

ITEM 18
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Education Code Sections 48213 and 48214

Statutes 1978, Chapter 668

Amended by Statutes 2004, Chapter 895 (Assem. Bill No. 2855)

Statutes 2005, Chapter 677 (Sen. Bill No. 512)

Pupil Exclusions

04-PGA-28 (CSM-4457 and CSM-4477)

EXECUTIVE SUMMARY

On March 27, 1997, the Commission on State Mandates determined that certain provisions of Education Code sections 48213 and 48214, added by Statutes 1978, chapter 668, imposed a reimbursable state mandated program upon school districts within the meaning of section 6 of Article XIII B of the California Constitution and section 17514 of the Government Code.

The Commission adopted parameters and guidelines on January 29, 1998. The parameters and guidelines included the following reimbursable activities:

- **Rules and Regulations.** Adopting rules and regulations for periodic reviews of governing board decisions to exclude students pursuant to Education Code section 48211. (Ed. Code, § 48214.)
- **Exclusion Report.** Reporting the facts supporting the pupil's exclusion to the governing board when the exclusion is based upon Health and Safety Code section 120230 (former section 3118) or Education Code section 49451, or when the pupil's continued presence at school would constitute a clear and present danger to the life, safety or health of other pupils or school personnel. The school principal or other responsible school official may make the report, which may be oral or written. (Ed. Code, § 48213.)
- **Specified Statements in the Exclusion Notice.** Inclusion of specified statements in the governing board's written notice to the pupil's parent(s) or guardian(s). (Ed. Code, § 48213.)
- **Providing Access to Documents.** Providing access to the parent(s) or guardian(s) of the pupil who is proposed for exclusion to the following documents which the governing board relied in its decision to propose exclusion that are not "education records" as defined under 20 U.S.C., § 1232g, subdivision (a)(4). (Ed. Code, § 48213.)

Statutes 2004, chapter 895 repealed Education Code sections 48211 and 48214. Statutes 2005, chapter 677 repealed Education Code section 48213, and added a new section 48213. These

amendments repealed three of the reimbursable activities previously determined by the Commission on State Mandates. All that remains is the amended last paragraph of Education Code section 48213. This provision is the basis for the sole remaining reimbursable activity of “reporting the facts supporting the pupil’s exclusion to the governing board,” as specified.

On November 1, 2005, the State Controller’s Office (SCO) requested the parameters and guidelines be set-aside based on amendments to the test claim statutes in Statutes 2004, chapter “890” (sic), and Statutes 2005, chapter 677.¹ Staff disagrees and recommends that the parameters and guidelines be amended to limit reimbursement for three activities to the repeal date, and updated to include language in recently adopted parameters and guidelines, as discussed below.

Discussion

Staff reviewed the legislation and the SCO’s request. Non-substantive changes were made to Section II. Eligible Claimants. Staff modified all other sections of the parameters and guidelines as discussed below:

Section I. Summary of the Mandate

This section was amended to include information regarding AB 2855 and SB 512 and to make the section consistent with other parameters and guidelines that the Commission recently adopted.

Section II. Period of Reimbursement

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed more than 90 days after the claiming deadline for initial reimbursement claims and on or before January 15, following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The SCO requested that these parameters and guidelines be set aside on November 1, 2005, which would make the proposed amendments effective July 1, 2004. However, the legislation that caused the need for the amendments did not become effective until January 1, 2005 and October 7, 2005. Staff revised this section to clarify that effective January 1, 2005 adopting rules and regulations is no longer eligible for reimbursement. On October 7, 2005, including specified statements in the governing board’s written notice, and providing access to documents are no longer eligible for reimbursement.

This section was also revised to include language adopted by the Legislature and the Commission since these parameters and guidelines were originally adopted in 1998. When these parameters and guidelines were adopted, the minimum threshold for filing reimbursement claims was \$200. In 2002, the amount was increased to \$1,000.² The proposed revision reflects this increase.

Section IV. Reimbursable Activities

This section was revised to include language regarding supporting documentation requirements adopted by the Commission. This section was also revised to cap the activities that were

¹ See Exhibit A.

² Statutes 2002, chapter 1124 (Assem. Bill No. 3000).

repealed and to remove the uniform cost allowance because it pertains to an activity that has been repealed.

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.³ 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 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 original Statement of Decision is based on Education Code sections 48213 and 48214. Both sections have been repealed but a slightly modified version of the last paragraph of section 48213 has been reenacted.

Prior to its repeal by Statutes 2004, chapter 895, Education Code section 48211 stated:

The governing body of any school district may exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases.

Prior to its repeal by Statutes 2004, chapter 895, Education Code section 48214 stated:

The governing board of a school district *shall* adopt rules and regulations governing periodic reviews of its decisions to exclude children from attendance pursuant to Sections 42811 and 48212.1. (Emphasis added.)

Prior to its repeal by Statutes 2005, chapter 677, Education Code section 48213 stated:

Prior to excluding a child from attendance pursuant to Section 48211 or Section 48212,⁴ the Governing board shall send notice to the parent or guardian of the child. The notice shall contain each of the following:

- (1) A statement of the facts leading to a decision to propose exclusion of the child.
- (2) A statement that the parent or guardian of the child has a right to meet with the governing board to discuss the proposed exclusion.

³ *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.

⁴ This section was repealed in 1992.

- (3) A statement that at any meeting with the governing board held to discuss such proposed exclusion, the parent or guardian shall have an opportunity to inspect all documents which the governing board relied on in its decision to propose exclusion of the child, to challenge any evidence and to confront and question any witness presented by the governing board; and to present oral and documentary evidence on the child's behalf including witnesses. The statement shall also include notice that the parent or guardian may designate one or more representatives to be present with the parent or guardian at the meeting.
- (4) A statement that the decision to exclude the child is subject to periodic review and a statement of the procedures set by the governing board for such periodic review.

If a child is excluded from attendance pursuant to Section 3118 of the Health and Safety Code or Section 49451 of this code, or when a principal or his or her designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of pupils or school personnel, the governing board shall not be required to send prior notice of the exclusion to the parent or guardian of the child as required in this section.⁵ The governing board shall send a notice as required by this section as soon as is reasonably possible after the exclusion.

Statutes 2005, chapter 677, added new section 48213, which is essentially the same last paragraph of former 48213, with technical amendments in strike-through and underline, as follows:

If a child ~~pupil~~ is excluded from attendance pursuant to Section ~~3118~~ 120230 of the Health and Safety Code or Section 49451 of this code, or ~~when if~~ a principal or his or her designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of a pupils or school personnel, the governing board ~~shall is not be~~ required to send prior notice of the exclusion to the parent or guardian of the child as required in this section.⁶ The governing board shall send a notice as required by this section of the exclusion as soon as is reasonably possible after the exclusion.

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.⁷ 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

⁵ Former Health and Safety Code section 3118, referenced in Education Code section 48213, has been recodified as Health and Safety Code section 120230. (Stats.1995, ch. 415, § 7.)

⁶ Former Health and Safety Code section 3118, referenced in Education Code section 48213, has been recodified as Health and Safety Code section 120230. (Stats. 1995, ch. 415, § 7.)

⁷ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁸

The parameters and guidelines authorize reimbursement for the following activities:

- **Rules and Regulations.** Adopting rules and regulations for periodic reviews of governing board decisions to exclude students pursuant to Education Code section 48211. (Ed. Code, § 48214.)
- **Exclusion Report.** Reporting the facts supporting the pupil’s exclusion to the governing board when the exclusion is based upon Health and Safety Code section 120230 (former section 3118) or Education Code section 49451, or when the pupil’s continued presence at school would constitute a clear and present danger to the life, safety or health of other pupils or school personnel. The school principal or other responsible school official may make the report, which may be oral or written. (Ed. Code, § 48213.)
- **Specified Statements in the Exclusion Notice.** Inclusion of specified statements in the governing board’s written notice to the pupil’s parent(s) or guardian(s). (Ed. Code, § 48213.)
- **Providing Access to Documents.** Providing access to the parent(s) or guardian(s) of the pupil who is proposed for exclusion to the following documents which the governing board relied in its decision to propose exclusion that are not “education records” as defined under 20 U.S.C., § 1232g, subdivision (a)(4). (Ed. Code, § 48213.)

Effective January 1, 2005, there is no statutory provision “requiring school districts to adopt rules and regulations.” Thus, all of the activities related to the adoption of rules and regulations should be deleted from the reimbursable activities.

Effective October 7, 2005, there is no statutory provision “describing the statements that school districts are required to include in the exclusion notice.” Thus, all the activities related to the specified statements should be deleted from the reimbursable activities.

Effective October 7, 2005, there is no statutory provision requiring school districts to “provide access to documents prior to exclusions.” Thus, all the activities related to providing access to documents should be deleted from the reimbursable activities.

In its decision, the Commission concluded that reporting to the governing board the facts relied upon to support a decision to exclude a pupil when it is determined that the pupil’s continued presence at school would constitute a clear and present danger to the life, safety, or health of pupils or school personnel, imposes a new program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution and section 17514. Although Education Code section 48213 was repealed and a new section 48213 was added, staff finds that Education Code section 48213, on which this mandate determination was based, remains largely unchanged. Therefore, staff finds that this activity is still reimbursable and will remain in the parameters and guidelines.

Sections V through X.

⁸ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

The remaining sections were updated to make these parameters and guidelines consistent with language in recently adopted parameters and guidelines.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendments to the parameters and guidelines for the Pupil Exclusions program, beginning on page 7.

Staff also recommends the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.