BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 48900, 48900.2, and 48911, as added and amended by Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 73, Statutes of 1980; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 536, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 856, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 134, Statutes of 1987; Chapter 383, Statutes of 1987; Chapter 1306, Statutes of 1989; and Chapter 909, Statutes of 1992; filed on March 9, 1994; and,

Education Code Sections 48900, 48900.3, 48900.4, 48911, as added and amended by Chapter 146, Statutes of 1994; Chapter 1017, Statutes of 1994; and Chapter 1198, Statutes of 1994; filed on April 7, 1995;

By the San Diego Unified School District, Claimant.

NO. CSM - 4456

Pupil Suspensions From School

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

PROPOSED STATEMENT OF DECISION

Issue: Do the provisions of Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48911, as added and amended by Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978; Chapter 73, Statutes of 1980; Chapter 318, Statutes of 1982; Chapter 498, Statutes of 1983; Chapter 536, Statutes of 1984; Chapter 318, Statutes of 1985; Chapter 856, Statutes of 1985; Chapter 1136, Statutes of 1986; Chapter 134, Statutes of 1987; Chapter 383, Statutes of 1987; Chapter 1306, Statutes of 1989; Chapter 909, Statutes of 1992; Chapter 146, Statutes of 1994; Chapter 1017, Statutes of 1994; and Chapter 1198, Statutes of 1994, impose a new program or higher level of service upon school districts within the meaning of section 6 of article XIIIB of the California Constitution and section 17514 of the Government Code?

This test claim was heard by the Commission on State Mandates (Commission) on October 31, 1996, in Sacramento, California, during a regularly scheduled hearing.

Mr. Jose Gonzales and Mr. Jim Cunningham appeared on behalf of the San Diego Unified School District, and Ms. Caryn Becker represented the Department of Finance.

At that hearing, 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 and following, and section 6, article XIIIB of the California Constitution and related case law.

BACKGROUND AND FINDINGS OF FACT

The claimant alleges that the provisions of Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48911, as added and amended by the test claim chapters imposed a new program or higher level of service within the meaning of section 6, article XIIIB of the California Constitution and section 17514 of the Government Code. Therefore, the statutes which are the subject of this test claim, are as follows:

Education Code section 48900, as last amended by Chapter 909, Statutes of 1992, states:[1]

> "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.

[1]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 Statutes of 1994, ch. 1198, § 5 (AB 2543). The 1994 amendment amended the section without changing the text. (West's Ann.Cal.Educ.Code § 48900 (1996).).

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

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

"(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 11014.5 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.

"(l) 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."

Education Code 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.

Education Code 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."[2]

Education Code 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."

Education Code section 48911, as last amended by Chapter 134, Statutes of 1987, states:

> "(a) The principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays."
>
> "(b) Suspension by the principal, the principal's designee, or the superintendent shall be preceded by an informal conference conducted by the principal or the principal's designee or the superintendent of schools between the pupil and, whenever practicable, the teacher or supervisor or school employee who referred the pupil to the principal or the principal's designee or the superintendent of schools. At the conference, the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense."
>
> "(c) A principal or the principal's designee or the superintendent of schools may suspend a pupil without affording the pupil an opportunity for a conference only if the principal or the principal's designee or the superintendent of schools determines that an emergency situation exists. 'Emergency situation,' as used in this article, means a situation determined by the principal, the principal's designee, or the superintendent to constitute a clear and present danger to the lives, safety, or health of pupils or school personnel. If a pupil is suspended without a conference prior to suspension, both the parent and the pupil shall be notified of the pupil's right to a conference, and the pupil's right to return to school for the purpose of a conference. The conference shall be held within two

[2]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."

schooldays, unless the pupil waives this right or is physically unable to attend for any reason, including, but not limited to, incarceration or hospitalization. The conference shall then be held as soon as the pupil is physically able to return to school for the conference."

"(d) At the time of suspension, a school employee shall make a reasonable effort to contact the pupil's parent or guardian in person or by telephone. Whenever a pupil is suspended from school, the parent or guardian shall be notified in writing of the suspension."

"(e) A school employee shall report the suspension of the pupil, including the cause therefor, to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board."

"(f) ....."

"(g)....."

"(h)....."

THE COMMISSION FINDS THAT:

The Authority to Suspend (Ed. Code § 48911, subd. (a).)

The recodification of the Education Code by Chapter 1010, Statutes of 1976, (Ch. 1010/76) did not significantly alter pre-1975 law on suspensions. Therefore, the 1976 recodified version and its section numbers are used as the Commission's reference point for prior law (pre-1975 law). The earliest claimed chapter in this test claim is Chapter 965, Statutes of 1977 (Ch. 965/77).[3]

The following Education Code sections, excerpted from Ch. 1010/76, were used by the Commission to serve as the benchmark for prior law:

The principal's authority to suspend was codified in former Education Code section 48901 (Ch. 1010/76), which stated:[4]

> "The principal may suspend, for good cause, any pupil from the school, subject to the provisions of Sections 48910, 48911, and 48912…."

Governing boards were authorized to suspend pupils under former sections 48904, subdivision (a), 48906, and 48907, (Ch. 1010/76), which stated:

> "For protection of other pupils in the public school, the governing board of any school district may suspend, or expel, and the superintendent or a principal of any school district when previously authorized by the governing board may suspend, a pupil

[3] During the October 31, 1996 hearing, the claimant expressed concerns about the Commission's reference to 1976 statutes. In response to claimant's concerns, a table illustrating pre-1975 and 1976 Education Code section numbers is incorporated into this Statement of Decision. (See Attachment A.).

[4] All section citations refer to the Education Code unless otherwise stated.

> whenever it is established…that the pupil has…[engaged in specified behaviors]… ." (§48904, subd. (a).)
>
> "Any governing board may enforce the provisions of Section 35291 by suspending, or if necessary, expelling a pupil in any elementary or secondary school who refuses or neglects to obey any rules prescribed pursuant to that section." (§ 48906.)
>
> "The governing board of any school district shall suspend or expel pupils for misconduct when other means of correction fail to bring about proper conduct." (§48907.)

The discretionary authority to suspend pupils from school has been in statute since *before* 1975. Therefore, the Commission found that suspension from schools is a discretionary program and existed in prior law. The Commission also made this determination in the test claim entitled "Pupil Classroom Suspensions, CSM-4458."[5]

In 1977, Chapter 965 repealed former section 48901 and simultaneously added Education Code section 48903, subdivision (a), which stated:

> "The principal of the school may suspend a pupil from the school for any of the reasons enumerated in Section 48900 for no more than five consecutive schooldays …." (§ 48903, subd. (a), Ch. 965/77.)

In 1978, the Legislature enacted Chapter 668 (Ch. 668/78) and in 1980, Chapter 73 (Ch. 73/80) to amend Education Code section 48903. Subsequently, in 1983, Chapter 498, renumbered section 48903 to become new section 48911, subdivision (a), which stated:

> "The principal of the school, the principal's designee, or the superintendent of schools may suspend a pupil from the school for any of the reasons enumerated in Section 48900, and pursuant to Section 48900.5, for no more than five consecutive schooldays …." (§ 48911, Ch. 498/83.)

Education Code section 48911, subdivision (a), authorizes the principal, designee, or superintendent of schools to suspend a pupil from school for no more than five consecutive

---

[5]In Pupil Classroom Suspensions (heard by the Commission on January 19, 1995), the Commission found that the authorization for teachers to suspend pupils from the classroom for inappropriate behaviors had been in existence since pre-1975 and that the behaviors defined as inappropriate under current law would have met the definition of good cause for suspension under prior law. (§§ 48910 and 48900.) In making this finding, the Commission reviewed prior law and noted that pertinent provisions which were recodified, acknowledged that suspension as a disciplinary tool may be necessary, but that other methods of discipline should first be attempted. When comparing the pre-1975 law with current Education Code section 48900.5, the Commission found that the continuity in legislative intent is clear: suspension may in fact be necessary but other means of discipline should first be considered. To the extent the suspensions are at times unavoidable, the authority to suspend and the requirement to consider alternatives existed in pre-1975 law. Accordingly, the Commission concluded that the provisions of Education Code section 48910, subdivision (a), did not impose a new program or higher level of service upon school districts to suspend students from the classroom.

schooldays for any of the reasons enumerated in Education Code section 48900 and pursuant to Education Code section 48900.5.

The most significant change to prior law by the test claim legislation is the inclusion of the words, "school superintendent" and the "principal's designee" as persons authorized to "suspend pupils from school". By expanding the list of personnel authorized to suspend pupils from school, the Legislature recognized that the absence or unavailability of a principal from the school site should not impede a school district from suspending a pupil from school and/or protecting its employees and pupils.

Accordingly, the Commission concluded that the specific inclusion of these persons does *not* create a new program or higher level of service because no new activity was created by the inclusion of the principal's designee and the superintendent in section 48911, subdivision (a).

"…[F]or any of the reasons enumerated in section 48900."

Section 48911, subdivision (a), also states that suspensions may be made "for any of the reasons enumerated in section 48900. The Commission noted that the definition of "good cause" under prior law was not expanded by section 48900, as contended by claimant. Further, the Commission found that the school suspension 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.

Thus, the Commission concluded that while section 48900 et seq. limits the discretionary authority of school officials to suspend pupils from school for enumerated acts, nevertheless, the substantive provisions, namely the authority for school suspensions based on specific acts or good cause, has been continuously in effect since *before* 1975.

"…[P]ursuant to Education Code Section 48900.5."

Section 48900.5 states in pertinent part, "Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a pupil may be suspended for any of the reasons enumerated in section 48900 upon a first offense… ."[6] This phrase limits a school official's discretionary authority to suspend. This limitation is not new to the Education Code or to schools: A 1966 Attorney General's Opinion (48 Ops.Cal. A.G. 7 (1966)) noted that under then section 10605 the exercise of the power of expulsion or suspension was expressly limited to cases where other means to correct misconduct had failed. The citation for this statement is the 1915 case of *Wooster* v. *Sunderland,* 27 Cal.App. 51, 56 (1915). The Commission observed that the current phrasing of section 48900.5 is substantially the same as the 1966 statement of prior law which was recodified as former section 48907 by Ch. 1010/76.

Therefore, the Commission found that the incorporation of section 48900.5 into section 48911, subdivision (a), of the test claim legislation does *not* result in the creation of a new program.

---

[6]After 1987, sections 48900.2, 48900.3, and 48900.4, were added to authorize principals, their designees, and superintendents to suspend [or expel] pupils for sexual harassment, hate crimes, and harassment/intimidation. (Ch. 909/92; Ch. 1198/94; Ch. 1017/94.)

Based on the foregoing review, the Commission found that Education Code section 48911, subdivision (a), as enacted by the subject chapters, does *not* impose a new program or higher level of service upon school districts within the meaning of section 6 of article XIIIB of the California Constitution and section 17514 of the Government Code.

The Basis For Suspension (Ed. Code, §§ 48900, 48900.2, 48900.3, 48900.4.)

Under prior law, the principal was authorized to suspend, "for good cause, any pupil from the school…." (§ 48901, Ch. 1010/76). Former section 48902 plainly stated that "good cause" was not limited to those offenses enumerated in section 48903:

> "As used in Sections 48900 and 48901, 'good cause' includes those offenses enumerated in Section 48903, but is not limited to those offenses." (§ 48902, Ch. 1010/76.)

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 suspended…unless the conduct for which he is to be disciplined is related to school activity or school attendance." (§ 48903, Ch. 1010/76.)

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 suspension, it changed the statutory construction philosophy: Whereas former section 48902 clearly indicated that "good cause" for suspension included several stated pupil behaviors and acts, new section 48900 stated that no suspension could be had 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 suspend pupils for specified behavior."

The test claim legislation, Education Code sections 48900, 48900.2, 48900.3, and 48900.4[7], provides that no pupil shall be suspended 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 parameters for suspensions by specifying that the act is related to school activity or attendance. It also specifies that this does not limit the occurrence of such acts to school grounds; while going to or coming from school; during lunch or off campus; or during, or while going to or coming from, a school-sponsored activity.

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

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

The first sentence of new sections 48900.2, 48900.3, and 48900.4, states that the suspension *may* be made if the superintendent or principal determines the pupil has engaged in one of the proscribed acts. As in section 48911, the word ***may*** is included to indicate the Legislature's intent that suspensions based on these offenses are permissive.

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 suspend pupils for specified acts, rather than just 'good cause,' after other means of correction failed."

The Commission recognized 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. In that test claim, the Commission found that section 48900 prohibits suspensions unless the superintendent or principal of the school determines that the pupil has committed any of the enumerated acts set forth therein. The Commission also 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 … unless … [engaging in the proscribed acts]," restricts the imposition of suspension from school 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.

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 suspended* 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 suspension may be based are included in statute. The Commission found that the school suspension 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 suspend pupils from school for the enumerated acts.**

Section 48900 et seq. limits the discretionary authority of school officials to suspend 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 suspensions based on specific acts or good cause, has continuously been in effect since *before* 1975.

Also, even though this section has been amended, nothing has been added which can be construed to require school officials to suspend 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 (l), is not a new requirement, but stems from former section 48903's limitation of suspensions to conduct related to school activity or attendance.

Thus, as evidenced by prior law, the Commission found that the authorization to suspend pupils from school for inappropriate behaviors has been in existence since *before* 1975.

Accordingly, the Commission concluded that sections 48900, 48900.2, 48900.3, 48900.4, as enacted by the subject chapters, do *not* impose upon school districts a new program or a higher level of service within the meaning of section 6 of article XIIIB of the Constitution and section 17514 of the Government Code.[8]

The Suspension Process: Non-Emergency Suspensions (Ed. Code, § 48911, subd. (b).)

Pre-1975 law (former § 10607) and former section 48910 required the school to invite the parent or guardian of the pupil to a meeting with school officials, on or before the third day after the suspension. The school officials were required to inform the parent or guardian of the "causes, the duration, the school policy involved, and other matters pertinent to the

[8]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 Unified 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 behaviors, 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.

suspension". (§ 48910, Ch.1010/76.) However, under prior law there was no requirement for a pre-suspension conference with the pupil.

Section 48911, subdivision (b), requires principals, their designees, or the superintendent to hold an informal conference with the pupil prior to making a non-emergency suspension to inform the pupil of the reasons for the disciplinary action and the evidence against the pupil and to give the pupil the opportunity to present his or her version and evidence in defense.

The Commission found that the California Legislature amended former Education Code section 48903 in response to the U.S. Supreme Court's landmark decision requiring due process procedures for pupil suspensions. A 1977 Report on Selected California Legislation stated that Statutes of 1977, Chapter 965 (first claimed legislation), appears to codify these requirements [rudimentary due process] by mandating a principal-pupil conference that incorporates all of the procedural due process elements outlined by *Goss* and by requiring that such a conference be held prior to the imposition of any disciplinary suspension…."[9] In *Goss v. Lopez* (1975) 419 U.S. 565, 42 L.Ed 2d 725, 95 S.Ct. 729, the U.S. Supreme Court held that in states which have chosen to extend the right to education (as has California), students facing temporary suspension have interests qualifying for protection of the due process clause. In connection with a public school students' suspension of 10 days or less, the Supreme Court held that:

> "[T]he due process clause requires that the student be given oral or written notice of the charges against him and if he denies them, an explanation of the evidence the school authorities have and an opportunity to present his side of the story; the due process clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school, under the following rules:
>
> (1) there need be no delay between the time 'notice' is given and the time of the hearing;
>
> (2) in the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred;
>
> (3) in being given an opportunity to explain his version of the facts at this discussion, the student first must be told what he is accused of doing and what the basis of the accusation is;
>
> (4) since the hearing may occur almost immediately following the misconduct, notice and hearing should, as a general rule, precede the removal of the student from the school;
>
> (5) however, there are recurring situations in which prior notice and hearing cannot be insisted upon;

[9]See 9 Pacific L.J. 505, 507, as cited in 62 Ops.Cal.A.G. 400 (1979); also acknowledged in *John A.* v. *San Bernardino City Unified School Dist.*, 33 Cal.3d 301, 313, 187 Cal.Rptr. 422, 654 P.2d 242 (Dec. 1982)(dis.opn. of Mosk, J.).

(6) students whose presence possess a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school;

(7) in such cases, the necessary notice and rudimentary hearing should follow as soon as practicable."

A comparison of Chapter 965/77 with the *Goss* decision reveals that subdivision (b) of section 48911 codifies *Goss* in all respects except one.[10] *Goss* uses the word "disciplinarian" to specify who is required to meet with the pupil prior to the suspension. While the *Goss* decision does not require the principal to be the disciplinarian, a 1978 Attorney General's Opinion concluded that when the school principal is present at school, the *Goss* due process procedures require the attendance of the principal [as the disciplinarian] at the informal conference conducted with the pupil prior to a suspension. (62 Ops.Cal.A.G. 402 (1978).)

Therefore, with respect to the participation of the principal or designee in the conference and its purpose, the Commission noted that these requirements clearly stem from the *Goss* decision. Accordingly, the statutory activities of section 48911, subdivision (b), are mandated by the federal due process requirements of the 14th Amendment of the United States Constitution and, thus, are *not* reimbursable state mandated activities.

Further, the Commission noted that "the Commission shall not find costs mandated by the state, as defined in Section 17514, in any claim…if…the commission finds the statute or executive order affirmed for the state that which had been declared existing law…by action of the courts or the statute…implemented a federal law …and resulted in costs mandated by the federal government, unless the statute…mandates costs which exceed the mandate in that federal law…." (Government Code, § 17556, subds. (b) & (c).)

With respect to section 48911, subdivision (b)'s provision for the participation of the referring school employee (whenever practicable) in the pre-suspension conference, the Commission found that this provision did not exist in prior law and was not mandated by the courts or federal law.

The Commission construed the statute to require the attendance of the referring school employee in a pre-suspension informal conference when attendance is feasible. But even with this construction, the Commission noted that any statutory activity which flows from a discretionary act, namely, the suspension of a pupil, does not cause subsequent, required activities to be reimbursable state mandates. However, when principals or superintendents carry out mandatory suspensions from school for possession of a firearm, knife, or explosive (§ 48915, as amended by Chapters 1255 and 1256, Stats. of 1993), the attendance of the referring school employee in the informal pre-suspension conference with the principal and the

[10] Section 48903, as amended in 1977, stated in relevant part: "…(b) Suspension by the principal shall be preceded by an informal conference between the pupil, the principal or the principal's designee, and, whenever practicable, the teacher or supervisor who referred the pupil to the principal…" (Ch. 965/77, § 9.)

pupil, whenever practicable, results in the imposition of a reimbursable state mandated program or higher level of service upon school districts.[11]

Therefore, based on the foregoing analysis, the Commission found that:

- Except for the provisions requiring participation of the referring school employee in the presuspension conference, Education Code section 48911, subdivision (b)'s requirements codify the U.S. Supreme Court's decision in *Goss* v. *Lopez, supra*, 419 U.S. 565.
- A pupil's rights to procedural due process guaranteed by the provisions of the 14th Amendment to the U.S. Constitution, are obligatory. In the absence of Education Code section 48911 (b), school districts would still be required to have the principal [or designee] hold a pre-suspension conference with the pupil to give the pupil notice of the charges against him or her and the evidence the school authorities have, and to provide the pupil with an opportunity to give his or her own version in defense.
- As to the activities described above, the requirements in subdivision (b) of Education Code section 48911 do not result in a new program or higher level of service on an existing program upon school districts within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514 because the statute affirmed for the state that which had been declared existing law by the U.S. Supreme Court and by the federal due process requirements of the 14th Amendment to the U.S. Constitution.
- Furthermore, the Commission found that section 48911, subdivision (b)'s requirement for the attendance of the referring school employee in the pre-suspension conference, whenever practicable, is outside the scope of federal due process. Accordingly, the Commission found that implementation of this requirement to carry out mandatory suspensions for possession of a firearm, knife, or explosive (§ 48915, as amended by Chapters 1255 and 1256, Stats. of 1993), imposes a new program or higher level of service on an existing program upon school districts within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514.

The Suspension Process: Emergency Situations. (Ed. Code, § 48911, subd. c).)

Subdivision (c) of section 48911, authorizes school officials to suspend pupils without a pre-suspension conference with the pupil in emergency situations. The statute defines an emergency situation, specifies who may make that determination, and describes post-suspension notice and meeting procedures. The principal, designee, or superintendent of

[11] In a related test claim on Pupil Expulsions (CSM-4455), the Commission found that by eliminating the principal's discretion to suspend pupils from school for certain acts, that section 48915 of the Education Code, as amended by Statutes of 1993, Chapters 1255 and 1256, imposes a new program or higher level of service upon school districts by requiring principals to suspend pupils for certain acts.

schools is authorized to immediately suspend a pupil when it is determined that an emergency situation, defined as a "clear and present danger" to the lives or health of pupils or school personnel, exists. In an emergency situation, the pupil may be suspended immediately. However, a conference must still be held within two schooldays after the suspension, with specified exceptions.

The Commission determined that the test claim legislation does not create a new program or higher level of service in section 48911, subdivision (c), for the following reasons:

First, current law is consistent with prior law by requiring school authorities to supervise and protect pupils. Under this duty, any investigative activity to determine an "emergency situation" would have been performed under prior law and is still required today. The California Supreme Court recognized the duty of school authorities to protect pupils, stating in pertinent part:

> "California law has long imposed on school authorities a duty to supervise at all times the conduct of children on the school grounds and to enforce those rules and regulations necessary to their protection ….Such regulation is necessary precisely because of the commonly known tendency of students to engage in aggressive and impulsive behavior which exposes them and their peers to serious physical harm." (*Dailey* v. *Los Angeles Unified School Dist.* (1970) 2 Cal.3d 741, 747.)

Secondly, prior law authorized the principal of a school to suspend, for good cause, any pupil from the school. (§ 48901, Ch. 1010/76.) *Good cause*, as defined by statute included assault and battery, assault with a deadly weapon, being under the influence of an alcoholic beverage, an intoxicant, or controlled substance, and other offenses pertaining to property damage. The commission of any of these offenses could have resulted in the creation of a "clear and present danger to the lives, safety, and health of pupils or school personnel" in the past and certainly today. Thus, a level of investigation to determine "good cause" before suspending a pupil is not a new program because it was implied under prior law.

Based on the foregoing analysis, the Commission found that section 48911, subdivision (c), does *not* impose a new duty or higher level of service upon school authorities to investigate potential suspensions to determine if an emergency situation exists because situations which are "emergency situations" under the test claim legislation also existed under prior law.

The plain text of section 48911, subdivision (c), does not include language specifying any new requirements for investigating pupil conduct. The addition of the words "emergency situation, defined as a 'clear and present danger' to the lives or health of pupils or school personnel, exists" was added to define those extraordinary circumstances which justify the exception to the constitutional requirement that a pupil must be afforded procedural due process ***before*** being suspended from school.

Also, the Commission noted that in *Goss*, the U.S. Supreme Court stated that "…there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary

notice and rudimentary hearing should follow as soon as practicable…." (*Goss* v. *Lopez, supra,* 419 U.S. 565, 582-583.)

The Commission found that the statute merely provides for the postponement of due process until after the emergency suspension. Further, the statute simply codifies the balance of two competing interests, namely, protection of pupils and school employees from imminent danger which justifies the postponement with the federal due process requirements of notice and an informal hearing.

Subdivision (c) of section 48911 also specifies that if a pupil is suspended without a conference prior to suspension, *both the parent and the pupil* shall be notified of the pupil's right to a conference which shall be held within two schooldays [of the suspension]. Prior law, required *on or before the third consecutive schoolday* of any given period of suspension, *the parent or guardian* of the suspended pupil be asked to attend a meeting with school officials, at which time the causes, the duration, the school policy involved, and other matters pertinent to the suspension shall be discussed. (§ 48910, Ch. 1010/76.) The language of the test claim legislation is nearly identical with prior law.

Therefore, the Commission found that the requirement to notify the parent or guardian under subdivision (c) of section 48911 does not constitute a new program or higher level of service for schools. However, the requirement for a school to notify the pupil of the right to a conference is new and was added as a direct result of the *Goss* decision.

The Commission determined that subdivision (c) of section 48911 codifies a pupil's rights as guaranteed by the provisions of the 14th Amendment, under *Goss* v. *Lopez, supra,* 419 U.S. 565, 42 L.Ed.2d 725, 95 S.Ct. 729; that in the absence of Education Code Section 48911, subdivision (c), school districts would still be required to notify pupils of their right to have a post-suspension conference, as specified.

Therefore, the Commission concluded that the requirements in section 48911, subdivision (c), are *not* state mandated, but stem from the due process clause of the 14th Amendment to the U.S. Constitution, prior law, and that which had been declared existing law by the U.S. Supreme Court.

Communicating the Suspension to the Parent or Guardian (Ed. Code, § 48911, subd. (d).)

Former Education Code sections 48910 and 48912 of Chapter 1010, Statutes of 1976[12], stated *similar* requirements, as follows:

> "…On or before the third consecutive schoolday of any given period of suspension, the parent or guardian of the pupil involved shall be asked to attend a meeting with school officials, at which time the causes, the duration, the school policy involved, and other matters pertinent to the suspension shall be discussed. If the parent or guardian fails to

[12] The recodification of the Education Code by Chapter 1010, Statutes of 1976, (Ch. 1010/76) did not change pre-1975 law on suspensions. Therefore, the 1976 recodified version and its section numbers are used as the Commission's reference point for prior law (pre-1975 law). Also, see note 3.

join in such a conference, the school officials shall send him by mail a letter stating the fact that suspension has been implemented and setting forth all other data pertinent to the action." (§ 48910, Ch. 1010/76, as derived from § 10607, as amended by Ch. 1006/68.)

"Whenever a pupil is suspended from school, the parent, or guardian shall be notified of such action. Any notification to a pupil's parent or guardian concerning the suspension of the pupil shall be signed by the school principal or his designee."
(§ 48912, Ch. 1010/76, as derived from § 10607.8, as added by Ch. 219/73.)

The Commission found that notification of the parent in person or by phone, and also in writing, is *not* a new program or higher level of service because the activity was required under prior law. As noted above, prior law required notification of the parent or guardian whenever a pupil was suspended. This contact had to be in writing since former section 48912 states that the notification shall be signed by the principal or his/her designee. Current law gives the school more flexibility by eliminating specificity concerning the signatory of the letter. An additional contact by phone or in person is implied in the requirement to ask the parent or guardian to attend a meeting with school officials on or before the third consecutive schoolday.

Therefore, the Commission concluded that section 48911, subdivision (d), as added by Chapter 134, Statutes of 1987, does *not* contain a reimbursable state mandated program or higher level of service in an existing program.

Reporting Suspensions to the Governing Board (Ed. Code, § 48911, subd. (e).)

Prior law required the principal to report pupil suspensions to the governing board of the school district or to the district superintendent pursuant to the governing board's regulations.[13] Education Code section 48911, subdivision (e), as amended by Chapter 134, Statutes of 1987, enhances this requirement by specifying that a school employee (not strictly the principal) report a school suspension and its cause, to the district governing board or to the superintendent in accordance with the board's adopted regulations.

The recent amendment changes the responsible person for reporting the suspension from "principal" to "a school employee". This change allows school districts to determine who will report suspensions to the superintendent or governing board. Additionally, the amendment to section 48911 now requires schools to report the cause of the suspension to the district office. Under prior law, reporting the cause of suspension would have been optional.

Therefore, the Commission found that disclosure of the cause of the suspension is a new state requirement. However, the Commission also noted that the program of school suspensions is a discretionary act and that any subsequent, downstream activities stemming from a discretionary act are not reimbursable state mandated activities.

[13] Former Education Code section 48901 stated: "…The principal shall report the suspension of such a pupil to the governing board of the school district or to the district superintendent in accordance with the regulations of the governing board." (Ch. 1010/76.)

(See *City of Merced* v. *State of California* (1984) 153 Cal.App.3d 777, 783; *County of Contra Costa* v. *State of California* (1986) 177 Cal.App.3d 62, 79.) Moreover, the Commission noted that school districts are required to suspend a pupil for possession of firearms, knives, and explosives, pursuant to section 48915, subdivision (b), as amended by Chapters 1255 and 1256, Statutes. of 1993. Accordingly, the Commission found that the new provision requiring disclosure of the cause of each suspension to the governing board is a reimbursable state mandated program, limited to suspensions based on pupil possession of firearms, knives, or explosives. (§ 48915, subdivision (b), as amended by Chapters 1255 and 1256, Stats. of 1993.)

Education Code section 48911, subdivisions (f), (g), and (h).

The claimant did not request, and the Commission did *not* find, a state mandated program in subdivisions (f), (g), and (h), of section 48911.

CONCLUSION

Based on the foregoing findings, the Commission approves the test claim in part.

The Commission determines that:

- Portions of the test claim statutes, as specified above, were enacted by the legislature to extend the federal requirements of procedural due process mandated by the United States Supreme Court in Goss v. Lopez (1975) 419 U.S. 565, to California public school students facing suspension from school.
- The following requirements are outside the scope of federal due process and were not required under prior law:
    - The attendance of the referring school employee in the pre-suspension conference between the principal (or designee or superintendent) and the pupil, whenever practicable (§ 48911, subd. (b));
    - A report of the cause of each school suspension to the district office. (§ 48911, subd. (e).)
- Implementation of these requirements under section 48911, subdivisions (b) and (e), to carry out suspensions for (1) possession of a firearm (for the period from October 11, 1993 through present) and (2) possession of a knife or explosive (for the period from October 11, 1993 through December 31, 1993,) impose a new program or higher level of service in an existing program within the meaning of section 6, article XIIIB of the California Constitution and section 17514 of the Government Code.

Finally, the Commission determines that, except as expressly stated above, the remaining portions of this test claim be denied because the subject statutes do *not* impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIIIB of the California Constitution and section 17514 of the Government Code.

ATTACHMENT A

CONVERSION TABLE

Derivation Table Pre-1975 Education Code	**1976 Education Code Recodification Chapter 1010/1976**
§ 10601.5	§§ 48900, 48901
§ 10601.6	§ 48902
§ 10602	§ 48903
§ 10603, subd. (a)	§ 48904, subd. (a)
§ 10604.3	§ 48906
§ 10605	§ 48907
§ 10607	§ 48910
§ 10607.5	§ 48911
§ 10607.8	§ 48912