam. Code, § 6552, (Notices); CDE Management Advisory 94-09, pg. 2.)

The Commission found that review of the caregiver affidavits upon receipt to determine if items 1-4 on the form are complete and a signature provided by the caregiver is a reimbursable state mandated activity. The caregiver affidavit form specifically provides that “completion of items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. ” Therefore, districts must ensure that these items are complete before they can accept and enroll the student.

The Commission found that monitoring and tracking students enrolled under a caregiver affidavit for expiration and renewal is required under the test claim legislation based on the provision that “the caregiver affidavit shall not be valid for more than one year after the date on which it is executed.” (Fam. Code, §§ 6550, subd. (b), and 6552 (Notices) .)

Administrative Tasks Associated with Enrollment and Transfers

The Department of Finance contended that school districts have already been reimbursed for existing administrative duties of enrollment, document transfer, and the administrative tasks associated with transfers of pupils as a result of a loss of their residency in the district from expiration or invalidation of their affidavit through the “base revenue limit” (i.e. a combination of local property tax revenue and state General Fund monies).

However, the Commission recognized that before the enactment of the test claim legislation, California schools were required to compile permanent pupil records for every student who was formerly or currently enrolled in a school's program. The records had to be maintained for an indefinite period of time. Such records included the legal name of the pupil, date of birth, entering and leaving date of each school year, the name and address of the parent of the

minor pupil, and the address of the minor pupil if different from that of the parent. The mandatory permanent pupil record or copy thereof had to be forwarded by the sending district upon request of the receiving district when the student transferred.' School districts are still required to perform these duties today,

Therefore, to the extent the caregiver program has caused *an increase in* the level of service required to enroll or transfer students, the Commission found that this higher level of service constitutes a reimbursable state mandated activity.

CONCLUSION

Based on the foregoing findings, the Commission concludes that the test claim legislation constitutes a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and section 17514 of the Government Code, for the following reimbursable state mandated activities:

- The one-time activity of preparing and adopting policies, procedures, and forms (other than the caregiver affidavit form) to implement the mandated program;
- The continuing activity of accepting and reviewing for completeness the caregiver affidavit form submitted by the caregiver on an annual basis;
- The continuing activity of monitoring and tracking students enrolled under a caregiver affidavit for annual expiration and renewal; and
- The continuing activity of performing administrative tasks associated with enrollment and transfer of students *to the extent these activities have increased as a result of the caregiver affidavit program.*

Further, the Commission authorized an amendment to the parameters and guidelines to include a uniform cost rate for administrative activities pursuant to Government Code section 17557, after initial reimbursement claims are filed,

⁷ 5 C.C.R. § 438.

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