

ITEM 4
COURT-ORDERED SET ASIDE AND
AMENDMENT OF STATEMENT OF DECISION
FINAL STAFF ANALYSIS

Education Code Sections 48900, 48900.2, 48915, 48915.1, 48915.2, 48915.7, 48916, 48918, Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1982, Chapter 318; Statutes 1983, Chapter 498; Statutes 1984, Chapter 23; Statutes 1984, Chapter 536; Statutes 1984, Chapter 622; Statutes 1985, Chapter 318; Statutes 1986, Chapter 1136; Statutes 1987, Chapter 383; Statutes 1987, Chapter 942; Statutes 1989, Chapter 1306; Statutes 1990, Chapter 1231; Statutes 1992, Chapter 909; Statutes 1993, Chapter 1255; Statutes 1993, Chapter 1256; Statutes 1993, Chapter 1257;

and

Education Code Sections 48900.3, 48900.4, and 48915
Statutes 1994, Chapter 146; Statutes 1994, Chapter 1017; Statutes 1994, Chapter 1198

Pupil Expulsions (CSM-4455)

San Diego Unified School District, Claimant

EXECUTIVE SUMMARY

Background

In March 1994, claimant San Diego Unified School District filed a test claim with the Commission on State Mandates (Commission). As amended in April 1995, the test claim alleged a reimbursable state mandate for school districts to perform new activities in connection with the suspension and expulsion of public school students. After hearings in 1996 and 1997, the Commission adopted its statement of decision in May 1997, and on August 10, 1998, issued a corrected statement of decision. Among other things, the Commission ruled that Education Code section 48915 mandated expulsions in certain situations, and in those instances, subvention was required for all costs of mandatory expulsions, except for certain costs that were required by federal law. The Commission further ruled that no subvention was required for costs of voluntary expulsions. The claimant challenged the ruling, and in October 1999, the claimant filed a petition for writ of mandate in San Diego County Superior Court. The claimant alleged that it was entitled to all costs for mandatory expulsions. For voluntary expulsions, claimant alleged all costs for expulsion proceedings to the extent such proceedings exceeded federal law requirements.

The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004. The Supreme Court ruled, as follows:

“We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a ‘higher level of service’ under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.

“We also conclude that *no* hearing costs incurred in carrying out those expulsions that are discretionary under Education Code section 48915 – including costs related to hearing procedures claimed to exceed the requirements of federal law – are reimbursable. [. . .] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate.” (Emphasis original.)

(*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (*San Diego Unified School District*.)

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District*.

Commission staff issued its draft staff analysis on April 15, 2005. No comments to the draft have been filed.

Attached as Exhibit E are the proposed order and amended decision to comply with the court-ordered reconsideration

Staff Recommendation

Staff recommends that the statement of decision be adopted, as modified, to comply with the writ of mandate and the Court’s ruling in *San Diego Unified School District*.

STAFF ANALYSIS

Reconsideration Order

San Diego Unified School District v. Commission on State Mandates, San Diego County Superior Court Case Number GIC 737638, judgment and peremptory writ of mandate

Original Claimant

San Diego Unified School District

Chronology

- 08/10/98 Commission issues Corrected Statement of Decision finding a reimbursable state mandate for specified activities
- 10/22/99 San Diego Unified School District files litigation challenging a portion of the Commission's decision in *Pupil Expulsions* (Ed. Code, §§ 48915, 48918)
- 08/02/04 In ruling on the litigation, the California Supreme Court invalidates a portion of the Commission's decision in *Pupil Expulsions* (*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859)
- 11/01/04 San Diego County Superior Court issues a preemprory writ of mandate in *San Diego Unified School District v. Commission on State Mandates* (GIC 737638) ordering the Commission to amend its decision to conform with the California Supreme Court's ruling
- 04/15/05 Draft staff analysis issued by Commission staff
- 05/17/05 Final staff analysis issued by Commission staff

Background

In March 1994, claimant San Diego Unified School District filed a test claim with the Commission, which was amended in April 1995. As amended, the test claim alleged a reimbursable state mandate for school districts to perform new activities in connection with the suspension and expulsion of public school students. The test claim statutes are various amendments and additions to the Education Code.¹ After hearings in 1996 and 1997, the Commission adopted its statement of decision in May 1997, and on August 10, 1998, issued a corrected statement of decision. Among other things, the Commission ruled that Education Code section 48915 mandated expulsions in certain situations, and in those

¹ Education Code sections 48900, 48900.2, 48915, 48915.1, 48915.2, 48915.7, 48916, 48918, Statutes 1975, chapter 1253; Statutes 1977, chapter 965; Statutes 1978, chapter 668; Statutes 1982, chapter 318; Statutes 1983, chapter 498; Statutes 1984, chapter 23; Statutes 1984, chapter 536; Statutes 1984, chapter 622; Statutes 1985, chapter 318; Statutes 1986, chapter 1136; Statutes 1987, chapter 383; Statutes 1987, chapter 942; Statutes 1989, chapter 1306; Statutes 1990, chapter 1231; Statutes 1992, chapter 909; Statutes 1993, chapter 1255; Statutes 1993, chapter 1256; Statutes 1993, chapter 1257; and Education Code sections 48900.3, 48900.4, and 48915; Statutes 1994, chapter 146; Statutes 1994, chapter 1017; Statutes 1994, chapter 1198.

instances, subvention was required for all costs of mandatory expulsions, except for certain costs that were required by federal law. The Commission further ruled that no subvention was required for costs of voluntary expulsions. The claimant challenged these rulings, and on October 22, 1999, the claimant filed a petition for writ of mandate in San Diego County Superior Court. The claimant alleged that it was entitled to all costs for mandatory expulsions. For voluntary expulsions, claimant alleged all costs for expulsion proceedings to the extent such proceedings exceeded federal law requirements.²

The matter was litigated in the lower courts and decided by the California Supreme Court in August 2004.³ The Supreme Court ruled, as follows:

“We conclude that Education Code section 48915, insofar as it compels suspension and mandates a recommendation of expulsion for certain offenses, constitutes a ‘higher level of service’ under article XIII B, section 6, and imposes a reimbursable state mandate for *all* resulting hearing costs—even those costs attributable to procedures required by federal law.

“We also conclude that *no* hearing costs incurred in carrying out those expulsions that are discretionary under Education Code section 48915 – including costs related to hearing procedures claimed to exceed the requirements of federal law – are reimbursable. [. . .] to the extent that [section 48915] makes expulsions discretionary, it does not reflect a new program or a higher level of service related to an existing program. Moreover, even if the hearing *procedures* set forth in Education Code section 48918 constitute a new program or higher level of service, we conclude that *this* statute does not trigger any right to reimbursement, because the hearing provisions that assertedly exceed federal requirements are merely incidental to fundamental federal due process requirements and the added costs of such procedures are de minimis. For these reasons, we conclude such hearing provisions should be treated for purposes of ruling upon a request for reimbursement, as part of the nonreimbursable underlying *federal* mandate and not as a state mandate.” (Emphasis original.)

(*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 867 (*San Diego Unified School District*.)

On November 1, 2004, the San Diego County Superior Court issued a peremptory writ of mandate, directing the Commission to amend its Statement of Decision dated August 10, 1998, in accordance with the ruling in *San Diego Unified School District*.⁴

² Petition for Writ of Mandate, Exhibit A.

³ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, Exhibit B.

⁴ Writ of Mandate, Exhibit C.

Commission staff issued its draft staff analysis on April 15, 2005. No comments to the draft have been filed.

Compliance with the court's order is now before the Commission.

Discussion

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁵ The Commission's decisions are reviewable by the courts.⁶ A reviewing court may "order the [C]ommission to hold another hearing regarding the claim and may direct the [C]ommission on what basis the claim is to receive a rehearing."⁷

The writ of mandate from the superior court instructs the Commission to set aside its decision to the extent required by the Supreme Court's ruling in *San Diego Unified School District* and to issue a statement of decision consistent with the court's ruling.⁸ The court's order provides:

"a. Set aside your decision dated August 10, 1998, Case No. CSM-4455, to the extent the Commission found that reimbursable costs in an expulsion proceeding under Education Code section 48915(b) are limited to the costs of those proceedings enumerated in the decision and not required by federal law, and to issue a decision in said case finding that all costs of expulsion proceedings brought under Education Code section 48915(b) are reimbursable costs for the reasons set forth in the opinion of the California Supreme Court; and

"b. Amend your decision dated August 10, 1998, Case No. CSM-4455, to the extent the Commission found that expulsions authorized by Education Code section 48915(c) result in no reimbursable costs, by issuing a decision finding that state mandated expulsion procedures costs incurred in cases when expulsion is discretionary are not reimbursable for the reasons set forth in the opinion of the California Supreme Court."

Turning to the decision in *San Diego Unified School District*, for hearing costs triggered by Education Code section 48915, subdivision (b) (mandatory expulsions), the Supreme Court ruled:

"Because it is state law (Education Code section 48915's mandatory expulsion provision), and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows, [. . .] that we cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of

⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁶ Government Code section 17559, subdivision (b).

⁷ *Ibid.*

⁸ Writ of Mandate, Exhibit C.

Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), *all* such hearing costs—those designed to satisfy the minimum requirements of federal due process, and those that might exceed those requirements—are, with respect to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.” (Emphasis original.)

(*Id.* at pp. 881-882.)

On the issue of “whether reimbursement is required for the costs associated with hearings triggered under discretionary expulsion provisions,” the Court ruled that Education Code section 48915 does not require subvention for such costs:

The discretionary expulsion provision of Education Code section 48915 does not constitute a ‘new’ program or higher level of service, because provisions recognizing discretion to suspend or expel were set forth in statutes predating 1975.

(*Id.* at p. 884.)

Finally, the Court ruled that Education Code section 48918, by itself, does not impose state-mandated costs because the hearing procedures are “part and parcel” of the procedures required by federal law:

[. . .] we conclude that there can be no doubt that the assertedly “excessive due process” aspects of Education Code section 48918 for which the District seeks reimbursement in connection with hearings triggered by discretionary expulsions ([. . .] primarily, as noted, various notice, right of inspection, and recording rules) fall within the category of matters that are merely incidental to the underlying federal mandate, and that produce at most a de minimis cost. Accordingly, for purposes of the District’s reimbursement claim, all hearing costs incurred under Education Code section 48918, triggered by the District’s exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal law, and hence all such costs are nonreimbursable, under Government Code section 17556, subdivision (c).

(*Id.* at p. 890.)

Accordingly, staff has revised the existing decision to include the conclusions and stated rationale of the California Supreme Court.⁹ The following changes, highlighted by shaded text, have been made to the existing decision:

- The face sheet of the statement of decision shows that the statement of decision dated August 10, 1998, is amended, pursuant to ruling of the California Supreme Court in *San Diego Unified School District*.

⁹ Proposed Amended Statement of Decision, Exhibit D.

- A brief description of the litigation and summary of the Court’s ruling is placed at the beginning of the amended statement of decision.
- Part C of the statement of decision, which concerns “Procedures for Expulsion,” is amended to include a verbatim restatement of the Court’s conclusions and rationale and to strike language made unnecessary by the Court’s ruling.¹⁰
- The Conclusion is modified to reflect the ruling of the Supreme Court, adding verbatim language from the Court’s decision and striking language that is inconsistent with the Court’s ruling.

In all other respects, with the exception of formatting changes, the statement of decision dated August 10, 1998, remains undisturbed. The Commission has limited jurisdiction to reconsider its decisions.¹¹ As to those findings and conclusions in the original decision that have not been challenged, those portions of the statement of the decision are final and may not be altered by the Commission.

CONCLUSION

Staff recommends that the statement of decision be adopted, as modified, to comply with the writ of mandate and the Court’s ruling in *San Diego Unified School District*.

¹⁰ The Court ruled that Education Code section 49818, by itself, did not require subvention. (*Id.* at pp. 889-890.)

¹¹ Government Code section 17559.