

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 48216, Health and Safety Code Sections 120325, 120335, 120340, and 120375 as amended by Statutes of 1978, Chapter 325, Statutes of 1979, Chapter 435, Statutes of 1982, Chapter 472, Statutes of 1991, Chapter 984, Statutes of 1992, Chapter 1300, Statutes of 1994, Chapter 1172, Statutes of 1995, Chapters 219 and 415, Statutes of 1996, Chapter 1023, and Statutes of 1997, Chapters 855 and 882

Title 17, California Code of Regulations, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

Filed on August 17, 1998

By the Los Angeles County Office of Education, Claimant.

No. 98-TC-05

Immunization Records - Hepatitis B

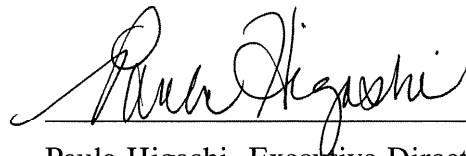
STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on August 24, 2000)

STATEMENT OF DECISION

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

This Decision shall become effective on August 25, 2000.



Paula Higashi, Executive Director

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on July 27, 2000 during a regularly scheduled hearing. The Commission approved this test claim on its consent calendar.

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

The Commission, by a vote of 7-0, approved this test claim.

BACKGROUND AND FINDINGS

The Commission noted that an earlier test claim, *Immunization Record*, was filed after the adoption of Statutes of 1977, Chapter 1176, which required school districts to require, maintain, and report on immunization records for diphtheria, pertussis, tetanus, poliomyelitis and measles for each pupil's permanent record. In 1979, the Board of Control, as predecessor to the Commission, found these requirements constituted a reimbursable state mandate, finding prior

law did not require school districts to engage in record keeping, record review, parent notification, or reporting activities related to the specified pupil immunizations.

The current test claim alleges a reimbursable state mandate resulting from legislation and regulations amending pupil immunization record requirements. This claim arises from amendments to Health and Safety Code section 120335, which establishes a list of diseases which an entering student must be immunized against prior to the first admission into the school. Specifically, Statutes of 1979, Chapter 435 amended current section 120335 by adding mumps and rubella to the list of diseases. And, Statutes of 1995, Chapter 291 further amended section 120335 by adding hepatitis B “for all children entering . . . kindergarten level or below on or after August 1, 1997.” The requirement for hepatitis B immunization was further amended pursuant to Statutes of 1997, Chapter 882 to require that:

“On and after July 1, 1999, the governing authority shall not unconditionally admit any pupil to the 7th grade level, nor unconditionally advance any pupil to the 7th grade level, . . . unless the pupil has been fully immunized against hepatitis B.”

In addition to the above amendments to Health and Safety Code section 120335, the test claim legislation amended related statutes and regulations relating to the monitoring, record keeping, reporting and parent notification requirements relative to the enforcement of the pupil immunization requirements.

The claimant contended that the test claim alleges mandated costs reimbursable by the state for meeting immunization record requirements. This claim was uncontested by the Department of Finance which agreed that the statutes result in a reimbursable state mandated local program for new activities related to review and reporting on pupil immunization records.

The sole issue before the Commission was whether the test claim statutes and regulations impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution¹ and costs mandated by the state pursuant to Government Code section 17514² by adding additional diseases and conditional enrollment policies to pupil immunization requirements?

The Commission found that the test claim legislation and regulations involve the administration of pupil immunization records by school districts. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public. Moreover, the

¹ Section 6, article XIII B of the California Constitution provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

² Government Code section 17514 provides: “Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

test claim legislation, which requires school districts to review student immunization records and exclude students from school who have not met immunization requirements, imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Thus, the Commission found that the administration of pupil immunization records by school districts constitutes a “program” within the meaning of section 6, article XIII B of the California Constitution.³

However, the Commission continued its inquiry to determine if the activities are new or impose a higher level of service and if so, if there are costs mandated by the state.

Prior Law

The Commission recognized that under the original mandate, Statutes of 1977, Chapter 1176, which added former Health and Safety Code section 3380, persons under 18 years of age were required to be immunized against poliomyelitis, measles, diphtheria, pertussis, and tetanus prior to unconditional first admission to a public or private elementary or secondary school, child care center, day nursery, nursery school, or development center. The law required school districts to maintain records of immunization of all school age children and report periodically to the state on the immunization status of all new entrants into the schools.⁴

Test Claim Legislation

Mumps and rubella added to immunization records for kindergarteners and incoming students

Statutes of 1979, Chapter 435, amended former Health and Safety Code sections 3380 and 3381, now renumbered as Health and Safety Code sections 120325 and 120335, by adding mumps and rubella to the list of diseases school districts must screen for and maintain immunization records before unconditionally admitting a kindergarten or out of state transfer student to school. This amendment applied for students not already enrolled in school as of January 1, 1980. The Commission found that this requirement was not in effect under prior law.

Hepatitis B added to immunization records for kindergarteners and incoming students

Statutes of 1995, Chapter 291, amended former Health and Safety Code section 3381, now renumbered by Statutes of 1996, Chapter 1023 as Health and Safety Code section 120335. The 1995 amendment added subdivision (b) (9), requiring documentation for hepatitis B for all children entering specified institutions at the kindergarten level or below on or after August 1, 1997.” The Commission found that this requirement was not in effect under prior law.

³ *Id.*

⁴ The State Board of Control initially determined the amount of the mandate to be: \$2.00 x total K-12 academic year enrollment and \$2.20 x “new entrants.”

Hepatitis B immunization required for all students entering seventh grade

Statutes of 1997, Chapter 882, added subdivision (c) to Health and Safety Code section 120335, which provided:

“On and after July 1, 1999, the governing authority shall not unconditionally admit any pupil to the 7th grade level, nor unconditionally advance any pupil to the 7th grade level, of any of the institutions listed in subdivision (b) unless the pupil has been fully immunized against Hepatitis B.”

The Commission found that this requirement was not in effect under prior law. The Commission also found that this amendment, by adding a new timeframe (entry to seventh grade) to check for an immunization that would not have been screened for previously, requires a district to perform paperwork, parent notifications and file reviews, as they would have to do for a new student to the district.

Documentation and reporting requirements for immunizations listed in section 120335

Health and Safety Code section 120375, as added by Statutes of 1995, Chapter 415 and derived from former Health and Safety Code section 3383, refers back to the list of diseases in Health and Safety Code section 120335, requiring school districts to:

- Maintain documentary proof of pupil’s immunization status in the student’s permanent record information, including adding subsequent immunizations to the file;
- File reports on state forms regarding the immunization status of entering students; and
- Prohibit further school attendance of conditionally admitted students who either fail to get their immunizations completed or fail to receive an appropriate exemption from immunizations for health or religious reasons.

The Commission found that the above requirements for all immunizations listed under Health and Safety Code section 120335 were not in existence under prior law. The Commission further found that as legislation adds diseases to section 120335, the requirements referred to in section 120375 must be performed for each of the new diseases as part of the immunization records requirements.

Mandatory pupil exclusion and parent notification requirements

Statutes of 1997, Chapter 855 amended and renumbered Education Code section 46010.5, as section 48216, operative after July 1, 1998. Statutes of 1978, Chapter 325, originally added the statute. Section 46010.5 originally provided that the district:

“Shall exclude any pupil of the district who has not been immunized properly . . . the first five schooldays of the exclusion *shall not* be deemed an absence in computing average daily attendance *if* the following conditions are complied with.” (Emphasis added.)

The Commission found that the original conditions were that if the school district did not wish an excluded student to be counted absent for the purpose of calculating average daily attendance, the district was to provide notice to the parent or guardian of the excluded student of the need for the parent to provide evidence of immunization within two weeks, and the district was to refer the parent to a medical source to obtain the required immunizations.

The Commission noted that Education Code section 48216 now provides:

“(a) The county office of education or the governing board of the school district of attendance *shall* exclude any pupil who has not been immunized properly pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code.

“(b) The governing board of the district *shall* notify the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized, or that the pupil is exempted from the immunization requirement pursuant to Section 120365 or 120370 of the Health and Safety Code.

“(c) The governing board of the district, in the notice, *shall* refer the parent or guardian of the pupil to the pupil’s usual source of medical care to obtain the immunization, or if no usual source exists, either refer the parent or guardian to the county health department, or notify the parent or guardian that the immunizations will be administered at a school of the district.” (Emphasis added.)

The Commission found that, substantively, section 48216 removed the exceptions for having immunization exclusions counted against the district for purposes of calculating average daily attendance. In addition, the Commission found that with this amendment, the formerly optional provisions upon school districts for notifying parents to avoid counting excluded students absent was expressed in mandatory terminology. Thus, following the amendments of Statutes of 1997, Chapter 855, the Commission found that the following new activities are now required:

- Excluding a pupil whose immunizations are not up to date;
- Notifying the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized or qualifies for an exemption; and
- Referring the parents to a source of medical care to obtain the immunizations.

Conclusion

The Commission found that the above-described test claim activities were not contained in prior law and thus constitute a new program or higher level of service.

The Commission further found that amendments to Health and Safety Code section 120335 requiring school districts to perform immunization records activities for additional diseases, namely mumps, rubella, and hepatitis B, for incoming kindergartners and students entering the district from out of state increases the paperwork and staff time beyond what was required under prior immunization record requirements and thus constitute a reimbursable state mandate.

The Commission also found that amendments to Health and Safety Code section 120335 requiring school districts to perform immunization records reviews for all incoming seventh graders for hepatitis B, including all students whose immunization records were checked upon entry to school, increases the paperwork and staff time beyond what was required under prior immunization record requirements and thus constitute a reimbursable state mandate.

Finally, the Commission found that the amendments to Education Code section 48216 requiring parental notifications and referrals regarding deficiencies in a pupil's immunization record were altered from optional to mandatory language and thus constitute a reimbursable state mandate.

Test Claim Regulations

The Commission noted that the requirements of Health and Safety Code sections 120325 through 120375 are codified in Title 17, California Code of Regulations, sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075. These regulations contain the requirements for record keeping and reporting on immunization records; for conditionally admitting pupils who have not completed their immunizations; and for pupil exclusion if the unconditional admission conditions are not met. The Commission found that this requirement was not in effect under prior law.

Conclusion

The Commission found that the regulations requiring school districts to perform immunization records checks for additional diseases increases the paperwork and staff time beyond what was required of school districts under prior immunization record requirements and thus constitute a new program or higher level of service and a reimbursable state mandate.

CONCLUSION

The Commission concluded that the test claim legislation and regulations impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514 for the following activities:

- Request and review lawful exemption or proof of immunization against mumps, rubella and hepatitis B from each pupil seeking admission to school in the state for the first time;
- Record each pupil's immunization for, or exemption from, mumps, rubella, and hepatitis B on an immunization record and maintain the form in the pupil's permanent record;
- Request and review lawful exemption or proof of immunization against hepatitis B from each pupil advancing to the seventh grade;
- Conditionally admit any pupil who has not been fully immunized for mumps, rubella and hepatitis B;
- Periodically review the pupil's immunization record until the pupil is fully immunized;
- Document vaccine doses on the pupil's immunization record as they are administered;
- Notify parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunizations are not timely presented;
- Refer the parents or guardians to a physician, nurse, or county health department for review of immunization records and provision of required immunizations;
- Exclude pupils from school attendance when written evidence of additional doses is not presented within ten days of parental notification; and

- Collect data and prepare reports annually on immunization status for the Department of Health Services, and prepare follow-up or additional reports upon request by county health departments and the state.