

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

PROPOSED AMENDMENT AND SET-ASIDE  
OF PARAMETERS AND GUIDELINES

As Directed or Required by:

Statutes 2004, Chapter 316 (Assem. Bill No. 2851, effective August 25, 2004);

Statutes 2004, Chapter 895, (Assem. Bill No. 2855, eff. January 1, 2005); and

Statutes 2005, Chapter 72 (Assem. Bill No. 138, eff. July 19, 2005)

And Requested by the State Controller's Office

Nos.: 04-PGA-12, 23, 26, and 05-PGA-02, 11

*Residential Care Services*

*Pupil Classroom Suspensions: Counseling  
Caregiver Affidavits*

*Presidential Primaries 2000*

*School Crimes Reporting, Statistics and  
Validation and School Crimes Reporting II*

NOTICE OF HEARING

HEARING DATE: December 9, 2005

Room 126, State Capitol

Sacramento, California

10:30 a.m.

TO: Department of Finance  
State Controller's Office  
Legislative Analyst's Office  
Interested Parties  
Legislative Committees

**Notice of Hearing on Proposed Amendments and Set-Aside  
of Parameters and Guidelines**

In 2004 and 2005, the Legislature enacted statutes to repeal or modify numerous state-mandated reimbursable programs. On November 8, 2004, the State Controller's Office requested the Commission on State Mandates (Commission) to amend the parameters and guidelines for these mandated programs. The parameters and guidelines for five of the programs are proposed for amendment or set-aside.

The staff analyses and proposed modifications to the parameters and guidelines on the five matters named above are being posted to the Commission's website:

[http://www.csm.ca.gov/Hearing\\_Agendas/July 28, 2005/Items 13, 15, 16, 17, and 21](http://www.csm.ca.gov/Hearing_Agendas/July_28,_2005/Items_13,_15,_16,_17,_and_21)

**Commission Hearing – December 9, 2005**

The Commission will hear and determine these items on December 9, 2005.

These items are proposed for the consent calendar unless any party objects. Please let us know in advance of the hearing if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions regarding this matter, please contact Nancy Patton, Assistant Executive Director at (916) 323-8217.

Dated: November 22, 2005

---

PAULA HIGASHI, Executive Director

## ITEM 15

### STAFF ANALYSIS PROPOSED ORDER TO SET ASIDE PARAMETERS AND GUIDELINES

#### *Pupil Classroom Suspension: Counseling*

04-PGA-23 (CSM-4458)

Education Code Section 48910, Subdivision (a)

Statutes 1977, Chapter 965

Statutes 1983, Chapter 498

As Amended by Statutes 2004, Chapter 890 (Assem. Bill No. 2855, § 10)

---

### EXECUTIVE SUMMARY

In 1995, the Commission on State Mandates determined that the *Pupil Classroom Suspension: Counseling* program (Ed. Code, § 48910, subd. (a)) imposed a reimbursable mandate on school districts by requiring school counselors or school psychologists to attend the classroom suspension parent-teacher conferences whenever practicable.

Statutes 2004, chapter 890 (Assem. Bill No. 2855, § 10) amended Education Code section 48910, subdivision (a) and became operative and effective on January 1, 2005. This amendment made the requirement for school counselors or school psychologists to attend the classroom suspension parent-teacher conference discretionary.

On November 8, 2004, the State Controller's Office requested that the parameters and guidelines be amended because the Legislature made this program optional.<sup>1</sup>

#### **Discussion**

Article XIII B, section 6 of the California Constitution states that "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." (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.<sup>2</sup> To implement article XIII B,

---

<sup>1</sup> Exhibit A.

<sup>2</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

The test claim statutes, as amended by Statutes 2004, chapter 890 (Assem. Bill No. 2855, § 10), do not mandate school districts to perform an activity or task. As amended, there is no express requirement for school counselors or school psychologists to attend the classroom suspension parent-teacher conferences. Rather, the plain language of Education Code section 48910, subdivision (a) now states, “[i]f practicable, a school counselor or a school psychologist *may* attend the conference.” (Emphasis added.)<sup>3</sup>

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.<sup>4</sup> This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.<sup>5</sup>

Thus, because school districts are no longer required to have school counselors or school psychologists attend the classroom suspension parent-teacher conferences, compliance with the test claim statute is within the discretion of the school district and is not subject to reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Therefore, staff concludes that the Commission should set aside the parameters and guidelines, effective January 1, 2005.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed Order to Set Aside the Parameters and Guidelines for the *Pupil Classroom Suspensions: Counseling* program, effective January 1, 2005.

---

<sup>3</sup> Education Code section 75 defines “shall” as mandatory and “may” as permissive.

<sup>4</sup> *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

<sup>5</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 48910, Subdivision (a), as added by Statutes 1977, Chapter 965 and amended by Statutes 1983, Chapter 498;

Filed on March 9, 1994;

By the San Diego Unified School District,  
Claimant.

Nos. 04- PGA-18 (CSM-4458)

*Pupil Classroom Suspension: Counseling*

ORDER TO SET ASIDE PARAMETERS  
AND GUIDELINES

*(Proposed on December 9, 2005)*

**ORDER TO SET-ASIDE PARAMETERS AND GUIDELINES**

In 1995, the Commission on State Mandates determined that the *Pupil Classroom Suspension: Counseling* program (Ed. Code, § 48910, subd. (a)) imposed a reimbursable mandate on school districts by requiring school counselors or school psychologists to attend the classroom suspension parent-teacher conferences whenever practicable.

Statutes 2004, chapter 890 (Assem. Bill No. 2855, § 10) amended Education Code section 48910, subdivision (a) and became operative and effective on January 1, 2005. This amendment made the requirement for school counselors or school psychologists to attend the classroom suspension parent-teacher conference discretionary.

On November 8, 2004, the State Controller's Office requested that the parameters and guidelines be amended because the Legislature made this program optional.

**Discussion**

Article XIII B, section 6 of the California Constitution states that "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." (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.<sup>6</sup> To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new

---

<sup>6</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.).

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

The test claim statutes, as amended by Statutes 2004, chapter 890 (Assem. Bill No. 2855, § 10), do not mandate school districts to perform an activity or task. As amended, there is no express requirement for school counselors or school psychologists to attend the classroom suspension parent-teacher conferences. Rather, the plain language of Education Code section 48910, subdivision (a) now states, “[i]f practicable, a school counselor or a school psychologist *may* attend the conference.” (Emphasis added.)<sup>7</sup>

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.<sup>8</sup> This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.<sup>9</sup>

Thus, because school districts are no longer required to have school counselors or school psychologists attend the classroom suspension parent-teacher conferences, compliance with the test claim statute is within the discretion of the school district and is not subject to reimbursement under article XIII B, section 6 of the California Constitution and Government Code section 17514.

Therefore, the Commission sets aside the attached parameters and guidelines for the *Pupil Classroom Suspension: Counseling* program, effective January 1, 2005.

---

Paula Higashi, Executive Director

---

Date

Attachment: Parameters and Guidelines

---

<sup>7</sup> Education Code section 75 defines “shall” as mandatory and “may” as permissive.

<sup>8</sup> *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

<sup>9</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.