

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:)	
)	
Centinela Valley Unified)	No. CSM-4422
School District)	Education Code
Claimant)	Sections 51201.5 and 51229.8
)	Chapter 818, Statutes of 1991
)	<u>AIDS Instruction</u>

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PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on January 21, 1993, in **Sacramento**, California, during a regularly scheduled hearing.

Ms. Theresa Della Gatta and Ms. Carol Miller appeared on behalf of Centinela Valley Union High School District. Mr. James Apps appeared on behalf of Department of Finance.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

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ISSUES

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3 Do the provisions of Education Code sections 51201.5 and 51229.8,
4 as added by Chapter 818, Statutes of 1991, impose a new program
5 or higher level of service in an existing program on school
6 districts, within the meaning of Government Code section 17514
7 and section 6, article XIIIIB of the California Constitution?
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9 If so, are school districts entitled to reimbursement pursuant to
10 section 6 of article XIIIIB?
11

BACKGROUND AND FINDINGS OF FACT

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14 **Centinela** Valley Union High School District filed this test claim
15 with the Commission on July 13, 1992.
16

17 The elements for filing a test claim, as specified in
18 section 1183 of Title 2 of the California Code of Regulations,
19 were satisfied.
20

21 The claimant alleged that Education Code sections 51201.5 and
22 51229.8, as added by Chapter 818, Statutes of 1991,
23 (Chapter 818/91) results in a reimbursable state mandated program
24 by requiring school districts to provide AIDS prevention
25 instruction to all pupils in grades 7 through 12, and to provide
26 in-service training to all teachers who provide AIDS prevention
27 instruction.
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1 Education Code section 51201.5, as added by Chapter 818/91,
2 states in pertinent part:

3
4 "(a) Commencing in the 1992-93 school year, school
5 districts shall ensure that all pupils in grades 7 to
6 12, inclusive, or equivalent thereof, except as
7 otherwise provided in subdivision (c); receive AIDS
8 prevention instruction from adequately trained
9 instructors in appropriate courses. Each pupil shall
10 receive the instruction at least once in junior high or
11 middle school and once in high school. For purposes of
12 this subdivision, 'school district' includes county
13 boards of education, county superintendents of schools,
14 and the State Schools for the Handicapped.

15
16 **(b) The required AIDS prevention instruction shall**
17 accurately reflect the latest information and
18 recommendations from the United States Surgeon General,
19 Federal Centers for **Disease** Control, and the National
20 Academy of Sciences, . . .

21
22 (c) The governing board of each school district, each
23 county board of education, and each county
24 superintendent of schools, as applicable, shall provide
25 the parent or guardian of each pupil in grades 7 to 12,
26 inclusive, or the equivalent thereof, with written
27 notice explaining the purpose of the AIDS prevention
28 instruction. . . .

2 The notice shall specify that any parent or guardian
3 may request that his or her child or ward not receive
4 instruction in AIDS prevention. No pupil shall attend
5 the AIDS prevention instruction if a written request
6 that he or she not attend has been received by the
7 school. . . .

8 (d) All school districts shall ensure all of the
9 following:

10
11 (1) That instructional materials related to this
12 instruction are available.

13
14 (2) That these instructional materials are
15 appropriate for use with pupils of various ages
16 and learning abilities.

17
18 (3) That these instructional materials may be
19 used effectively with pupils from a variety of
20 ethnic, cultural, and linguistic backgrounds, and
21 special needs."

22
23 The Commission found that under prior law, school districts were
24 not required to ensure that students receive specific instruction
25 relating to AIDS prevention.

26
27 While the claimant did not appear to allege that providing the
28 actual classroom instruction in AIDS prevention imposes a

reimbursable state mandated program upon school districts, nonetheless, the Commission believed it was appropriate to address this issue.

5 At the Commission's May 30, 1991 hearing, the Commission noted:

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7 **"At its** February 28, 1991, hearing, the Commission
8 adopted an amendment to the parameters and guidelines
9 for Emergency Procedures, Earthquakes and Disasters
10 pursuant to Chapter 1659/84. The amended parameters
11 and guidelines did not permit reimbursement for
12 in-classroom teacher time involved in instructing
13 students on emergency procedures. The discussions
14 surrounding this matter focused on the situation where
15 teachers provide instruction in the classroom on
16 earthquake safety procedures. **In** such a situation
17 there is no corresponding time **increase** in the school
18 **day** and therefore no increased costs **to the** school
19 district. In essence, a finding of fact was made that
20 no increased school teacher labor **costs** were incurred
21 by the school district because the school day remained
22 the same before and after the performance of emergency
23 procedures and no new teachers were added. Therefore,
24 there are no '**costs** mandated by the state', pursuant to
25 **Government** Code section 1753.4, subject to state
26 reimbursement/
27

28 Based on the above, the Commission found that providing in-

1 classroom AIDS prevention instruction to students does not impose
2 increased or additional costs on school districts since school
3 districts do not extend the school day or add new teachers to
4 comply with the mandated requirements of this statute.

5
6 Finally, the Commission found that under prior law school
7 districts were not required to provide written notification of
8 AIDS prevention instruction to students and their parents or
9 guardians.

10
11 Education Code section 51229.8, as added by Chapter 818/91,
12 states in pertinent part:

13
14 **"County** offices of education and school districts,
15 through regional planning, joint powers agreements, or
16 **contract** services, shall cooperatively plan and conduct
17 in-service training to all teachers and school
18 **employees** who provide AIDS prevention instruction.

19 This in-service training shall be conducted
20 periodically to enable staff to remain current with new
21 developments in the scientific understanding of AIDS as
22 well as with new prevention education techniques. **In-**
23 service training shall be voluntary for teachers or
24 school employees who have demonstrated expertise or
25 have already received in-service training by the State
26 Department of Education or the federal Centers for
27 Disease Control, or other appropriate agency or group.

28 . . . "

1 The claimant requested that the staff's recommendation be
2 expanded to include a finding that the cooperative planning
3 needed to develop the in-service training for teachers and school
4 employees who provide AIDS prevention instruction and the
5 selection of AIDS prevention instruction materials results in a
6 new program or higher level of service in an existing program,
7 within the meaning of Government Code section 17514 and
8 section 6, article XIIIIB of the California Constitution.

9
10 The Commission found that staff's recommendation should be
11 expanded to include a finding that the cooperative planning of
12 the in--service training and the selection of AIDS instruction
13 materials results in a reimbursable state mandated program.

14
15 The Commission noted that under prior law, school districts were
16 required to inform their employees at least annually on AIDS
17 related information provided by the Department of Education.

18
19 **Specifically,** the Commission observed that Health and Safety
-20 Code sections 199.81 and 199.82 state:

21
22 **"The** State Department of Education shall provide
23 information to school districts on acquired immune
24 deficiency syndrome (AIDS), and AIDS-related
25 conditions, .and on Hepatitis B. This information shall
26 include, but not be limited to, any appropriate methods
27 school employees may employ to prevent exposure to AIDS
28 and Hepatitis B, including information concerning the

1 availability of a vaccine to prevent contraction of
2 Hepatitis B, and that the cost of vaccination may be
3 covered by the health plan benefits of the employees.
4 This information shall be compiled and updated
5 annually, or if there is new information, more
6 frequently, by the State Department of Education in
7 conjunction with the State Department of Health
8 Services and in consultation with the California
9 Conference of Local-Health Officers. In order to
10 reduce costs, this information may be included as an
11 insert with other regular mailings to the extent
12 practicable, and the information required to be
13 provided on Hepatitis B shall be provided in
14 **conjunction** with the information required to be
15 provided on AIDS.

16
17 **"School** districts shall inform their employees
18 annually, or if there is new information, more
19 frequently, of the information compiled by the State
20 **Department of Education pursuant to Section 199.81."**

21
22 However, the Commission found that this prior law did not
23 specifically require school districts to provide in-service
24 training to teachers and school employees who provide the AIDS
25 prevention instruction to the students.

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

Government Code section 17500 and following, and section 6, article XIIIIB of the California Constitution and related case law.

CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a) .

The **Commission** concludes that the provisions of Education Code sections 51201.5 and 51229.8, as added by Chapter 818/91, which require **school** districts to provide AIDS prevention instruction **to all pupils** in grades 7 through 12; to cooperatively plan and **conduct** in-service **training** for all teachers and school employees who provide WIDS prevention instruction; to provide appropriate **written** notice explaining the purpose of the AIDS prevention instruction to students and their parents or guardians; to **participate** in the selection and purchase of AIDS instructional materials, results in a new program or higher level of service in an existing program, within the meaning of Government Code section 17514 and section 6, article XIIIIB of the California Constitution.

The Commission also concludes that providing in-classroom AIDS

1 prevention instruction to students does not impose increased or
2 additional costs on school districts.

3
4 Therefore, the claimant is directed to submit parameters and
5 guidelines, pursuant to Government Code section 17557 and
6 Title 2, California Code of Regulations, section 1183.1, to the
7 Commission for its consideration.

8
9 The foregoing determination pertaining to Education Code
10 sections 51201.5 and 51229.8, is subject to the following
11 conditions:

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

22
23 If the statewide cost estimate for this mandate does
24 not exceed one million dollars (\$1,000,000) during the
25 first twelve (12) month period following the operative
26 date of the mandate, the Commission shall certify such
27 estimated amount to the State Controller's Office, and
28 the State Controller shall receive, review, and pay

claims from the State Mandates Claims Fund **as claims**
are received. (Government Code section 17610.)

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