

1 BEFORE THE
2 COMMISSION ON STATE MANDATES
3 STATE OF CALIFORNIA

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Claim of:

San Diego Unified School District

Claimant

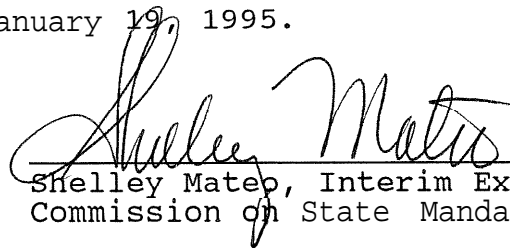
No. CSM-4454
Chapter 161, Statutes of 1993
Chapter 915, Statutes of 1993
Education Code Section
35160.5, Subdivision (c)
Intradistrict Attendance

DECISION

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

This Decision shall become effective on January 19, 1995.

IT IS SO ORDERED January 19, 1995.



Shelley Mateo, Interim Executive Director
Commission on State Mandates

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:)	No. CSM-4454
)	Education Code Section 35160.5
San Diego Unified)	Subdivision (c)
School District,)	Chapter 161, Statutes of 1993
)	Chapter 915, Statutes of 1993
Claimant)	<i>Intradistrict Attendance</i>

PROPOSED STATEMENT OF DECISION

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

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

ISSUE

Do the provisions of Education Code section 35 160.5, subdivision (c), as added by Chapter 161, Statutes of 1993 (Chapter 161/93), and amended by Chapter 915, Statutes of 1993 (Chapter 915/93), require school districts to implement a new program or provide a higher level of service in an existing program, within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514?

BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on February 22, 1994, by the San Diego Unified School District.

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

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 4 Chapter 161/93 added and Chapter 915/93 subsequently amended Education Code section
 5 160.5, subdivision (c), as follows:

6
 7 "(c) (1) On or before July 1, 1994, the governing board of each school district shall, as
 8 a condition for the receipt of school apportionments from the state school fund,
 9 adopt rules and regulations establishing a policy of open enrollment within the
 10 district for residents of the district. This requirement does not apply to any
 11 school district that has only one school or any school district with schools that
 12 do not serve any of the same grade level.

13 "(2) The policy shall include all of the following elements:

14 "(A) It shall provide that the parents or guardian of each schoolage child who is
 15 a resident in the district may select the schools the child shall attend,
 16 irrespective of the particular locations of his or her residence within the
 17 district, except that school districts shall retain the authority to maintain
 18 appropriate racial and ethnic balances among their respective schools at the
 19 school districts' discretion or as specified in applicable court-ordered or
 20 voluntary desegregation plans.

21 "(B) It shall include a selection policy for any school that receives requests for
 22 admission in excess of the capacity of the school that ensures that selection
 23 of pupils to enroll in the school is made through a random, unbiased process
 24 that prohibits an evaluation of whether any pupil should be enrolled based
 25 upon his or her academic or athletic performance. For purposes of this
 26 subdivision, the governing board of the school district shall determine the
 27 capacity of the schools in its district. However, school districts of choice
 28 may employ existing entrance criteria for specialized schools or programs if
 the criteria are uniformly applied to all applicants.

"(C) It shall provide that no pupil who currently resides in the attendance area of
 a school shall be displaced by pupils transferring from outside the attendance
 area.

"(3) It is the intent of the Legislature that, upon the request of the pupil's parent or
 guardian and demonstration of financial need, each school district provide
 transportation assistance to the pupil to the extent that the district otherwise
 provides transportation assistance to pupils. "

Regarding Education Code section 35160.5, subdivision (c), paragraph 1, the Commission
 observed that as a condition for the receipt of school apportionments from the state school fund,
 school districts are required to prepare and adopt rules and regulations to establish a policy of open
 enrollment on or before July 1, 1994, within the district for residents of the district. This

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1 requirement does not apply to any school district that has only one school or any school district
2 with schools that do not serve any of the same grade level.

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4 With respect to the provisions of Education Code section 35 160.5, subdivision (c), paragraph (2),
5 the Commission observed that such provisions describe the elements that must be set forth in an
6 open enrollment policy of an applicable school district and that school districts are required to
7 perform tasks in addition to adopting rules and regulations.

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9 Also, the Commission noted that the elements in this open enrollment policy shall provide that the
10 parent or guardian of each school age child who is a resident in the district may select the schools
11 the child shall attend, subject to the maintenance of appropriate racial and ethnic balances among
12 the respective schools at the school district's discretion or as otherwise specified.

13
14 In addition, the Commission found that the intradistrict attendance in a school district that receives
15 requests for admission in excess of a school site capacity shall be determined by a random,
16 unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon
17 academic or athletic performance. However, school districts may employ existing entrance
18 criteria for specialized schools or programs if the criteria are uniformly applied to all applicants.

19
20 Further, the Commission found that the governing board of the school district shall determine the
21 capacity of the schools in its district and no pupil who currently resides in the attendance area of
22 a school shall be displaced by pupils transferring from outside the attendance area.

23
24 Further, the Commission found that only after a request has been selected is it then necessary to
25 evaluate whether the selected request impacts the maintenance of appropriate racial and ethnic
26 balances among the respective schools. If the selected request does adversely impact the racial
27 and ethnic balance, another selection may be made and then such selection may be evaluated.

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1 Regarding Education Code section 35 160.5, subdivision (c), paragraph (3), the Commission
2 recognized that these provisions evidence the Legislature's intent that, upon request from the
3 parent or guardian, each school district provides transportation assistance to the pupil to the extent
4 that the district otherwise provides this service to other pupils. The Commission found that no
5 reimbursable state mandated program exists for transportation under these statutory provisions.
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7 The Commission found that the activities required in Education Code section 35 160.5,
8 subdivision (c), were not required under prior law.
9

10 APPLICABLE LAW RELEVANT TO THE DETERMINATION
11 OF A REIMBURSABLE STATE MANDATED PROGRAM
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13 Government Code section 17500 and following, and section 6, article XIII B of the California
14 Constitution and related case law.
15

16 CONCLUSION

17 The Commission determines that it has the authority to decide this claim under the provisions of
18 Government Code sections 17500 and 17551, subdivision (a).
19

20 In view of all the foregoing, the Commission concludes that the provisions of Education Code
21 section 35 160.5, subdivision (c), paragraph (3), of Chapter 161/93 and Chapter 9 15/93, do not
22 impose a new program or higher level of service in an existing program within the meaning of
23 section 6 of article XIII B of the California Constitution and Government Code section 17514.
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25 In view of all of the foregoing, the Commission concludes that the provisions of Education Code
26 section 35160.5, subdivision (c), paragraphs (1) and (2), of Chapter 161/93, and Chapter 915/93,
27 do impose a new program or higher level of service in an existing program within the meaning
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1 of section 6 of article XIII B of the California Constitution and Government Code section 17514
 2 by requiring school districts to:

- 3 1. Prepare and adopt rules and regulations, and establish a policy of open enrollment
 4 on or before July 1, 1994, which includes elements specified therein.
- 5 2. Establish and operate a random selection process subject to the conditions described
 6 therein.
- 7 3. Determine the capacity of the schools in its district subject to the conditions
 8 described therein.
- 9 4. Evaluate each selected request for intradistrict attendance subject to the conditions
 10 described therein.

11 Accordingly, costs incurred related to the aforementioned reimbursable state mandated programs
 12 contained in Education Code section 35 160.5, subdivision (c), paragraphs (1) and (2), are costs
 13 mandated by the state and are subject to reimbursement within the meaning of section 6,
 14 article XIII B of the California Constitution. Therefore, the claimant is directed to submit
 15 parameters and guidelines, pursuant to Government Code section 17557 and **Title 2**, California
 16 Code of Regulations, section 1183.1, to the Commission for its consideration.

17
 18 The foregoing conclusions pertaining to the requirements contained in Education Code section
 19 35 160.5, subdivision (c), paragraphs (1) and (2), are subject to the following conditions:

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

24 If the statewide cost estimate for this mandate does not exceed one million dollars
 (\$1,000,000) during the first twelve (12) month period following the operative date
 25 of the mandate, the Commission shall certify such estimated amount to the State
 Controller's Office, and the State Controller shall receive, review, and pay claims
 26 from the State Mandates Claims Fund as claims are received. (Government Code
 section 17610.)

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