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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:)

San Diego Unified
School District,)

Claimant)


No. CSM-4452
Education Code
Section 49079
Chapter 1306, Statutes of 1989
Chapter 1257, Statutes of 1993

*Notification to Teachers:
Pupils Subject to Suspension or Expulsion*

ADOPTED STATEMENT OF DECISION

The attached Statement of Decision is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on January 19, 1995.
IT IS SO ORDERED January 19, 1995.



Mary Ann Aguayo, Assistant Executive Director
Commission on State Mandates

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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5 San Diego Unified)
6 School District,)
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8 Claimant)
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*Notification to Teachers:
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ADOPTED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on November 17, 1994, in Sacramento, California, during a regularly scheduled hearing.

Mr. Keith Petersen appeared on behalf of the San Diego Unified School District, Ms. Carol Miller appeared on behalf of the Education Mandated Cost Network, and Mr. James Apps appeared on behalf of the Department of Finance. Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Education Code section 49079 as added by Chapter 1306, Statutes of 1989 (Chapter 1306/89) and amended by Chapter 1257, Statutes of 1993 (Chapter 1257/93), require school districts to implement a new program or provide a higher level of service in an existing program, within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514?

BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on February 18, 1994, by the San Diego Unified School District.

The elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied.

Chapters 1306/89 and 1257/93 added and amended Education Code section 49079 as follows:

~~“(a) A school district shall inform the teacher of every student who has caused, or who has attempted to cause, serious bodily injury or injury, as defined in paragraphs (5) and (6) of subdivision (c) of Section 243 of the Penal Code, to another person each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in any of the subdivisions, except subdivision (h), of Section 48900. The district shall provide the information to the teacher based on written upon any records that the district maintains in its ordinary course of business, or receives from a law enforcement agency regarding a student described in this section.~~

~~“(b) No school district, or school district officer or employee, shall be civilly or criminally liable for failure to comply with this section if, in a particular instance, it is demonstrated that the district has made a good faith effort to notify the teacher providing information under this section unless it is proven that the information was false and that the district or district officer or employee knew that the information was false, or was made with a reckless disregard for the truth or falsity of the information provided.~~

~~“(c) An officer or employee of a school district who knowingly fails to provide information about a pupil who has engaged in, or who is reasonably suspected to have engaged in, the acts referred to in subdivision (a), is guilty of a misdemeanor, which is punishable by confinement in the county jail for a period not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or both.~~

~~“(c)(d) The reporting period of the information required by this section shall commence in the 1990-91 school year. For that school year, the information described in subdivision (a) shall be from the previous school year. For the 1991-92 school year, the information provided shall be from the previous two school years. For the 1992-93 school year and each school year thereafter, the information provided shall be from the previous three school years.~~

~~“(d)(e) Any information received by a teacher pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.~~

~~“(f) In no event shall this section be retroactively applied to any individual for any act of that individual undertaken, or failure to act by that individual, prior to January 1, 1994. ”~~

1 The Commission observed that Education Code section 49079, subdivisions (b), (c), (e), and
2 (f), deal with liability of school districts or school district employees, penalties for violation of
3 this section, confidentiality of information, and applicability of the section to actions
4 undertaken or failure to act prior to January 1, 1994.

5
6 The Commission found that these subdivisions do not establish a new program or higher level
7 of service in an existing program upon school districts within the meaning of section 6 of
8 article XIII B of the California Constitution and Government Code section 175 14.

9
10 The Commission observed that Education Code section 49079, subdivisions (a) and (d),
11 requires school districts to, from records maintained in the ordinary course of business or
12 received from law enforcement agencies, identify pupils who have, during the previous three
13 years, engaged in, or are reasonably suspected to have engaged in, any of the acts described in
14 any of the subdivisions, except subdivision (h), of section 48900. The Commission noted that
15 subdivision (d) specifies that the time frame of the "previous three years" commences with the
16 1992-93 school year and continues for each school year thereafter.

17
18 The Commission observed that Education Code section 49079 does not explicitly require
19 school districts to establish and maintain an information file or data base of such pupils, but
20 simply requires that such pupils be identified and their teachers notified. The requirement
21 contained in Education Code section 49079, subdivision (d), to maintain this information for a
22 period of three years implies that, once the pupils have been identified, the information
23 identifying them must be recorded, and the Commission therefore found that school districts
24 are implicitly required to adopt cost effective methods of assembling and maintaining this
25 information as specified in Education Code section 49079, subdivision (d).

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1 The Commission observed that Education Code section 49079, subdivision (a), requires school
2 districts to provide the specified information to teachers, but does not explicitly state time
3 frames for providing such information.

4
5 The Commission recognized that the Legislature had the opportunity to set explicit time frames
6 and chose to not do so, and further noted that subdivision (a) provides that the information
7 provided be based on records the district “maintains in its ordinary course of business”.

8
9 The Commission recognized that the phrase “maintains in its ordinary course of business”
10 implies a routine report, as opposed to one which is specially produced or prepared. Since this
11 information has some degree of time sensitivity, and the untimely providing of information
12 would defeat the purpose of the statute, the Commission also determined that the information
13 must be provided on a timely basis.

14
15 The Commission therefore recognized that the phrase “routine and timely basis”, as alleged by
16 the claimaint, accurately reflects the direction of the Legislature in enacting and amending this
17 subdivision.

18
19 The Commission found that providing, on a routine and timely basis, the information specified
20 in Education Code section 49079, subdivision (a), implicitly requires the school districts to
21 adopt cost effective methods of assembling and disseminating this information to teachers.

22
23 The Commission found that the activities required in Education Code section 49079,
24 subdivisions (a) and (d), were not required under prior law.

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1 APPLICABLE LAW RELEVANT TO THE DETERMINATION
2 OF A REIMBURSABLE STATE MANDATED PROGRAM

3 Government Code section 17500 and following, and section 6, article XIII B of the California
4 Constitution and related case law.

5
6 CONCLUSION

7 The Commission determines that it has the authority to decide this claim under the provisions
8 of Government Code sections 17500 and 1755 1, subdivision (a).

9
10 In view of all of the foregoing, the Commission concludes that the provisions of Education
11 Code section 49079, subdivisions (b), (c), (e), and (f), of Chapter 1306/89 and Chapter
12 1257/93, do not impose a new program or higher level of service in an existing program
13 within the meaning of section 6 of article XIII B of the California Constitution and Government
14 Code section 17514.

15
16 In view of all of the foregoing, the Commission concludes that the provisions of Education
17 Code section 49079, subdivisions (a) and (d), of Chapter 1306/89 and Chapter 1257/93, do
18 impose a new program or higher level of service in an existing program within the meaning of
19 section 6 of article XIII B of the California Constitution and Government Code section 17514
20 by requiring school districts to, from records maintained in the ordinary course of business or
21 received from law enforcement agencies, identify pupils who have, during the previous three
22 years, engaged in, or are reasonably suspected to have engaged in, any of the acts described in
23 any of the subdivisions, except subdivision (h), of section 48900; to maintain this
24 information for a period of three years, commencing with the 1992-93 school year and
25 continuing for each school year thereafter; to adopt cost effective methods of assembling and
26 maintaining this information; to provide the specified information to teachers on a routine and
27 timely basis; and to adopt cost effective methods of assembling and disseminating this
28 information to teachers.

1 Accordingly, costs incurred related to the aforementioned reimbursable state mandated
2 programs contained in Education Code section 49079, subdivisions (a) and (d), are costs
3 mandated by the state and are subject to reimbursement within the meaning of section 6,
4 article XIII B of the California Constitution. Therefore, the claimant is directed to submit
5 parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California
6 Code of Regulations, section 1183.1, to the Commission for its consideration.

7
8 The foregoing conclusions pertaining to the requirements contained in Education Code section
9 49079, subdivisions (a) and (d), are subject to the following conditions:

10 The determination of a reimbursable state mandated program does not mean that
11 all increased costs claimed will be reimbursed. Reimbursement, if any, is
12 subject to Commission approval of parameters and guidelines for reimbursement
13 of the mandated program; approval of a statewide cost estimate; a specific
14 legislative appropriation for such purpose; a timely-filed claim for
15 reimbursement; and subsequent review of the claim by the State Controller's
16 Office.

17 As provided in Chapter 1306/89, if the statewide cost estimate for this mandate does
18 not exceed one million dollars (\$1,000,000) during the first twelve (12) month period
19 following the operative date of the mandate, the Commission shall certify such
20 estimated amount to the State Controller's Office, and the State Controller shall
21 receive, review, and pay claims from the State Mandates Claims Fund as claims are
22 received. (Government Code section 17610).

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

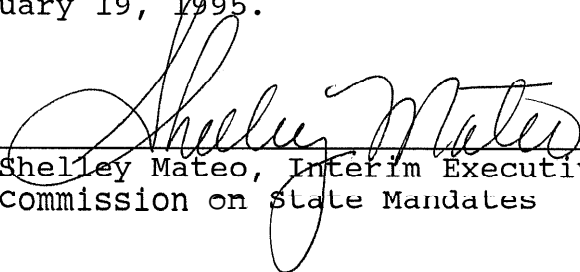
Claim of:)
San Diego Unified School)
District)
Claimant)
No. CSM-4452)
Chapter 1257, Statutes of 1993)
Chapter 1306, Statutes of 1989)
Education Code Section 49079)
Notification to Teachers:)
Pupils Subject to Suspension)
or Expulsion)

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on January 19, 1995.

IT IS SO ORDERED January 19, 1995.



Shelley Mateo, Interim Executive Director
Commission on State Mandates

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:)
San Diego Unified)
School District,)
Claimant)

No. CSM-4452
Education Code
Section 49079
Chapter 1306, Statutes of 1989
Chapter 1257, Statutes of 1993

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6 CONCLUSION

7 The Commission determines that it has the authority to decide this claim under the provisions
8 of Government Code sections 17500 and 1755 1, subdivision (a).

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10 In view of all of the foregoing, the Commission concludes that the provisions of Education
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 legislative appropriation for such purpose; a timely-filed claim for
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 Office.

14 As provided in Chapter 1306/89, if the statewide cost estimate for this mandate does
 15 not exceed one million dollars (\$1,000,000) during the first twelve (12) month period
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 19 received. (Government Code section 17610).