BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, 48915, 48915.1, 48915.2, 48915.7, 48916, 48918, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 3 18, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 23, Statutes of 1984; Chapter 536, Statutes of 1984; Chapter 622, Statutes of 1984; Chapter 3 18, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 383, Statutes of 1987; Chapter 942, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 123 1, Statutes of 1990; Chapter 909, Statutes of 1992; Chapter 1255, Statutes of 1993; Chapter 1256, Statutes of 1993; Chapter 1257, Statutes of 1993; and filed on March 9, 1994, and

Education Code Sections 48900.3, 48900.4, and 48915, as added and amended by Chapter 146, Statutes of 1994; Chapter 1198, Statutes of 1994; Chapter 1017, Statutes of 1994; and filed on April 7, 1995,

By the San Diego Unified School District, Claimant.

NO. CSM-4455

PUPIL EXPULSIONS

CORRECTED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(Adopted on May 29, 1997)

Corrected on August 10, 1998

STATEMENT OF DECISION

The attached Statement of Decision is corrected pursuant to Title 2, California Code of Regulations, section 1188.2, (b).

It is so ordered on August 10, 1998.

Paula Higashi, Executive Director

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, 48915, 48915.1, 48915.2, 48915.7, 48916, 48918, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 3 18, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 23, Statutes of 1984; Chapter 536, Statutes of 1984; Chapter 622, Statutes of 1984; Chapter 3 18, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 383, Statutes of 1987; Chapter 942, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 123 1, Statutes of 1990; Chapter 909, Statutes of 1992; Chapter 1255, Statutes of 1993; Chapter 1256, Statutes of 1993; Chapter 1257, Statutes of 1993; and filed on March 9, 1994, and

Education Code Sections 48900.3, 48900.4, and 489 15, as added and amended by Chapter 146, Statutes of 1994; Chapter 1198, Statutes of 1994; Chapter 10 17, Statutes of 1994; and filed on April 7, 1995,

By the San Diego Unified School District, Claimant.

NO. CSM-4455

PUPIL EXPULSIONS

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on May 29, 1997)

(Effective on May 4, 1998)

(Corrected on August 10, 1998, Pursuant to Cal. Code. Regs., Tit. 2, § 1188.2, subd. (b).)

STATEMENT OF DECISION

Issue: Do the provisions of Education Code sections 48900, 48900.2, 48900.3, 48900.4, 489 15, 48915.1, 48915.2, 48915.7, 48916, and 48918, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 23, Statutes of 1984; Chapter 536, Statutes of 1984; Chapter 622, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 383, Statutes of 1987; Chapter 942, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 1231, Statutes of 1990; Chapter 909, Statutes of 1992; Chapter 1255, Statutes of 1993; Chapter 1256, Statutes of 1993; Chapter 1257, Statutes of 1993; Chapter 146, Statutes of 1994; Chapter 1198, Statutes of 1994; Chapter 1017, Statutes of 1994, impose a reimbursable state mandated 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 175 14 of the Government Code?

This test claim was heard by the Cornmission on State Mandates (Commission) on October 3 1, 1996, during a regularly scheduled hearing. Mr. Jose Gonzales and Mr. James Cunningham appeared for the San Diego Unified School District, and Ms. Caryn Becker appeared for the Department of Finance.

Supplemental hearings on this test claim were held on December 19, 1996 and March 27, 1997, during regularly scheduled hearings. Mr. James Cunningham appeared for the San Diego Unified School District, and Ms. Caryn Becker appeared for the Department of Finance.

At both hearings, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

BACKGROUND AND FINDINGS OF FACT

The San Diego Unified School District alleges that Education Code sections 48900, 48900.2, 48900.3, 48900.4, 48915, 48915.1, 48915.2, 48915.7, 48916, and 48918, as added and amended by Chapter 1253, Statutes of 1975; Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 3 18, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 23, Statutes of 1984; Chapter 536, Statutes of 1984; Chapter 622, Statutes of 1984; Chapter 3 18, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 383, Statutes of 1987; Chapter 942, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 123 1, Statutes of 1990; Chapter 909, Statutes of 1992; Chapter 1255, Statutes of 1993; Chapter 1256, Statutes of 1993; Chapter 1257, Statutes of 1993; Chapter 146, Statutes of 1994; Chapter 1198, Statutes of 1994; Chapter 1017, Statutes of 1994 impose a reimbursable state mandated program or higher level of service upon school districts within the meaning of section 6 of article XIII B of the California Constitution.

Therefore, the Education Code statutes which are the subject of this test claim, are as follows:

Section 48915, subdivision (a), as added by Chapter 498, Statutes of 1983, states in pertinent part :[1]

"(a) The principal or the superintendent of schools shall recommend a pupil's expulsion . . . for any of the following acts, unless the principal or superintendent finds, and so reports in writing to the governing board, that expulsion is inappropriate, due to the particular circumstance, which shall be set out in the report of the incident:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds.

(3) Unlawful sale of any controlled substance, as defined in Section 11007 of the Health and Safety Code. . . .

(4) Robbery or extortion."

Section 48915, subdivision (b), as amended by Chapter 1255, Statutes of 1993, states:

"(b) The principal or superintendent shall immediately suspend pursuant to section 48911, and shall recommend to the governing board the expulsion of, any pupil found to be in possession of a firearm, knife of no reasonable use to the pupil, or explosive [at school or at a school activity off school grounds]. The governing board shall expel that pupil or, as an alternative, recommend that pupil to an alternative education program, whenever the principal or superintendent of schools confirm that:

(1) The pupil was in knowing possession of the item,

(2) Possession of the firearm, knife of no reasonable use to the pupil, or explosive was verified by an employee of the district.

(3) There was no reasonable cause for the pupil to be in possession of the [firearm, knife, or explosive.] "

[The effective date of this chapter was October 11, 1993 through December 3 1, 1993 .]

Section 48915, subdivision (b), as amended by Chapter 1256, Statutes of 1993, states:

"(b) The principal or superintendent shall immediately suspend, pursuant to Section 48911, any pupil found to be in possession of a firearm at school or at a school activity off school grounds and shall recommend expulsion of that pupil to the governing board. The governing board shall expel that pupil or refer that pupil to a program of study that is appropriately prepared to accommodate students who exhibit discipline problems and is not provided at a comprehensive middle, junior or senior high school or housed at the school site attended by the pupil at the time the expulsion was recommended to the school board, whenever the principal or superintendent of schools and the governing board confirm the following:

(1) The pupil was in knowing possession of the firearm.

(2) An employee of the school district verifies the pupil's possession of the firearm.

[Effective date of this chapter was January 1, 1994.1

[1] Unless otherwise indicated, all referenced sections are to the Education Code.

Section 48915, subdivision (c), as amended by Chapter 1256, Statutes of 1993; Chapters 146 and 1198, Statutes of 1994, states in pertinent part:

"(c) Upon recommendation of the principal, superintendent, hearing officer, or administrative panel, the governing board *may* order a pupil expelled upon finding that the pupil violated subdivisions (f), (g), (h), (i), (j), (k), or (1) of Section 48900, or Section 48900.2 or 48900.3, and either of the following: [2]

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.[3]" (Emphasis added.)

Section 48900, as amended by Chapter 909, Statutes of 1992, states:[4]

"A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

"(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

"(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

"(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

"(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

"(e) Committed or attempted to commit robbery or extortion.

"(f) Caused or attempted to cause damage to school property or private property.

"(g) Stolen or attempted to steal school property or private property.

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[2] These subdivisions refer to damage to school property or private property (subd. (f).), theft of school property or private property (subd. (g) .), tobacco related offenses (subd. (h) .), obscenity, profanity or vulgarity (subd. (i) .), drug paraphernalia related offenses (subd. (j).), disruption/defiance (subd. (k).), receipt of stolen property (subd. (l).), sexual harassment (§ 48900.2), hate crimes (§ 48900.3).

[3] The double underlined text was added by Chapters 146 and 1198, Statutes of 1994.

[4] According to West's Annotations, the 1992 amendment made nonsubstantive changes to the end of the second sentence of the paragraph, prohibiting suspension or expulsion of pupils for any of the enumerated acts. Section 48900 was also amended by Chapter 11980994, § 5 (AB 2543), without change to the text. (West's Ann.Cal.Ed.Code, § 48900 (1996).).

"(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

"(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

"(j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 110 14.5 of the Health and Safety Code.

"(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

"'(1) Knowingly received stolen school property or private property.

"No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

"It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities."

Section 48900.2, as added by Chapter 909, Statutes of 1992, states:

"In addition to the reasons specified in Section 48900, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Section 212.5.

"For the purposes of this chapter, the conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance or to create an intimidating, hostile, or offensive educational environment. This section shall not apply to pupils enrolled in kindergarten and grades 1 to 3, inclusive. "

Section 48900.3, as added by Chapter 1198, Statutes of 1994, states:

"In addition to the reasons specified in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 33032.5. "[5]

Section 48900.4, as added by Chapter 1017, Statutes of 1994, states:

"In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment."

Section 48918, as added and amended by the subject chapters, states:

"*The* ***governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils.*** These ***procedures shall include, but are not necessarily limited to,*** all of ***the following:***

"(a) ***The pupil shall be entitled to a hearing to determine whether the pupil should be expelled.*** An expulsion hearing shall be held within 30 school days after the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall specify that the pupil is entitled to at least one postponement of an expulsion hearing, for a period of not more than 30 calendar days. Any additional postponement may be granted at the discretion of the governing board.[6]

"The decision of the governing board as to whether to expel a pupil shall be made within 10 schooldays after the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. If the hearing is held by a hearing officer or an administrative panel, or if the district governing board does not meet on a weekly basis, the governing board shall make its decision about a pupil's expulsion within 40 schooldays after the date of the pupil's removal from his or her school of attendance for the incident for which the recommendation for expulsion is made by the principal or the superintendent, unless the pupil requests in writing that the decision be postponed.

"In the event that compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the tirne period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

'Education Code section 33032.5, subdivision (e), defines "hate violence" as "any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code."

[6]The italicized text in the first paragraph and in subdivision (a), was added as section 10608 by Chapter 1253, Statutes of 1975.

"(b) *Written notice of the hearing shall be forwarded to the pupil at least 10 calendar days prior to the date of the hearing. The notice shall include: the date and place of the hearing; a statement* ***of*** *the specific* facts and *charges upon which the proposed expulsion is based;* ***a copy of the disciplinary rules of the district that relate to the alleged violation;*** **a notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of Section 48915.1;** *and notice* ***of*** *the opportunity* ***for*** *the pupil or the pupil's parent or guardian to appear in person or employ and be represented by counsel,* to inspect and obtain copies of all documents to be used at the hearing, *to confront and question all witnesses who testify at the hearing, to question all other evidence presented, and to present oral and documentary evidence on the pupil's behalf including* witnesses .[7] (Emphasis added.)

"(c) Notwithstanding Section 54593 of the Government Code and Section 35145 of this code, *the governing board shall conduct a hearing to consider the expulsion* ***of*** *a pupil in a session closed to the public, unless the pupil requests, in writing, at least five days prior to the date* ***of*** *the hearing, that the hearing be conducted at a public meeting.* Regardless of whether the expulsion hearing is conducted in a closed or public session, the governing board may meet in closed session for the purpose of deliberating and determining whether the pupil should be expelled.[8] [First paragraph]

If the governing board or the hearing officer or administrative panel appointed under subdivision (d) to conduct the hearing admits any other person to a closed deliberation session, the parent or guardian of the pupil, the pupil, and the counsel of the pupil also shall be allowed to attend the closed deliberations. [Second paragraph]

"(d) In lieu ***of*** *conducting an expulsion hearing itself the governing board may contract with the county hearing officer, or with the Office* ***of*** *Administrative Hearings* ***of*** *the State* ***of*** *California pursuant to Chapter 14 (commencing with Section 27720)* ***of*** *Part 3* ***of*** *Division 2* ***of*** *Title 3* ***of*** *the Government Code and Section 35207 of this code,* ***for*** *a hearing officer to conduct the hearing. The governing board also may appoint an impartial administrative panel* ***of*** *three or more certtjicated persons, none* ***of*** *whom are members* ***of*** *the board or employed on the staff* ***of*** *the school in which the pupil is enrolled. The hearing shall be conducted in accordance with all* ***of*** *the procedures established under this section.* [9]

"(e) Within three schooldays after the hearing, the hearing officer or administrative panel shall determine whether to recommend the expulsion of the pupil to the governing board. If the hearing officer or administrative panel decides not to recommend expulsion, the expulsion proceedings shall be terminated and the pupil immediately shall be reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. Placement in one or more of these programs shall be made by the superintendent of schools or the superintendent's designee after consultation with school district personnel, including

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[7] The italicized text was added as section 10608, subdivision (b), by Statutes of 1975, Chapter 1253 and re-numbered section 48914, subdivision (b), by Statutes of 1977, Chapter 965; the bold text was added to re-numbered section 48918, subdivision (b), by Chapter 1231, Statutes of 1990.

[8] The italicized text, referencing former section numbers, was added as former section 10608, subdivision (c), by Chapter 1253, Statutes of 1975.

9 The italicized text was added as section 10608, subdivision (d), by Chapter 1253, Statutes of 1975. Although the form of this text has changed since 1975, it has not undergone substantive alteration.

the pupil's teachers, and the pupil's parent or guardian. The decision not to recommend expulsion shall be final.

"(f) If the hearing officer or administrative panel recommends expulsion, ***findings of fact in support of the recommendation shall be prepared and submitted to the governing board. All findings of fact and recommendations shall be based solely on the evidence adduced at the hearing. If the governing board accepts the recommendation calling for expulsion, acceptance shall be based either upon a review of*** the findings of fact and recommendations submitted by the hearing officer or panel ***or upon the results of any supplementary hearing conducted pursuant to this section that the governing board may order.*** "[First Paragraph.]

"The decision of the governing board to expel a pupil shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing or hearings. Except as provided in this section, no evidence to expel shall be based solely upon hearsay evidence. The governing board or the hearing officer or administrative panel may, upon a finding that good cause exists, determine that the disclosure of the identity of a witness and the testimony of that witness at the hearing would subject the witness to an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearing in the form of sworn declarations which shall be examined only by the governing board or the hearing officer or administrative panel. Copies of these sworn declarations, edited to delete the name and identity of the witness, shall be made available to the pupil.[10] [Second Paragraph.]

"(g) ***A record*** of ***the hearing shall be made. The record may be maintained by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.***[11]

"(h) ***Technical rules of evidence shall not apply to the hearing, except that relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A decision of the governing board to expel shall be supported by substantial evidence*** showing that the pupil committed any of the acts enumerated in Section 48900.[12]

"(i) ***Whether an expulsion hearing is conducted by the governing board or before a hearing officer or administrative panel, final action to expel a pupil shall be taken only by the governing board in a public session. Written notice*** of ***any decision to expel or to suspend the enforcement*** of ***an expulsion order during a period of probation shall be sent by the superintendent of schools or his or her designee to the pupil or the pupil's parent or guardian, and shall be accompanied by notice of the right to appeal the expulsion to the county board of education*** and of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the expulsion.[13]

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[10] The ***italicized*** text was added as former section 10608, subdivision (d), by Chapter 1253, Statutes of 1975; the ***bold italicized*** text was added to former section 48914, subdivision (b), by Chapter 965, Statutes of 1977; the double underlined text was added to former section 48914, subdivision (d), by Chapter 668, Statutes of 1978; the underlined text was added to re-numbered section 48918, subdivision (f), by Chapter 498, Statutes of 1983.

[11] The italicized text was added as former section 10608, subdivision (e), by Chapter 1253, Statutes of 1975.

[12] The italicized text was added as former section 10608, subdivision (f), by Chapter 1253, Statutes of 1975.

[13] The italicized portion is substantially the same as former section 10608, subdivision (g), added by Chapter 1253, Statutes of 1975, as subdivision (g) of former section 10608.

"(j) The governing board shall maintain a record of each expulsion, including the cause therefor. Records of expulsions shall be a nonprivileged, disclosable public record. The expulsion order and the causes therefor shall be recorded in the pupil's mandatory interim record and shall be forwarded to any school in which the pupil subsequently enrolls upon receipt of a request from the admitting school for the pupil's school records.

Section 48916, as added by Chapter 498, Statutes of 1983, states:

"An expulsion order shall remain in effect until the governing board may, in the manner prescribed in this article, order the readmission of a pupil. At the time an expulsion of a pupil is ordered, the governing board shall set a date, not later than the last day of the semester following the semester in which the expulsion occurred, when the pupil may apply for readmission to a school maintained by the district." [First paragraph]

"The governing board may recommend a plan of rehabilitation for the pupil, which may include, but not be limited to, periodic review as well as assessment at the time of application for readmission. The plan may also include recommendations for counseling, employment, community service, or other rehabilitative programs." [Second paragraph]

"The governing board of each school district shall adopt rules and regulations establishing a procedure for the filing and processing of requests for readmission. Upon completion of the readmission process, the governing board shall not be required to readmit the pupil. A description of the procedure shall be made available to the pupil and the pupil's parent or guardian at the time the expulsion order is entered." [Third paragraph]

Section 48915.1, as added by Chapter 942, Statutes of 1987, and amended by Chapter 1231, Statutes of 1990, states:

"(a) If the governing board of a school district receives a request from an individual, who has been expelled from another school district for an act described in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger to either the pupils or employees of the school district. The hearing and notice shall be conducted according to the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918. A school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.

"(b) If a pupil has been expelled from his or her previous school for any of the offenses listed in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 48915 the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided to the school district and the school district later determines that the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a)."

"(c) The governing board of a school district may make a determination to deny enrollment to an individual who has been expelled from another school district for any act described in paragraphs (1) to (4), inclusive of subdivision (a) of Section 48915, for the remainder of the expulsion period after a determination has been made, pursuant to a hearing that the individual poses a potential danger to either the pupils or employees of the school district.

"(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

(1) Deny enrollment.

(2) Permit enrollment.

(3) Permit conditional enrollment in a regular school program or another educational program.

"(e) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for any act described in paragraphs (1) to (4), inclusive of subdivision (a) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts. "

Section 48915.1 , as amended by Chapter 1257, Statutes of 1993, states:

"(a) If the governing board of a school district receives a request from an individual who has been expelled from another school district for *an act other than those described in subdivision (a) of Section 48915,* for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger to either the pupils or employees of the school district. [First Sentence] The hearing and notice shall be conducted according to the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918. A school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request. (Emphasis added.)

"(b) If a pupil has been expelled from his or her previous school for *offenses other than those listed in subdivision (a) of Section 48915* the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided to the school district and the school district later determines that the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a). (Emphasis added.)

"(c) The governing board of a school may make a determination to deny enrollment to an individual who has been expelled from another school district *for an act other than those described in subdivision (a) of Section 48915,* for the remainder of the expulsion period after a determination has been made, pursuant to a hearing that the individual poses a potential danger to either the pupils or employees of the school district.

"(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

(1) Deny enrollment.

(2) Permit enrollment.

(3) Permit conditional emollment in a regular school program or another educational program.

"(e) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for an act other than those described in subdivision (a) of Section 48915 does not pose a danger to either the pupils or employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts. "[14]

Section 48915.2, as added by Chapter 1257, Statutes of 1993, states:

"(a) A pupil expelled from school for any of the offenses listed in subdivision (a) of Section 48915, shall not be permitted to enroll in any other school or school district ***during the period of expulsion*** unless it is a county community school pursuant to subdivision (b) of Section 1981, or a juvenile court school, as described in Section 48645.1. (Emphasis added.)

"(b) After a determination has been made, pursuant to a hearing under Section 48918, that an individual expelled from another school district for any act described in subdivision (a) of Section 48915 ***does not pose a danger*** to either the pupils or employees of the school district, the governing board of a school district ***may permit*** the individual to enroll in the school district ***after the term of expulsion,*** subject to one of the following conditions :

(1) He or she has established legal residence in the school district, pursuant to Section 48200.

(2) He or she is enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to chapter 5 (commencing with Section 46600) of Part 26." (Emphasis added.)

Section 48915.7, as added by Chapter 1256, Statutes of 1993, states:

"It is the intent of the Legislature that where community school opportunities exist, the principal shall recommend for expulsion, and the governing board shall expel, any pupil who is found to be in possession of a firearm at school or at a school activity off school grounds and that the governing board shall request the county board of education to enroll the pupil in a community school."

[14] The italicized text was added by Chapter 1257, Statutes of 1993.

ORGANIZATION OF THE STATEMENT OF DECISION

The statutes which are the subject of this Statement of Decision are presented in the following order:

A. Immediate Suspension, Initiating Expulsion, and Making the Decision to Expel (§ 48915.)

B. Basis for Expulsions (§§ 48900, 48900.2, 48900.3, and 48900.4.)

C. Procedures for Expulsions (§ 48918 .)

D. Procedures for Readmission (§§ 48916, 48915.1, 48915.2, 48915.7.)

THE COMMISSION FINDS THAT:

On November 29, 1984, the Board of Control[15] adopted a "Brief Written Statement," on section 489 15, subdivision (a), which reads in part:

> "The Board of Control determined that Chapter 498/83 constituted a state mandate because it requires an increased level of service. Specifically, the Board determined that the statute imposes costs by requiring the school administrator or principal to request expulsion hearings in certain instances or to explain in writing why expulsion is inappropriate. The school administrator or principal formerly had discretion in these matters and now is required by Chapter 498/83 to proceed with an expulsion action."

The Board of Control's decision states that, "the statute imposes costs by requiring the school administrator or principal to request expulsion hearings in certain instances or to explain in writing why expulsion is inappropriate. " However, the Department of Finance, California Department of Education and State Controller's Office agreed that the only reimbursable activity was the requirement of the school administrator or principal to explain in writing why expulsion is inappropriate. That position was based on the premise that *expulsions are not new* with the enactment of section 489 15 and that those activities outlined in 489 15, subdivision (a) (1) through *(4) are not new actions* that require expulsion for the first time.

In other words, any of the actions outlined could have resulted in expulsion and now the only new requirement is that a written report must be prepared when expulsion is inappropriate. Therefore, the parameters and guidelines[16] called only for the reimbursement of written reports not to expel. [17]

Although pre- 1975 law authorized governing boards to expel for "good cause," no provisions expressly addressed the principal's role in recommending an expulsion to the governing board[18] or

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"Predecessor agency to the Commission on State Mandates.

[16]As reported by State Controller's Office, the Budget Acts of 1993, 1994 and 1995 appropriated $420,000, $434,000, and $447,000 respectively for reimbursement of this mandate.

[17]Proposed Parameters and Guidelines for August 27, 1987 hearing.

in explaining why an expulsion should not result when a pupil was suspected of committing certain offenses. In contrast, prior law concerning the discretionary authority of a principal to suspend a pupil from school for "good cause" was explicit.[19] School districts had the authority to require principals to recornruend that a pupil be expelled for specified offenses within the meaning of "good cause. "[20] However, a directive requiring a principal to recommend expulsion for certain offenses could only have stemmed from a district's rules and regulations, and not from a specific statute or executive order.

Therefore, ***the Commission affirmed the Board of Control's Brief Statement, adopted on November 29, 1984,*** that section 48915, subdivision (a), as added by Chapter 498, Statutes of 1983, imposed a [new program or] higher level of service upon school districts by requiring principals and superintendents to recommend expulsion for specified offenses or to explain in writing why expulsion is inappropriate. It should also be noted that the downstream activities which would have been triggered by the school principal or superintendent's recommendation to expel a pupil were not before the Board of Control in 1984, but are before the Cornmission on State Mandates in this test claim (CSM-4455).

A. IMMEDIATE SUSPENSION, INITIATING EXPULSION, AND MAKING THE DECISION TO EXPEL. (§ 48915.)

The Commission found that prior law ***did not require principals or superintendents*** to irnrnediately suspend a pupil from school for any specific offenses.

The Comrnission further found that the following provisions impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and section 175 14 of the Government Code:

The requirement for principals and superintendents to immediately suspend and to recommend the expulsion of pupils to their governing boards for specified offenses. (§ 48915, subds. (a) & (b).)

- For the period from October 11, 1993 through December 3 1, 1993, Education Code section 48915, as amended by Chapter 1255, Statutes of 1993, the requirement for governing boards to expel for specified offenses or in the alternative to recommend admission of a pupil to an alternative education program.
- Effective, January 1, 1994, Education Code section 489 15, as amended by Chapter 1256, Statutes of 1993, the requirement for governing boards instead to expel pupils only for the possession of a firearm at school or at a school activity off grounds, or to recommend their admission to a community school.

The language added to Education Code section 48915 by Chapter 1255, Statutes of 1993, requiring the governing board to confirm that the pupil was in knowing possession of the firearm, and that a school employee had verified the pupil's possession of the firearm before expelling the pupil, does

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[18]Section 48907, Chapter 1010, Statutes of 1976, stated in pertinent part: The governing board of any school district shall . . . expel pupils for misconduct when other means of correction fail to bring about proper conduct. "

[19]Section 10601.5, as amended by Chapter 219, Statutes of 1973.

[20]Section 10603, as amended by Chapter 1186, Statutes of 1970.

not result in a new program or higher level of service. These requirements are consistent with pre-existing federal due process requirements for expulsions and as specified for adoption by governing boards under section 48918, subdivisions (f) and (h).

The Commission further concluded that:

- The authorization for governing boards to expel pupils from school for inappropriate behaviors has been in existence since ***before*** 1975. The behaviors defined as inappropriate under current law, subdivisions (a) through (1) of section 48900, 48900.2, and 48900.3, meet prior laws' definitions of "good cause" and "misconduct" as reasons for expulsion.
- The introductory language to section 489 15, subdivision (c), recognizes those persons who are now authorized to recommend expulsion to the governing board pursuant to section 489 15, subdivisions (a) and (b), and section 48918, subdivision (e), and authorizes the governing board to expel pupils based on their recommendations.
- Section 48915, subdivision (c), authorizes the governing board to order the expulsion of a pupil, based upon findings of specific violations and the occurrence of certain conditions; however, this subdivision does not require any new activity or an expulsion on the part of the governing board, or upon any of the persons authorized to recommend expulsions to the governing board.

Therefore, any expulsions which result from the offenses listed in subdivision ***(c)*** are ***discretionary.*** Accordingly, the Commission found that section 489 15, subdivision (c), as amended by Chapter 1256, Statutes of 1993 and Chapters 146 and 1198, Statutes of 1994, ***does not impose a new program or higher level of service.***

B. THE BASIS FOR EXPULSION

The Claimant alleged that sections 48900, 48900.2, 48900.3, and 48900.4 impose a new program or higher level of service upon school districts. [21] However, no allegations which are specific only to these sections are made by claimant.

Therefore, limited to the provisions of Education Code sections 48900 et seq., the Commission incorporated the analysis, findings, and conclusions contained in the Test Claim on Pupil Suspensions from School (CSM-4456) into this Statement of Decision with appropriate modifications.

Prior Law

The recodification of the Education Code by Chapter 10 10, Statutes of 1976 (Chapter 1010/76) did not significantly alter pre-1975 law on grounds for expulsion. Therefore, the 1976 recodified version and its section numbers are used here as the Comrnission's reference point for prior law (pre-1975 law). The earliest claimed chapter in this test claim on "grounds for expulsion" is Chapter 965, Statutes of 1977.[22]

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[21] References to section 48900 et seq." shall mean "sections 48900, 48900.2, 48900.3, and 48900.4."

[22] During the October 31., 1996 hearing, the claimant expressed concerns about the Commission's reference to 1976 statutes. In response to claimant's concerns, pre-1975 section numbers are incorporated into this decision.

Former section 48902[23] stated that "good cause" was not limited to those offenses enumerated in section 48903 :[24]

> "As used in Sections 48900 and 48901, 'good cause' includes those offenses enumerated in Section 48903, but is not lirnited to those offenses. " (§ 48902, Ch. 10 10/76, derived from former § 10601.6.)

As defined in section 48903, "good cause" included the following offenses:

> "Continued willful disobedience, habitual profanity or vulgarity, open and persistent defiance of the authority of the school personnel, or assault or battery upon a student, upon school premises or while under the authority of school personnel, or continued abuse of school personnel, assault or battery upon school personnel, or any threat of force or violence directed toward school personnel, at any time or place shall constitute good cause for suspension . . . from school; however, no pupil shall be.. . expelled unless the conduct for which he is to be disciplined is related to school activity or school attendance. " (§ 48903, Ch. 1010/76, derived from former § 10602.)

In 1977, Chapter 965 repealed sections 48902 and 48903 and replaced them with Education Code section 48900. The claimant alleged that section 48900 ". . .did not merely restate the existing grounds for expulsion, it changed the statutory construction philosophy: Whereas former section 48902 clearly indicated that "good cause" for expulsion included several stated pupil behaviors and acts, new section 48900 stated that no expulsion could be made except for the enumerated causes, thereby substituting (and mandating) the statutory judgment of the Legislature for the judgment of school personnel, thus establishing the parameters of the state mandate to expel pupils for specified behavior. "

The test claim legislation -- Education Code sections 48900, 48900.2, 48900.3, and 48900.4, provides that no pupil shall be expelled from school unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any offense from 15 categories. Section 48900 further defines the pararneters for expulsions by specifying that the act must be related to school activity or attendance. However, the law does not limit the occurrence of these acts to school grounds; while going to or coming from school; during lunch or off campus; or during, or while going to or Corning from, a school-sponsored activity.

Education Code section 48900 lists and simultaneously limits the grounds for pupil expulsion. Sections 48900.2, 48900.3, and 48900.4 added sexual harassment, hate crimes, and verbal harassment or intimidation to the grounds for expulsion.

The first sentence of each of these three new sections states that a recommendation for expulsion ***may*** be made if the superintendent or principal determines the pupil has engaged in one of the proscribed acts. As in section 489 11, the word ***may*** is included to indicate the Legislature's intent that suspensions based on these offenses are permissive.

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[23] Derived from section 10601.6, added by Chapter 164, Statutes of 1972.

[24] Derived from section 10602, amended Chapter 102, Statutes of 1970 and by Chapter 65, and Statutes of 1975.

The claimant cited the importance of the repeal and replacement of section 48900 made through Chapter 965, Statutes of 1977, and Chapter 498, Statutes of 1983: ". . . after two repeals of prior law, school districts were required beginning in 1977 to expel pupils for specified acts, rather than just 'good cause,' after other means of correction failed. "

The Commission noted that in a previous, related test claim ***(Pupil Classroom Suspensions*** - CSM-4458), section 48900 of the Education Code had been examined and found ***not to*** require suspensions; rather, section 48900 prohibits them unless the superintendent or principal of the school determines that the pupil has committed any of the enumerated acts set forth therein. In that claim, the Comrnission found that a determination of whether the repeal and replacement of statutes imposes a new program or higher level of service upon a local agency requires substantive analysis of prior law and subsequent claimed chapters to ascertain if a new program or higher level of service has been created.

Claimant contended that section 48900 expands the definition of "good cause" under prior law and requires school officials to suspend pupils from school for enumerated acts. The Commission disagreed with claimant's contentions for the reasons discussed below:

1. **The definition of "good cause" under prior law was not expanded by section 48900.**

The opening phrase of section 48900, ". . . a pupil shall not be suspended from school . . . or recommended for expulsion unless . . . [engaging in the proscribed acts], " restricts the imposition of suspension from school or recommendation for expulsion to the enumerated acts. Education Code section 48900 et seq. differs from the relevant provisions of prior law by providing a closed listing of offenses which can lead to suspension or expulsion.

Upon examination, the Commission found that the enumerated acts in current law are consistent with prior law and its concept of "good cause."

Further, the recent additions to the proscribed acts also include discretionary language. Education Code section 48900.2, explicitly states that "***. . . a pupil may be expelled*** from school . . . " if determined to have committed sexual harassment. The same phrase ***"may be suspended"*** is also included in new sections 48900.3 and 48900.4 which add hate crimes and harassment or intimidation. The Commission noted that all of these more recent, permissive statutory provisions are consistent with the former section's definition of good cause.

As under prior law, the acts upon which a discretionary expulsion may be based are included in statute. The Commission found that the school expulsion program has not been substantively altered by the repeal and replacement of statutes as alleged by claimant because the behaviors defined as inappropriate under current law meet the definition of "good cause" for suspension under prior law. Further, the Commission concluded that, while the provisions of Education Code section 48900 narrow prior law's non-exclusive definition of "good cause, " such legislation does ***not*** impose a new program or a higher level of service.

2. Section 48900 et seq. does not require school officials to recommend the expulsion of pupils for the enumerated acts.

Section 48900 et seq. limits the discretionary authority of school officials to recommend the expulsion of pupils from school for specific enumerated acts. Although the form of section

48900 differs from the form of prior law, the substantive provisions, namely the authority for school expulsions based on specific acts or good cause, have continuously been in effect since ***before 1975.***

Also, even though section 48900 has been amended, nothing has been added which can be construed to require school officials to recommend expulsion of pupils from school each time one of these acts is committed. Thus, the Commission found that the limiting language which follows the categorical listing of enumerated offenses (a) through (1) is not a new requirement, but stems from former section 48903's limitation of expulsions to conduct related to school activity or attendance.

In ***Pupil Classroom Suspensions,*** CSM-4458, the Cornmission reaffirmed a previous, related finding that the authorization to suspend pupils from school for inappropriate behaviors has been in existence since ***before*** 1975. Moreover, in ***Pupil Suspensions from School, the*** Commission concluded that sections 48900, 48900.2, 48900.3, and 48900.4, as enacted by the subject chapters, do not impose upon school districts a new program or higher level of service within the meaning of section 6 of article XIII B of the Constitution and section 17514 of the Government Code.[25]

[25]The Commission also observed that the current enumeration of inappropriate behaviors originally enacted in 1977 is consistent with case law, providing the specificity needed to avoid pupil due process violations for vagueness. ***See Abella v. Riverside Unijied Sch. Dist.*** (December 21, 1976) 65 C.A.3d 153, 169-170; 135 Cal.Rptr. 177); ***Meyers v. Arcata School Dist., 269*** Cal.App.2d 549, 558; in a similar case, the term "misconduct" was held to violate the due process clause of the Fourteenth Amendment by reason of its vagueness. (*Soglin* ***v.*** *Kauffman* (W.D.Wis. 1968) 295 F.Supp. 978, 991.)" Former section 48907 authorized school boards to suspend pupils for "misconduct" when other means of correction failed to bring about proper conduct. The Legislature's decision to change the approach and enumerate inappropriate behavior, narrowed the basis for discretionary suspensions. Thus, the elimination of the open-ended phrase "good cause" represented the Legislature's intent to codify this constitutional standard. As such, it would not be a reimbursable state mandated program or higher level of service, because the subject chapters conformed state law to constitutional requirements.

C. PROCEDURES FOR EXPULSION

Background on Legislative History and Due Process

Whether Education Code section 489 18 imposes a new program or higher level of service rests upon a determination of whether it is mandated by the state or by principles of federal constitutional law. [26] This test claim involves a pupil's constitutional right to due process, guaranteed by the 14th Amendment and triggered whenever a state agency (school district) seeks to deprive a person of protected interests.

The 14th Amendment of the United States Constitution provides that no state may deprive any person of life, liberty, or property without due process of law. The due process provision of the California Constitution is identical in purpose and scope with the due process clause of the 14th Amendment. (Cal.Const. Art. I, §§ 7, 15.)

If a state voluntarily provides public education, it cannot deprive a person of that education without providing sufficient procedural due process. (Goss v. ***Lopez*** (1975) 4 19 U.S. 565, 572-573; 95 S. Ct. 729, 735-736 .) California is such a state. California has extended the right to an education by virtue of two constitutional provisions, one calling for legislative encourage-ment of education (Cal. Const., art. IX, §1) and the other requiring the Legislature to create a system of "free schools" in each district of the state (Cal. Const. , art. IX, §5 .) It has also extended the right to an education by a statutory prescription for a compulsory full-time education for all persons between the ages of 6 and 16. The importance of this right has been repeatedly emphasized by the California Supreme Court. ***(Piper v. Big Pine School Dist.*** (1924) 193 Cal. 664, 670; *Serrano* ***v. Priest*** (1971) 5 Cal.3d 584, 608-609.)

In 1973, the federal Ninth Circuit Court of Appeals held that expulsion procedures were unconstitutional for failing to provide any hearing at which a student could be represented by counsel and could present his own witnesses and cross-examine adverse witnesses. ***(Black Coalition v. Portland School District No. 1 (9th*** Cir. 1973) 484 F.2d 1040.)

Finally, in 1975, the U. S . Supreme Court issued its landmark decision in Goss ***v. Lopez, supra,*** 4 19 U. S . 565, 58 1. This case addressed the due process required for a short term suspension of 10 days or less. The court held that a student must be given "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. " The Supreme Court held that, where a state has established and maintained a public school system, "the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause. The court reasoned that due process, "requires at

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[26] In the County ***of Los Angeles v. State of California, supra, 32*** Cal.App.4th 805, the court affirmed the Commission's decision *(Defense* ***of Indigents in Capital Cases, CSM-4411)*** and "held that the requirements of Penal Code section 987.9 were not state mandated, since even in the absence of the statute, counties would be responsible for providing ancillary services to indigent defendants under the federal constitutional guaranties of right to counsel and due process (U.S . Const. 6th and 14th Amends.). And, even assuming that the provisions of the statute constitute a new program, it does not necessarily mean that the program is a state mandate under Cal.Const. Art. XIII B, section 6. The requirements of Penal Code section 987.9 are not mandated by the state, but rather by principles of constitutional law.. . . "

least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school. " (*Id.*)

The Supreme Court cautioned, however, "[w]e stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with ***short suspensions*** must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident." (*Id.* at p. 583.) Finally, the court specifically left unresolved the question of what process is due in an expulsion hearing: "We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term [as here], may require more formal procedures. " (*Id.* at p. 584.)

Although the U.S. Supreme Court chose not to address what process is due in an expulsion hearing, one local federal court reviewed California's 1975 statute to determine if it met federal due process requirements. In ***Gonzales*** v. *McEuen,* (CA.CD. March 2, 1977) 435 F.Supp.460, this federal court declared:

> "It is now beyond argument that due process protections apply to expulsion of students by public educational institutions. The prerogative of the educational institution to regulate student conduct, though concededly broad, must be exercised consistently with constitutional safeguards. Goss v. ***Lopez*** (citations omitted) The question here is common to almost every case in which it is claimed due process has been violated: 'once it is determined that due process applies, the question remains what process is due?" ***Goss, supra,*** 419 U.S. at 577, 95 S.Ct. at 783; *Morrissey* ***v. Brewer, 408*** U.S. 471 at 481, 92 S.Ct. 2593.
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> "The requirements of due process are flexible and different cases may require different procedural safeguards. If the possible penalties are mild, quite informal procedures may be sufficient. More formal proceedings may be required where severe penalties may attach. See Goss ***v. Lopez, supra.*** Where the cutoff is between a 'severe' and a 'mild' penalty is not clear; what is clear is that expulsion is by far the most severe. ***(Id., 466.)***
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> ". . . Goss clearly anticipates that where the student is faced with the severe penalty of expulsion he shall have the right to be represented by and through counsel, to present evidence on his own behalf, and to confront and cross-examine adverse witnesses.
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> "Other courts have held that a hearing incorporating these safeguards must be held before or shortly after a child is suspended for a prolonged or indefinite period. (Citations omitted) This court agrees." ***(Id.*** at 467.)
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> "Notice to be adequate must communicate to the recipient the nature of the proceeding. In an expulsion hearing, the notice given to the student must include a statement not only of the specific charge, but also the basic rights to be afforded the student; to be represented by counsel, to present evidence, and to confront and cross-examine adverse witnesses. Section 10608 of the California Education Code [current section 48918] provides, inter alia, for notice to the student and the parent of the specific charge, of the right to be represented by counsel, and of the right to present evidence. Federal due process requires no less." (Id. at 467.)

The goal of the Legislature to safeguard the constitutional and statutory right of California children to a free education by establishing fair procedures which must be followed before that right is withdrawn was also recognized in *Slayton* ***v. Pomona*** *Unified* ***School District et al.*** (1984) 161

Cal.App.3d 538. This court based its conclusion on its review of the 1977 statute and stated, in pertinent part:

> "In 1977, the Legislature enacted chapter 965 which repealed former section 48900 of the Education Code and added a new section 48900 and a new section 48900.2 to the code. (Stats. 1977, ch. 965, §§ 3, 4.). . . (citation omitted) . . .These revisions to the Education Code were in response to a decision of the United States Supreme Court in *Goss* v. ***Lopez*** (1975) (citation omitted) in which the court applied the requirements of procedural due process to suspensions of public school pupils.. . .
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> "Chapter 965 was an attempt by the Legislature to satisfy the procedural due process requirements of Goss.. .The obvious goal of the Legislature in enacting chapter 965 was to safeguard the constitutional and statutory rights of California children to a free education by establishing fair procedures which must be followed before that right is withdrawn.. . ."

The purpose of the 1977 enactment to revise procedures concerning suspensions and expulsions as California's response to Goss was also recognized by Witkin's Summary of California Law, Ninth Edition (1988) (Vol. 7 Constitutional Law § 548, at 754.)(Referring to Chapter 965.); ***John A. v. San Bernardino*** *Unified* ***School Dist.*** (1982) 33 Cal.3d 301, 313 (dis. opn. of Mosk, J.).

The responsibility to set minimal requirements of due process is the responsibility of each state and not the United States Supreme Court. (*Morrissey* ***v. Brewer, supra, 408*** US. 47 1, 488) However, the minimal requirements of due process will be defined by judicial decision if a legislative response is not forthcoming. In 19 15, the U.S. Supreme Court in the decision of Coe v. ***Armour Fertilizer Works*** (1915) 237 U.S. 413, 59 L.Ed. 1027, 35 S.Ct. 625, held:

> "Extra-official or casual notice, or a hearing granted as a matter of favor or discretion does not take the place of the notice with right and opportunity to be heard which the due process provision of the Federal Constitution requires. It is not enough that the owners [of property] may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard. This notice must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace. The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion. The law itself must save the parties rights, and not leave them to the discretion of the courts. ***(Coe v. Armour Fertilizer Works, supra, 237*** U.S. 413, 59 L.Ed. 1027, 35 S.Ct. 625.)

The Cornmission recognized that the components of due process included in the California statutes are nearly identical with the minimal elements of due process prescribed by the U.S. Supreme Court in a case involving parole revocations: (a) written notice of the violations alleged and disclosure of evidence against him or her; (b) opportunity to be heard in person and to present witnesses and documentary evidence; (c) the right to confront and cross-examine adverse witnesses unless it is specifically found that a witness would thereby be exposed to a significant risk of harm; (d) in each case, the decision maker must be impartial; (e) there must be some record of the proceedings; and (f) the decision maker's conclusions must be set forth in written form indicating both the evidence and the reasons relied upon. ***(Morrissey v. Brewer, supra, 408*** U.S. 471, 488) The Commission also noted that in a later California case, the California Supreme Court determined what due process rights may be asserted by a minor when a parent initiates the action in the exercise of the parent's responsibility to obtain that care which the parent reasonably believes necessary to proper upbringing of his child. In the case of ***Roger S.*** (1977) 19 Cal. 3d 92 1, a 14-

year old minor sought release from confinement in Napa State Hospital, to which he was admitted by his mother. In this case, the court stated:

> "When the state participates in the deprivation of a person's right to personal liberty, even a conditional liberty, due process requires that the facts justifying that action be reliably established. To that end the United States Supreme Court has suggested that, at a minimum, due process requires that the person receive a hearing after adequate written notice of the basis for the proposed action; an opportunity to appear in person and to present evidence in his own behalf; the right to confrontation by, and the opportunity to cross-examine, adverse witnesses; a neutral and detached decision maker; findings by a preponderance of the evidence; and a record of the proceeding adequate to permit meaningful judicial or appellate review.. . . "

After extensive discussion, the Cornmission found that specified portions of Chapter 1253, Statutes of 1975, and Chapter 965, Statutes of 1977, and other subject chapters, *do not impose a reimbursable state mandated program upon school districts, but instead, codify in the Education Code the minimal due process rights of pupils under the 14th Amendment to the United States Constitution.* The Cornmission's findings are detailed below:

1. Adoption of Rules and Regulations (§ 48918.)

Prior to the enactment of Chapter 1253, Statutes of 1975, there was no rulemaking requirement. The test claim statute revised and expanded the procedures for expulsion of pupils by requiring school boards to adopt specified procedural requirements. Therefore, the Cornmission concluded that the first paragraph of section 48918 imposes a reimbursable state mandated program. However, the Commission further determined that reimbursement for implementation of the individual subdivisions would be limited to those rules and regulations required by state statute that were not required under prior state law and/or were not within federal due process procedures mandated by the 14th Amendment of the United States Constitution.

Although school districts are eligible for reimbursement of a one-time cost for the initial development of the rules and regulations after enactment of each subject chapter, beginning in 1975, the eligible claiming period for this test claim begins on July 1, 1993. Accordingly, the Commission recognized that much of the reimbursable cost mandated by the state for adoption of regulations required by the subject chapters will be negligible.

2. The Due Process Hearing (§ 48918, subd. (a).)

Prior law authorized governing boards of school districts to hold hearings to consider the expulsion, suspension or discipline of a pupil in executive session, unless the pupil or his or her parent or guardian made a written request for a public hearing within 48 hours after receiving notice that a hearing was to be held. (§ 967, added by Chapter 629, Statutes of 1963 .)

A 1966 Attorney General's Opinion (48 Ops. Cal. Atty .Gen. 4, 8 (1966)) stated, that, "Since the decision of the local governing board to expel a pupil is subject to appeal to the County Board of Education (§ 10608) it would appear that evidence must be presented to the governing board and a record made which, if reviewed by the county board would show the existence of facts justifying an expulsion." This language confirms that prior law contemplated that the governing board would render a decision in expulsions. However, the statutes provided no direction to governing boards

concerning timelines for scheduling of the hearing, the right to postponement by the student, or a deadline for rendering a decision.

The purpose and intent of the provisions contained in current section 489 18, subdivision (a), were previously contained in ***former*** section 48914, which was the subject of review by a California appellate court. In ***Garcia v. Los Angeles County Bd. of Education (1981) 123*** Cal.App.3d 807, 812-810, the court reviewed the legislative history of expulsion procedures:

> "In apparent response to this mandate [referring to *Goss*], the California Legislature, in 1975, enacted the predecessor statute to Education Code section 48914 [48918 under current law], which provided that in expulsion cases, '[the] pupil and his parent or guardian shall be entitled to a hearing to determine whether the pupil should be expelled. '" (former § 10608, added by Stats. 1975, ch. 1253, § 4, p. 3275.)
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> "In 1976, that statute was repealed and section 48914 was enacted, which provided that the expulsion hearing 'shall be held within 20 calendar days of the date expulsion is recommended' or 'within 25 calendar days of the date suspension is ordered for the offense.' This statute was amended in 1978, changing the words 'calendar days' to 'schooldays, ' thus lengthening the period of time provided the school board to hold a hearing. "
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> "It appears from the history and from the reading of the statute that the intent of the legislation is to provide a student with the protection of due process when faced with the possible forfeiture of the 'legitimate entitlement to a public education as a property interest. ' (Goss v. ***Lopez,*** *supra*, at p. 574.) One aspect of the procedural protections of due process is the opportunity to be heard within a reasonably prompt period of time. ***(See, In re Davis*** (1979) 25 Cal.3d 384, 391-392 [158 Cal.Rptr. 384, 599 P.2d 690].) The 1976 and 1978 amendments to the statute were obviously an attempt to define the period of delay during which it is reasonable to summarily deprive the student of his fundamental right to public education. The consequence of holding the time limit to be mandatory would, therefore, promote the purpose of the enactment. The Legislature further evidenced its mandatory intent in using the word 'shall' and its intent that those limits be jurisdictional, by providing in section 48914, subdivision (a) that: '[In] the event that compliance with the above time requirements is impractical, the expulsion hearing may be delayed, for good cause, up to five additional schooldays. ' . . . . "
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> ". . . . The time provision for the date by which a decision must be reached is, however, merely a corollary of the right to a tin-rely hearing. . . The 10-15 day period for which the Legislature has allowed between the convening of the hearing and the required decision allows sufficient time for both. To shorten this interim period by allowing the hearing to be set at a later time would create the risk that the student might be denied the right to a full and fair hearing reflecting a considered decision. This would defeat the purpose of the statute."

The Commission agreed with the reasoning of ***Garcia*** and found that: (i) the purpose of subdivision (a) of section 48918 is to provide due process for students faced with expulsion from school, (ii) among the procedural protections of due process is the opportunity to a timely hearing, and its corollary, the right to have a decision on the expulsion rendered by a date certain.[27]

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[27] In *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, the California Supreme Court held that when the Legislature has specified a time within which an administrative board is to render a decision, that time limit may be mandatory in the obligatory sense, but this does not necessarily mean that a failure to comply with its provision causes a loss of jurisdiction. Thus the court held that a statutory requirement for the State Personnel Board to render a decision within the statutory time is directory, not mandatory, and the California State

Accordingly, the Comrnission determined that subdivision (a) of section 48918 ***does not*** impose a reimbursable state mandated program because these statutory provisions codify the minimal federal due process rights of pupils required under the 14th Amendment to the United States Constitution.

3. Written Notice of the Hearing (§ 48918, subd. (b) .)

Under prior law, section 967 required the governing board, by registered or certified mail or by personal service, to notify the pupil and his parent or guardian (or only the pupil if the pupil was an adult) of the intent of the governing board of the district to call and hold an executive session on a suspension, expulsion, or other disciplinary matter. (57 Ops. Cal. Atty.Gen. 439-440 (1974).)

The Cornrnission observed that the original purpose of section 489 18, subdivision (b), was to codify the minimal due process procedures required for notice and hearing of the charges upon which a recommendation for expulsion would be based. At the October 3 1, 1996 hearing on the test claim, the claimant asserted that expelled students are not constitutionally entitled to a specific statement of facts, only a statement of charges. ***(Nash v. Auburn University*** (1 lth Cir. 1987) 8 12 F.2d 655, 663 .) After a lengthy discussion, the Commission concluded that the requirement for school districts to include ***a statement of the specific facts and charges upon which the proposed expulsion is based,*** is an element of federal due process, and as such, does not constitute a reimbursable state mandated program.

The claimant asserted that expelled students had no right to representation in an expulsion proceeding. ***(Osteen*** v. ***Henley*** (7th Cir. 1993) 13 F.3d 221, 225 and ***Jaksa v. Regents of University of Michigan*** (1984) 597 F .Supp. 1254.) The Commission noted that ***the Jaksa*** court recognized that courts are split on the issue of the right to representation in student disciplinary proceedings. Accordingly, the Commission found that notification of the right to be represented by counsel is an element of due process, thus, a federal requirement, and not a reimbursable state mandated program. ***(Gonzales v.*** *McEuen*, ***supra, 435,*** F.Supp. 460; ***Black Coalition v. Portland, supra, 474*** F.2d 1040.)

Further, the Commission approved claimant's contentions and found that the following requirements, are outside the scope of due process and thus constitute a reimbursable state mandated program: including a copy of the district's disciplinary rules that relate to the alleged violation in the notice of expulsion hearing; providing notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing, and the parent or pupil's obligation pursuant to subdivision (b) of section 48915.1; and upon request of the pupil's parent or guardian, providing the opportunity to inspect and obtain copies of all documents to be used at the hearing.

The Commission noted that the federal Family Educational Rights and Privacy Act of 1974 (FERPA) requires states and school districts receiving federal funds to establish appropriate procedures allowing parents/guardians or eligible students access to the records upon request. However, federal law does not require states to grant access to parents or guardians of eligible students, or to students who are under 18 years of age. Since California law does not make this distinction, the provision of access and records to the parent or guardian of an 18-year old student

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Personnel Board retains jurisdiction over the employee's appeal notwithstanding its failure to render a decision within the statutory time limits. In so doing, the court rejected the plaintiff's contention that the statute was mandatory and jurisdictional ***(Garcia v. Los Angeles County Board of Education*** (1981) 123 Cal.App.3d 807).

(eligible student) or to a student who is less than 18 years of age would constitute a reimbursable state mandated program. (20 U.S.C.A. § 1232g(a)(1)(A) and § 48918, subd. (b).) Further, the right of the parent or guardian of a pupil who is less than 18 years of age to inspect documents under FERPA is limited to documents that are "education records" as defined in 20 U.S. C. section 1232g(a)(4). Education Code section 48918, subdivision (b), grants a right to inspect and obtain copies of all documents to be used in the expulsion hearing. Moreover, the Commission found that providing parents and guardians of pupils less than 18 years of age with documents, which are not "education records", is reimbursable.

As to the remaining requirements, the Commission noted that the form of the notice requirements has changed since the original 1975 enactment, but the substance has remained the same since the 1977 enactment in response to Goss. The Commission also found that the new requirement for school districts to include a notice of the parent, guardian, or pupil's obligation pursuant to subdivision (b) of section 48915.1, in the notice of hearing is a reimbursable state mandated program.

The Commission found that, except as stated above, the text of section 48918, subdivision (b), as added by Chapter 1253, Statutes of 1975, and amended by the subject chapters, codifies minimal federal due process requirements for notice. As such, school districts would be required to comply with these requirements irrespective of the state statute and, therefore, subdivision (b) does *not* impose a reimbursable state mandated program, *except as stated above.*

The Commission further determined that reimbursement for these mandated activities shall be limited to recommendations for expulsions based upon the following acts: (1) causing serious physical injury to another person, except in self-defense; (2) possession of any firearm, knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds; (3) unlawful sale of any controlled substance, as defined in section 11007 of the Health and Safety Code; and (4) robbery or extortion. (§ 48915, as added by Stats. 1983, ch. 483, and amended by Stats. 1993, ch. 1255 and ch. 1256.)

4. Board Hearing on the Recommendation for Expulsion (§ 48918, subd. (c).)

The Commission found that closed sessions for the consideration of disciplinary matters were authorized under prior law and that the new requirement, which states -- if any person is admitted to a closed session, that the pupil and his or her parent or guardian, or counsel, shall also be allowed to attend -- is fundamental to a pupil's right to a fair hearing. The determination to expel cannot be based on confidential reports or independent information received by the governing board (hearing officer or administrative panel). The pupil has a right to cross-examine witnesses and produce evidence in refutation. Thus, it is *nut* a reirnbursable state mandated program because it was enacted by the Legislature to codify the minimal federal due process rights of pupils under the 14th Amendment to the United States Constitution.

Therefore, the Cornmission determined that section 489 18, subdivision (c), does *not* impose a new program or a higher level of service.

5. Alternative Hearing Officers (§ 48918, subd. (d).)

The Comtnission found that the authorization to permit a governing board to delegate conduct of the "hearing" further clarifies a pupil's right to a hearing. As such, it codifies the minimal due process rights under the 14th Amendment to the United States Constitution and accordingly is *not* a reimbursable state mandated program.

6. Recommendation Not to Expel to the Governing Board (§ 48918, subd. (e).)

Subdivision (e) applies exclusively to those expulsion cases which have been delegated to hearing officers or administrative panels under subdivision (d), and which result in a decision not to recommend expulsion.

After receipt of a mandatory recommendation for expulsion, the governing board has no choice in the matter but to hold an expulsion hearing. The board may conduct the hearing itself or delegate the expulsion hearing to a hearing officer or administrative panel. When it is recommended that the pupil not be expelled, the due process hearing has served its purpose. However, for the school district, the work is not done. There is a new requirement for the superintendent or the superintendent's designee to consult with school district personnel, including the pupil's teachers, and the pupil's parent or guardian before reinstating the pupil and permitting him or her to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs. The consultation required under this subdivision is not part of the pupil's right to a due process hearing, nor was it required under prior law.

The additional activity to consult with others prior to reinstating the pupil may be required. However, if the activity follows the discretionary decision of the governing board - delegation of the hearing to a hearing officer or adrninistrative panel – the Commission concluded that it is *not* a reimbursable state mandate. *(See City of San Jose v. State of California, Kathleen Connell, et al.* (1996) 96 Cal.App.4th 1802 (rev.den.).)

7. Hearing Officer or Panel's Expulsion Recommendation to the Governing Board (§ 48918, subd. (f).)

The first paragraph of subdivision (f) requires the hearing officer or panel to prepare and submit findings of fact based solely on the evidence adduced at the hearing to recommend the expulsion of a pupil to the governing board and also specifies that the governing board's acceptance of the recommendation must be based either upon a review of the findings of fact and recommendations or upon the results of any supplementary board hearing. The first sentence of the second paragraph requires the governing board to base a decision to expel a pupil upon substantial evidence relevant to the charges adduced at the hearing.

The claimant contended that pupils have no right to written findings in an expulsion hearing.[28] However, the Cornrnission determined that the requirement for hearing officers or panels to prepare and submit findings of fact based solely on the evidence and for the governing board to review the findings of fact before expelling a pupil codify an element of due process. (*Morrisey v.*

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[28] ***Bleiker v. Board of Trustees*** (S.D. Ohio 1980) 485 F.Supp. 1381, 1387-88, and ***Herman v. University of South Carolina*** (D.S.C. 1971) 342 F.Supp.226, 232, aff'd 457 F.2d 902 (4th Cir.1972). In a letter, dated January 16, 1997, claimant cited ***Linwood v. Board of Education,*** 463 F.2d 763, 770 (7th Cir.1972), cert. den. 409 U.S. 1027 (1972); ***Jaksa v. Regents of University of Michigan*** 1984, 597 F.Supp. 15 1253-54.

Brewer, supra, 408 U.S. 471, 488; see also 7 Witkin, Summary of California Law (8th ed. 1988) Constitutional Law § 532, p. 735; and further supported by ***Morale v.*** *Grigel* (D.N.H. 1976) 422 F.Supp. ***988; Vail v. Board of Education of Portsmouth School Dist.*** (D.N.H. 1973) 354 F.Supp. 592, 603-604, aff'd in part ***502*** F.2d 1159; *Marin* ***v. University of Puerto Rico*** (D.P.R. 1974) 377 F.Supp. 613.)

The Commission recognized that a fair hearing requires that the decision maker's conclusions be set forth in written form indicating both the evidence and the reasons relied upon. The pupil would be denied a fair hearing if the governing board did not review the findings of fact before voting to accept a recommendation of a hearing officer or panel. Therefore, the Commission found that the statute represents a codification of constitutional principles and, therefore, cannot constitute a reimbursable state mandated program.

The Commission found that prohibiting a governing board from relying exclusively upon hearsay evidence to support the expulsion of a pupil codifies a federal court decision and principles of constitutional law and, therefore, cannot constitute a reimbursable state mandated program. In ***Gonzales*** v. *McEuen* (C. D. Cal. 1977) 435 F. Supp. 460, the district court rejected the use of hearsay statements in a school discipline proceeding on the grounds that, "the accused student [was] deprived of his constitutional right to confront and cross examine his accuser. " ***(Id.*** at. p. 469.) The district court recognized that the rules of evidence did not apply strictly at such proceedings; however, it ruled that due process prohibited the use of unsworn testimony by witnesses not subject to cross-examination. ***(Id.)***

The Commission further found that the witness protection procedures in the second paragraph codify a holding of the California Supreme Court in ***John A. v. San Bernardino City*** *Unified* ***School Dist. (1982)*** 33 ***Cal. 3d 301,*** and, therefore, cannot constitute a reimbursable state mandated program. The California Supreme Court reversed a case involving the expulsion of a pupil based upon a written report by the principal and statements by witnesses. Here, there was conflicting testimony in which the student denied the allegation, but no testimony by the witnesses. The California Supreme Court held that administrative reports could not be relied upon when evidence is conflicting and witnesses are readily available. The court also stated that statements and reports may be relied on when it is found that disclosure of an informant's identity and his production as a witness would subject him to a significant and specific risk of harm. (*Id*. at p. 308.) Based on the foregoing review, the Commission found that section 48918, subdivision (f), does ***not*** impose a new program or higher level of service because the statute codifies minimal federal due process requirements. ***(Morrissey v. Brewer, supra, 408,*** U.S. ***47*** 1, ***488; Gonzales v.*** *McEuen* ***(C*** .D. Cal. 1977) 435 F.Supp. 460; and ***John A. v. San Bernardino City Unified School*** *Dist*. ***(1982) 33*** Cal.3d 301.)

8. Record of Hearing (§ 48918, subd. (g).)

There was no requirement in prior law for governing boards to make a record of expulsion hearings. The Commission noted that this requirement was added by the Legislature in 1975, in response to Goss.

The Commission recognized that when the State participates in a pupil expulsion proceeding, due process requires that the facts justifying that action be reliably established. Therefore, if requested by the pupil, arrangements must be made to make a record of the proceedings adequate to permit

meaningful judicial or appellate review. (See e.g., *Morrissey* v. Brewer, ***supra, 408*** U.S. 47 1, ***488; In re Roger S., supra,*** 19 Cal.3d 921, 939.)

The claimant contended that an expelled student has no constitutional right to a record of an expulsion hearing. [29] However, the Comrnission recognized that, "[w]hen an expulsion appeal results in a trial de novo, a student is not deprived of procedural due process by virtue of failure of their school to make a record of the disciplinary hearing." ***(Morale v.*** *Griegel* (D. N. H. 1976) 422 F.Supp.988.) The Commission also recognized *Marin* ***v. University of Puerto Rico*** *(D.* ***P.R. 1974)*** 377 ***F. Supp. 613,*** in which the federal court held that "due process requires full hearing.. .the proceedings of which are transcribed.. . ."

Since this subdivision was added by Chapter 1253, Statutes of 1975, and remains largely unchanged, the Cornmission found that it was enacted in response to Goss. Therefore, the Commission determined that section 48918, subdivision (g), does ***not*** impose a reimbursable state mandated program because it was enacted by the Legislature to codify the minimal federal due process rights of pupils under the 14th Amendment to the United States Constitution.

9. Applicable Evidentiary Standard (§ 48918, subd. (h).)

Under prior law, there were no evidentiary standards for pupil expulsions in the Education Code. As originally enacted in 1975, subdivision (f) stated that the technical rules of evidence did not apply to an expulsion hearing and set the evidentiary standard for pupil expulsions. A later version of the statute provided for "preponderance of the evidence." In 1977, Chapter 498 amended the second sentence of section 48914, subdivision (f) (enacted by Ch. 1010/76) to require that the decision of the governing board to expel must be supported by a preponderance of the evidence."

The Cornrnission recognized that the current provisions of subdivision (h) contain the "substantial evidence" standard which was established in the original 1975 and 1977 legislation in response to Goss. As such, the evidentiary standard is encompassed within minimal federal due process. Accordingly, the Commission determined that subdivision (h) of section 489 18 does ***not*** impose a reirnbursable state mandated program.

10. Governing Board Decision in Public Session (§ 48918, subd. (i).)

Both prior and current law require a governing board to order pupil expulsions in open session. Therefore, the requirement contained in the first sentence of subdivision (i) does ***not*** impose a new program or higher level of service. Although notification of the decision to expel and the right to expulsion appeals occurred under prior law, such notification would have been optional because it was not required by state law. Implicit in notification of the right to appeal the expulsion is inclusion of information on the county board of education's appeals process. A hearing before expulsion, with full opportunity to present all the evidence and arguments, is all that is required under the guaranty of due process of law. Rehearings are not essential to due process. One hearing before judgment, if ample, satisfies the constitutional requirement. Moreover, the right of appeal is not essential to due process in administrative proceedings where a hearing has already afforded that due process. (13 Cal. Jur.3d (Rev.) Constitutional Law, $292, pp. 729-730.)

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[29] *Bokyins v. Fairfield Board of Education (5th* Cir. 1974) 494 F.2d 697, 702, and *Jaksa v. Regents of University of Michigan* (1984) 597 F.Supp. 1245, 1252.

The last part of the second paragraph of subdivision (i) requires the superintendent or his or her designee to send notice of the obligation of the parent, guardian, or pupil, upon enrollment in a new school district, to inform that district of the expulsion. The Commission noted that inclusion of this information imposes a limited state mandated program, although this activity should not require more than an additional page or paragraph in the same notification letter.

Therefore, the Cornmission found that subdivision (i) of section 48918, imposes a new program or higher level of service requiring school districts to send written notice to the pupil or the pupil's parent or guardian of:

(1) Any decision to expel or to suspend the enforcement of an expulsion order during a period of probation;

(2) The right to appeal the expulsion to the county board of education; and,

(3) The obligation of the parent, guardian, or pupil under subdivision (b) of section 48915.1, upon the pupil's enrollment in a new school district, to inform that district of the expulsion.

Effective January 1, 1994, Chapter 1257, Statutes of 1993, amended section 48915.1, and changed the scope of the obligation of the parent, guardian, or pupil to offenses other than those described in section 489 15, subdivision (a). An expulsion based on one of these other offenses results from the discretionary exercise of the principal's authority to recommend a pupil for expulsion, and a governing board's authority to expel. Thus, the Commission found that on January 1, 1994, inclusion of, "notice of the obligation of the parent, guardian, or pupil under subdivision (b) of Section 48915.1, " no longer constitutes a reimbursable state mandated program because this requirement (§ 48918, subd. (i).) is triggered by a governing board's discretionary exercise of the authority to expel.

The following activities are reimbursable, limited to expulsion for possession of a firearm, a knife of no reasonable use to the pupil, or an explosive, on or after October 11, 1993 to December 3 1, 1993; and possession of a firearm on or after January 1, 1994 to present, as follows:

Sending written notice to a pupil's parent or guardian of:

- The decision to expel or to suspend enforcement of an expulsion order during a period of probation;
- Right to appeal the expulsion to the county board of education;
- Parent or guardian, or pupil's obligation to inform a new school district of the expulsion upon the pupil's enrollment in the new district.

(Ed. Code, § 48915, subd. (b), as amended by Stats. 1993, ch. 1255 and ch. 1256.)

11. Record of the Expulsion (§ 48918, subd. (j).)

Prior and current law are consistent in requiring governing boards to maintain records of official actions in minutes, to act on expulsions during public meetings, and to designate the record of the expulsion as a public record. (See former § 967.) However, prior law did not require governing boards to record the *cause thereof* of expulsions. Accordingly, the Commission found that subdivision (j) imposes a new requirement upon school districts to maintain a disclosable public record of the expulsion, including

the 'cause thereof, ' and determined that this constitutes a reimbursable state mandated program. However, reimbursement for this provision is limited to expulsions for the following offenses during the following time periods, as specified:

1. For the period from October 11, 1993 to December 3 1, 1993, expulsion of pupils for possession of a firearm, knife of no reasonable use to the student or explosive. ($48915, subd. (b), as amended by Stats. 1993, ch. 1255.)

2. For the period from January 1, 1994 to the present, expulsion of pupils for possession of a firearm. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1256.)

The Commission further noted that this requirement could be met by including the cause thereof in the official minutes of the governing board meeting.

The Commission noted that the Department of Education's pre- 1983 regulations define "mandatory interim record" as a record, which the schools are directed to compile and maintain for stipulated periods of time and are then destroyed. "Mandatory interim records" do not include information on pupil discipline. The regulations instead state that districts may record such information in *'permitted pupil records, " discretionary records which are destroyed when their usefulness ceases, i.e., six months following the pupil's completion of or withdrawal from the educational program. School districts are required to adopt regulations that provide for the forwarding of "mandatory permanent pupil records, " or a copy thereof, upon request of the public or private school in which the student has enrolled or intends to enroll. However, there are no sirnilar requirements concerning the pupil's "mandatory interirn record" or "permitted pupil record". (See Cal. Code Regs., tit. 5, § 430 et seq. (Register 76, No. 40; amended by Register 77, No. 39) .)

Based on the absence of any requirements in prior law, the Commission determined that the third sentence of subdivision (j) of section 48918, ***imposes a new program or higher level of service*** upon school districts by requiring the recording of expulsion orders and the causes therefor in the pupil's mandatory interim record, and upon request, the forwarding of this record to any school in which the pupil subsequently enrolls, limited to those expulsions required under subdivision (b) of section 48915. (Stats. 1993, ch. 1255 and ch. 1256.)

D. PROCEDURES FOR READMISSION

1. Expulsion Orders, Readmission Date; Rehabilitation Plan (§ 48916.)

The Cornrnission found that prior law did not address how school districts should act upon requests for readmission from previously expelled pupils. Therefore, the Cornmission determined that section 48916 imposes a new program or higher level of service upon school district governing boards, limited to mandated expulsions resulting from section 48915, subdivision (b) (as amended by Stats. 1993, ch. 1255 and ch. 1256). The reimbursable mandate consists of the requirements for districts to perform the following activities at the time expulsion is ordered or entered:

- set a date, as specified, when the pupil may apply for readmission to a district school;
- make available to the pupil and his or her parent or guardian a description of the procedure for readmission.

The Commission found that the second paragraph of section 48916 does not impose a new program or higher level of service upon school districts because it merely authorizes governing boards to recommend a plan of rehabilitation for a pupil.

The Commission further concluded that the requirement in the third paragraph of section 48916 for governing boards to adopt rules and regulations to establish a procedure for the filing and processing of requests for readmission, imposes a new program or higher level of service. Although a one-time cost for the initial development of the rules and regulations would have been eligible for reimbursement after enactment of each subject chapter and determination of subsequent mandate claims, the eligible claiming period for this test claim begins on July 1, 1993. Accordingly, much of the reimbursable cost mandated by the state for adoption of regulations required by the subject chapters are not covered by this test claim because the reimbursement period begins on July 1, 1993. Any state mandated regulations required on or after July 1, 1993, will be negligible.

2. Admission of an Individual Expelled From Another School District (§ 48915.1, subd. (a) .)

The intent of Chapter 942, Statutes of 1987 (Ch. 942/87), is set forth in the following legislative findings and declarations:

> "The Legislature finds and declares that a pupil who is expelled from a school district for the serious offenses specified in Section 48915 of the Education Code may enroll, through subterfuge or the failure of communication between school districts, in a school in another school district in the state." [First paragraph.]
>
> "The Legislature finds and declares that the presence of these pupils in any other school during the period of the expulsion represents a possible danger to pupils or employees of the district and that school districts should not evade the responsibility of prohibiting these pupils from enrolling at a school in their school district." [Second paragraph.]
>
> "The Legislature finds and declares that the law is silent regarding the responsibilities of a school district with respect to enrolling a pupil during the period of his or her expulsion from another school district if the pupil has satisfied the residency requirements of the enrolling district." [Third paragraph.] (Ch. 942/87, § 1.)

The Commission noted that except for section 48916, there is no prior law addressing post-expulsion admission procedures. Therefore, the subject chapter created a new program of post-expulsion admission procedures. If an individual who has been expelled from another school district for an act described in section 48915, subdivision (a),[30] requests enrollment in a school maintained by the district, section 489 15.1, subdivision (a), (as added by Stats. 1987, ch. 942, as amended by Stats. 1990, ch. 123 1 and Stats. 1991, ch. 756) requires the governing board to provide notice and conduct a hearing to determine whether the individual poses a continuing danger to either the pupils or employees of the [receiving] school district pursuant to the rules and regulations governing procedures for expulsion of pupils as described in section 48918. Chapter 1256, Statutes of 1993 amended section 489 15.1 by changing the scope of its application to acts other than those described in section 489 15, subdivision (a). At the same time, the hearing

[30] Causing serious physical injury to another person (except in self defense); possession of any firearm, knife, explosive, or other dangerous object.. . ; unlawful sale of any controlled substance.. . ; robbery or extortion.

requirements to admit pupils whose expulsions were based on section 489 15, subdivision (a), were moved to new section 489 15.2.

3. Hearing and Notice Procedures (§ 48915.1)

Section 489 15.1 requires school districts to use the notice and hearing procedures established by section 48918 in determining whether to admit or deny an otherwise qualified individual who was previously expelled by another school district. The Cornmission examined section 48918 and determined that some portions codify federal due process requirements and court decisions, The Commission also determined that some provisions impose a reimburseable state mandated program or higher level of service.

The Commission recognized that a school-aged individual's legitimate claim of entitlement for adrnission to a California school district is based upon age and residency or a voluntary interdistrict transfer agreement. Once a pupil has been expelled from one district, and otherwise qualifies for admission to another district, a new claim of entitlement for admission arises and cannot be taken away without minimum due process protection.

Moreover, the Cornmission noted that Goss also defines a liberty interest in "a person's good name, reputation, honor, or integrity. " ***(Goss v. Lopez, supra, 419*** U.S. at 574, 95 S .Ct. at 736.) The Commission found that the requirement for a governing board hearing and determination on the issue of whether an individual applicant would pose a potential danger to pupils or employees would impair an individual's reputation by lowering his or her esteem in the eyes of pupils, teachers, and others who might afford education or employment opportunities to the child in the future, and thus qualifies for due process protection (§ 489 15.1, subd. (a) .) (Goss v. ***Lopez,*** *supra* at 574-575, 95 S.Ct. at 736-737)

Although the post-expulsion admission hearing would be conducted in closed session, unless otherwise requested, the governing board is required to act in public session. Thus, the Cornmission acknowledged that an admission determination [order] is a public record. However, a finding that an individual poses a "potential danger" is a new consideration. Whether or not all of the facts of the matter are made known in public, an individual's reputation is impaired by virtue of the necessity for the hearing, and the board's obligation to make a decision in public. Under this rationale, the determination of "potential danger . . . . " required by section 48915.1, subdivision (a), to enroll an individual applicant who is otherwise qualified by residency or through an interdistrict transfer agreement clearly impacts an individual's liberty interest in his or her good name.

Having determined that an individual who has been expelled by ***another*** school district still possesses liberty and property interests in his or her public education, it follows that any ***subsequent*** state action tending to deprive the individual of these interests must comply with the due process requirements of the Fourteenth Amendment. The subject chapters address the ***potential deprivation of the right to attend public school.*** A governing board is required to determine ***after a hearing*** if the admission of an individual who has previously been expelled by another school district would pose a potential danger to the pupils or employees of the new school district.

The Cornmission found that determinations which will affect an individual's liberty interests in his or her good name and property interests in his or her continuing a public education require due

process. Due process procedures will provide some assurance against unfair or mistaken findings. In regard to the issue of what process is due, an individual facing interference with the liberty interest in his or her good name and property interest in a public education, "must be given some kind of notice and afforded some kind of hearing . . . the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved." Goss ***v. Lopez, supra, 4*** 19 U.S. at 579, 95 S. Ct. at 739.

The Commission noted that sections 48915.1 and 48915.2 specify that admission determination hearings follow the same procedures established for expulsion hearings under section 48918. Thus, the Commission incorporated its findings regarding section 489 18 into its determination regarding this section. Specifically, the Commission determined that the following requirements, limited to determinations regarding applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district, are outside the scope of federal due process and thus, impose a new program or higher level of service:

- Include in the notice of the hearing, a copy of the rules of the receiving district (hearing procedures), and notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing, as specified. (§§ 489 15.1, 48915.2 and 48918, subd. (b).)
- Notify the applicant and his/her parent or guardian of (1) the governing board's determination of whether a pupil expelled by another school district would pose a potential danger to the pupils and employees of the receiving district and (2) the decision to accept or deny admission. (§§ 48915.1, 48915.2, and 48918, subd. (i).)
- Maintain a record of each pre-admission denial, including the cause thereof. (§§ 489 15.1, 48915.2, and 48918, subd. (j).)

4. Requesting Information and Providing Recommendations (§ 48915.1, subd. (a).)

The Commission found that a discretionary request made by a receiving district to an expelling district, pursuant to section 48915.1, subdivision (a), does not constitute a new program or higher level of service for the receiving district. The Commission noted that the use of the word "may" in subdivision (a) indicates that this is an optional or discretionary activity for the receiving district.

However, the Commission found that the requirement for expelling districts to respond to requests for recommendations is reimbursable, limited to requests from receiving districts that are not parties to voluntary interdistrict transfer agreements with expelling districts. Reimbursement for this provision is further limited to expulsions for the following offenses, during the specified time periods:

1. For the period from October 11, 1993 to December 3 1, 1993, expulsion of pupils for possession of a firearm, knife of no reasonable use to the student or explosive. (§ 489 15, subd. (b), as amended by Stats. 1993, ch. 1255 .)
2. For the period from January 1, 1994 to the present, expulsion of pupils for possession of a firearm. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1256.)

The Comrnission found that expelling districts are not entitled to reimbursement when responding to requests concerning discretionary expulsions. Thus, any activities following the exercise of a discretionary decision to expel will not result in reimbursement for expelling districts.

5. Disclosure of Prior Expulsions by Parent, Guardian or Pupil (§ 48915.1, subd. (b) .)

Since there were no requirements in prior law, the Comrnission found that subdivision (b) of section 489 15.1 imposes a new program or higher level of service upon school districts, by requiring districts to ask applicants and their parents or guardians if the applicants have been expelled from their previous school, and if so, the term and the basis for the expulsion. The Comrnission noted that districts would have revised enrollment applications soon after enactment of the 1987 statute and would have incurred start-up costs before the claiming period.

6. Board Determination on Enrollment of Individual Expelled from Another District (§ 48915.1, subds. (c) & (d).)

Prior law was silent as to the responsibility of governing boards to determine who should be admitted and who should be denied admission based on their potential danger to pupils and employees. Although making enrollment determinations would have been required under prior law, no standards or requirements were specified for the governing board to make such determinations.

July 1, 1993 through December 3 1, 1993

The Commission found that section 48915.1, subdivisions (c) and (d), impose a new program or higher level of service upon school districts by requiring governing boards to determine whether an applicant may pose a potential danger to either the pupils or employees of the school district and whether to admit, deny, or conditionally admit the applicant during or after the period of expulsion. Further, this finding is limited to determinations on applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.

January 1, 1994 (§ 48915.1, subds. (c) & (d), as amended by Stats. 1993, ch. 1257.)

The Commission determined that section 48915.1, subdivisions (c) and (d), imposes a new program or higher level of service upon school districts by requiring governing boards to determine whether an applicant may pose a potential danger to either the pupils or employees of the school district and whether to admit, deny admission, or conditionally admit the applicant during the period of expulsion. The Commission's finding is limited to determinations on applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district.

7. Enrollment of Individuals Expelled From Another District (§ 48915.1, subd. (e) .)

Under prior law, there were no enrollment restrictions based upon prior expulsion from another district.

July 1, 1993 through December 3 1, 1993

Subdivision (e) of section 489 15.1 of the test claim legislation codifies the affirmative duty of school districts to admit certain individuals who have met residency requirements or enrollment criteria. Thus, the Commission determined that no new program or higher level of service is imposed by subdivision (e) because it codifies the existing right of certain pupils to receive an education during the term of expulsion.

January 1, 1994 ($48915.1, subd. (e), as amended by Stats. 1993, ch. 1257.)

Effective January 1, 1994, subdivision (e) of section 489 15.1 requires districts to permit enrollment by non-dangerous individuals during the term of the expulsion upon establishment of legal residence or pursuant to an interdistrict agreement. Although the most recent amendment changes the scope of who is permitted to enroll, it does not alter the right of pupils to enroll when all requirements are met. Thus, the Commission concluded that section 489 15.1 (e) does *not* impose a new program or higher level of service upon school districts because it codifies the right of certain pupils to receive an education.

8. Enrollment of Individuals Expelled from Another District During and After Period of Expulsion. (§ 48915.2) (New § for Preadmission Hearing Requirement for Pupils Expelled For Any Offense Listed in § 48915, sub. (a).)

Section 489 15.2 was added by Chapter 1256, Statutes of 1993, effective January 1, 1994. Prior to this enactment, school districts were required under section 489 15.1 to hold preadmission hearings for pupils expelled for any offense listed in section 489 15, subdivision (a). Effective, January 1, 1994, section 489 15.2 does not require any new activities of school districts, but changes the time in which the activities occur. Also, the requirement previously included in section 48915.1, subdivision (a) (as added and amended by Stats. 1987, ch. 842 and Stats. 1990, ch. 123 1) moved to new section 489 15 .2. After a pupil is expelled by a school district for specified offenses, that pupil is restricted to enrollment in a county community school or a juvenile court school during the term of expulsion. (§ 48915.7, subd. (a) .) Upon completion of the term of expulsion, the pupil has the following options:

- Seek readmission to the original expelling school district;
- Seek admission to another district based on a voluntary interdistrict transfer agreement; or
- Seek admission to another district based on new residency.

Admission of this pupil after the term of expulsion still requires the governing board to conduct a preadmission hearing pursuant to section 48918 before determining if the individual would pose a danger to the pupils and employees of the receiving district. The Commission further found that, unless previously excepted, the notice and hearing provisions are required under principles of constitutional law.

Therefore, the Commission concluded that, after January 1, 1994, receiving school districts are eligible for reimbursement for these activities, pursuant to section 48915.2.

9. Legislative Intent; Expulsion; Possession of Firearm. (§ 48915.7)

Claimant did not allege and the Commission did not find that section 489 15.7 imposed a new program or higher level of service. See analysis of section 48915, subdivision (b), as amended by Chapter 1256, Statutes of 1993.

CONCLUSION

BASED ON THE FOREGOING FINDINGS:

The Commission concludes that the following provisions in Education Code section 48915, subdivisions (a) and (b) impose a new program or higher level of service in an existing program within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code:

- The requirement for principals and superintendents to immediately suspend and recommend expulsion of pupils to governing boards for specified offenses, as follows:

IMMEDIATELY SUSPEND[31]

Date of Offense	*Offenses*
October 11, 1993 through December 31, 1993	***Possession of a prearm, knife of no reasonable use to the student or explosive.***
January 1, 1994 through present.	***Possession of a firearm.*** [32]

RECOMMEND EXPULSION

Offenses

(a) Causing serious physical injury to another person, except in self defense;

(b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;

(c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis;

(d) Robbery or extortion.

(§ 48915, subd. (a), as added by Stats. 1983, ch. 498 and amended by Stats. 1993, ch. 1255 and ch. 1256; § 48915, subd. (b), as amended by Stats. 1993, ch. 1255 and ch. 1256.)

The Commission concludes that the following provisions of Education Code section 48918, as enacted and amended by the subject chapters, impose a new program or higher level of service upon school districts within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code, by requiring governing boards to:

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[31] Emphasis added to indicate text that was inserted on August 10, 1998 to correct the Statement of Decision.

[32] Note that Chapter 972, Statutes of 1995 (effective January 1, 1996) re-lettered section 48915, subdivision (b) as section 489 15, subdivision (c) and added activities for which suspensions are required. This Chapter is the subject of another test claim.

- Adopt rules and regulations which shall include the procedures as specified, in Education Code section 48918, pertaining to pupil expulsions. (§ 48918.)
- Include in the notice of hearing to the pupil: a copy of the disciplinary rules of the district (that relate to the alleged violation); a notice of the parent, guardian, or pupil's obligation pursuant to Education Code section 489 15.1, subdivision (b), to notify a new school district, upon enrollment, of the pupil's expulsion; and a notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing.
- Upon request, allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the expulsion hearing, as follows:

  (1) If the requesting party is a pupil less than 18 years of age; or

  (2) If the requesting party is the parent or guardian of a pupil who is 18 years of age; or

  (3) If the requesting party is the parent or guardian of a pupil less than 18 years of age, and the requested documents are not " education records" as defined in 20 U.S.C. section 1232g(a)(4).

  (§ 48918, subd. (b).)

Reimbursement for the activities required under section 48918, subdivision (b), is limited to expulsions for the following specified offenses:

(a) Causing serious physical injury to another person, except in self defense;

(b) Possession of any firearm, knife, explosive, or other dangerous device of no reasonable use to the pupil at school or at a school activity off school grounds;

(c) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of Health and Safety Code, except for the first offense for the sale of not more man one avoirdupois ounce of marijuana, other than concentrated cannabis;

(d) Robbery or extortion.

(§ 48915, subd. (a), as added by Stats. 1983, ch. 498 and amended by Stats. 1983, ch. 1255 and ch. 1256; § 48915, subd. (b), as amended by Stats. 1993, ch. 1255 and ch. 1256.)

The Commission determines that the following provisions of Education Code section 48918, subdivisions (i) and (j) impose a new program or higher level of service upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514:

- Send written notice of: (1) any decision to expel or to suspend the enforcement of an expulsion order during a period of probation; (2) the right to appeal the expulsion to the county board of education and (3) the obligation of the parent or guardian or pupil under Education Code section 48915.1. (§ 48918, subd. (i).)
- Maintain a record of each expulsion, including the cause thereof (§ 489 18, subd. (j) .)

- Record expulsion orders and the causes thereof in the pupil's mandatory interim record, and, upon request, forward this record to any school in which the pupil subsequently enrolls. (§ 48918, subd. (j).)

Reimbursement for the requirements in section 48918, subdivisions (i) and (j) is limited to expulsions for the following offenses during the following time periods:

(1) For the period from October 11, 1993, to December 31, 1993, the requirement for governing boards to expel pupils for possession of a firearm, knife of no reasonable use to the student or explosive. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1255.)

(2) For the period from January 1, 1994 to the present, the requirement for governing boards to expel pupils for possession of a firearm. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1256.)

The Commission determines that, except as expressly stated above, the remaining subdivisions of Education Code section 48918 do not impose a new program or higher level of service within the meaning of section 6 of article XIII B of the California Constitution and section 17514 of the Government Code.

The Commission determines that Education Code section 48916 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 of the Government Code, by requiring school districts to:

- Set a date when a pupil expelled pursuant to Education Code section 48915, subdivision (b), may apply for readmission to a district school;
- Make available to the same pupil and his or her parent or guardian a description of the procedure for readmission; and
- Adopt rules and regulations to establish a procedure for the filing and processing of requests for readmission.

The Commission further determines that the following activities, limited to applicants who have been expelled by a district that has not entered into a voluntary interdistrict transfer agreement with the receiving district, impose a new program or higher level of service in an existing program within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code, by requiring governing boards to:

- Determine whether a pupil expelled by another school district, would pose a potential danger to the pupils and employees of the receiving district and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion. (§ 48915.1, subd. (d).)
- Respond to a receiving district's request for recornrnendation. (§ 48915.1.) Reirnbursement for this provision is limited to expulsions for the following offenses during the following time periods:

    (1) For the period from October 11, 1993 to December 31, 1993, the requirement for governing boards to expel pupils for possession of a firearm, knife of no reasonable use

to the student, or explosive. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1255 .)

(2) For the period from January 1, 1994 to the present, the requirement for governing boards to expel pupils for possession of a firearm. (§ 48915, subd. (b), as amended by Stats. 1993, ch. 1256.)

- Include in the notice of hearing (1) a copy of the rules of the receiving district (hearing procedures) and (2) notice of the opportunity for the pupil or the pupil's parent or guardian to inspect and obtain copies of all documents to be used at the hearing. (§ § 489 15.1, 489 15.2, and 48918, subd. (b).)
- Upon request, allow a pupil or pupil's parent or guardian to inspect and obtain copies of documents to be used at the admission hearing, as follows:

  (1) If the requesting party is a pupil less than 18 years of age; or

  (2) If the requesting party is the parent or guardian of a pupil who is 18 years of age; or

  (3) If the requesting party is the parent or guardian of a pupil less than 18 years of age, and the requested documents are not " education records" as defined in 20 U.S.C. section 1232g(a)(4).

  (§§ 48915.1, 48915.2, and 48918, subd. (b).)

- Maintain a record of each pre-admission denial, including the cause thereof. (§§ 48915.1, 48915.2, and 48918, subd. (j).)
- Notify the applicant and parent/guardian of the governing board's determination of whether a pupil expelled by another school district poses a potential danger to the pupils and employees of the receiving district, and whether to admit, deny admission, or conditionally admit the applicant during or after the period of expulsion. (§§ 489 15.1, subd. (a), 48915.2, and 48918, subd. (i).)

Except as expressly stated above, the Commission determines that the remaining portions of Education Code sections 48916, 48915.1, 48915.2, and 48915.7, as added and amended by the subject chapters, do not impose 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 of the Government Code.

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