

Hearing: May 29, 2009

ITEM 14

CHIEF LEGAL COUNSEL'S REPORT New Filings, Recent Decisions, Litigation Calendar

This public session report is intended only as an information item for the public.¹ Commission communications with legal counsel about pending litigation or potential litigation are reserved for Closed Executive Session, per the Notice and Agenda.

New Filings

None.

Recent Decisions

None.

Litigation Calendar

<u>Case</u>	<u>Hearing</u>
<i>Department of Finance v. Commission on State Mandates, et al.</i> Sacramento County Superior Court, Case No. 03CS01432, [<i>Behavioral Intervention Plans</i>]	December 11, 2009. The hearing date is based on a stipulation of the parties to extend the time for the hearing in order to facilitate a settlement of the case and to allow time for legislation to be enacted (AB 661) to fund the monetary provisions of the settlement.

Cases of Interest

- a. *Grossmont Union High School District v. California Department of Education*, California Supreme Court, Case No. S170384

This case involves the *Handicapped and Disabled Students* program, which is a mandates program approved by the Commission for counties. Under the program, counties provide mental health services to special education students. When the Legislature appropriated \$1000 in the Budget to counties for their mandate reimbursement, the counties sought and obtained a superior court judgment holding that because this was an unfunded state mandate, the county did not have to provide the services. In response, the Department of Education required local school districts to absorb the cost of the services. The school districts filed a complaint seeking reimbursement for the cost of the services.

¹ Based on information available as of May 13, 2009. Release of this litigation report shall not be deemed to be a waiver of any privileged communication or act, including, but not limited to, the attorney-client privilege and the attorney work product doctrine.

On December 29, 2008, the Third District Court of Appeal issued a published decision, finding that school districts failed to exhaust their administrative remedies with the Commission, and denied their complaint.

On February 10, 2009, Grossmont filed a petition for review with the California Supreme Court. Grossmont argues that it would be futile to exhaust administrative remedies with the Commission since the costs that Grossmont complains of result from a federal mandate.

On April 14, 2009, the California Supreme Court denied the petition for review.

b. *Clovis Unified School Dist., et al. v. State Controller*
Third District Court of Appeal, Case No. C061696

This case involves a challenge by school districts on reductions made by the State Controller's Office to reimbursement claims for several mandated programs. The Commission is not a party to this action. The school districts argue that reductions made on the ground that school districts did not have contemporaneous source documents were invalid.

On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents supporting their reimbursement claims were invalid *if* the contemporaneous source document requirement was not in the Commission's parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller's claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs (*Collective Bargaining* and *Intradistrict Attendance*) that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents. All other contentions of the school districts were denied.

Notices of appeal and cross-appeal have been filed by the State Controller's Office and the school districts.