BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

TEST CLAIM ON:

Education Code Sections 48213 and 48214, as added by Chapter 668, Statutes of 1978, and filed on March 9, 1994,

By the San Diego Unified School District, Claimant.

NO. CSM- 4457/4477

***Pupil Behavioral/Health Exclusions***

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 March 27, 1997

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 March 31, 1997.

PAULA HIGASHI, Executive Director

BEFORE THE

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STATE OF CALIFORNIA

| IN RE TEST CLAIM ON: | NO. CSM- 4457/4477 |
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| | ***Pupil Behavioral/Health Exclusions*** |
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| By the San Diego Unified School District, Claimant. | Adopted on March 27, 1997 |

Issue: Do the provisions of Education Code sections 48213 and 48214, as added by Chapter 668, Statutes of 1978, 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 (Cornmission) on October 3 1, 1996, in Sacramento, California, during a regularly scheduled hearing. Mr. Jose Gonzales and Mr. James Cunningham appeared on behalf of the San Diego Unified School District and Ms. Jeannie Oropeza and Mr. Bob Olson represented the Department of Finance at the October hearing.

On March 27, 1997, a supplemental hearing was conducted by the Commission to take testimony limited to the applicability of the federal Family Educational Rights and Privacy Act of 1974 to the test claim. Mr. James Cunningham appeared on behalf of the San Diego Unified School District, Dr. Carol Berg appeared on behalf of the Education Mandated Cost Network, and Ms. Caryn Becker represented the Department of Finance.

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

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

[1] CSM-4457, Pupil Behavioral Exclusions, and CSM-4477, Pupil Health Exclusions, had been submitted in a single test claim, were subsequently separated, and finally were heard as a combined test claim.

## BACKGROUND AND FINDINGS OF FACT

The San Diego Unified School District alleges that the provisions of Education Code sections 48213 and 48214, as added by Chapter 668, Statutes of 1978, 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. The statutes which are the subject of this test claim are as follows:

### Education Code Section 48213

"Prior to excluding a child from attendance pursuant to Section 4821 1[2] or Section 48212[3], the governing board shall send notice to the parent or guardian of the child. [First sentence] The notice shall contain each of the following: [Second sentence]

(1) A statement of the facts leading to a decision to propose exclusion of the child.

(2) A statement that the parent or guardian of the child has a right to meet with the governing board to discuss the proposed exclusion.

(3) A statement that at any meeting with the governing board held to discuss such proposed exclusion, the parent or guardian shall have an opportunity to inspect all documents which the governing board relied on in its decision to propose exclusion of the child; to challenge any evidence and to confront and question any witness presented by the governing board; and to present oral and documentary evidence on the child's behalf, including witnesses. The statement shall also include notice that the parent or guardian may designate one or more representatives to be present with the parent or guardian at the meeting.

(4) A statement that the decision to exclude the child is subject to periodic review and a statement of the procedures set by the governing board for such periodic review.

"If a child is excluded from attendance pursuant to Section 3 118 of the Health and Safety Code or Section 49451 of this code, or when a principal or his or her designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of pupils or school personnel, the governing board shall not be required to sent prior notice of the exclusion to the parent or guardian of the child as required in this section.[4] The governing board shall send a notice as required by this section as soon as is reasonably possible after the exclusion." (Last Paragraph)

### Education Code Section 48214

"The governing board of a school district shall adopt rules and regulations governing periodic reviews of its decisions to exclude children from attendance pursuant to Sections 482 11 and 482 12[5]."

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[2] Section 48211 reads as follows:
"The governing body of any school district may exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases." (Chapter 1010/1976 was derived from former § 10552, Chapter 2/1959.)
[3] Repealed 1992.
[4] Former Health and Safety Code section 3 118, referenced in Education Code section 48213, has been recodified as Health and Safety Code section 120230. (Chapter 415/1995, § 7.) All references to Health and Safety Code section 3 118 are also to recodified Health and Safety Code section 120230.
[5] Repealed 1992.

THE COMMISSION FINDS THAT:

This test claim involves a pupil's constitutional right to due process, guaranteed by the 14th Amendment and triggered whenever a state agency (school district) seeks to deprive a person of protected interests. [6]

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

If a state voluntarily provides public education, it cannot deprive a person of that education without providing sufficient procedural due process. (Goss v. *Lopez,* (1975) 419 U.S. 565, 572-573; 95 S .Ct. 729, 735-736 .) California is such a state because it has extended the right to an education by virtue of two constitutional provisions, one calling for legislative encouragement of education (Cal. Const., art. IX, § 1) and the other requiring the Legislature to create a system of 'free schools' in each district of the state (Cal.Const., art. IX, § 5 .) It has also extended the right to an education by a statutory prescription for a compulsory full-time education for all persons between the ages of 6 and 16. The importance of this right has been repeatedly emphasized by the California Supreme Court.[7]

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

Finally, in 1975, the U.S. Supreme Court issued its landmark decision in Goss v. *Lopez, supra*, 419 U.S. 565, 581. This case addressed the due process required for a short term suspension of 10 days or less. The court held that a student must be given "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. " The court reasoned that due process "requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.. .The timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of competing interests

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[6] In the *County of Los Angeles v. State of California* (1995) 32 Cal.App.4th 805, the court affirmed the Commission's decision ***(Defense of Indigents in Capital Cases, CSM-4411)*** and held that the requirements of Penal Code section 987.9 were not state mandated, since even in the absence of the statute, counties would be responsible for providing ancillary services to indigent defendants under the federal constitutional guaranties of right to counsel and due process (U.S. Const. 6th and 14th Amends.). "Assuming, arguendo, the provisions of section 987.9 were determined to be a new program, it does not necessarily lead to the conclusion that the program is a state mandate under Cal. Const. Art. XIII B, section 6.. .In fact, the requirements under section 987.9 are not mandated by the state, but rather by principles of constitutional law.. . . " *(Id.* at 818.)

[7] In *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 670, the court stated that the right of a child to attend school is "a right- a legal right — as distinctively so as the vested right in property owned is a legal right, and as such it is protected, and entitled to be protected by all the guarantees by which other legal rights are protected.. . . " In *Serrano v. Priest* (197 1) 5 Cal. 3d 584, the court reaffirmed the fundamental nature of that right as follows: "[W]e are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest. ' " *(Id.* at pp. 608-609.)

involved. The student's interest is to avoid unfair or mistaken exclusion from the educational process with all of its unfortunate consequences. " (*Id.*)

One year after *Goss,* in *Abella v. Riverside Unified School District* (December 1976) 65 C .A. 3d 153 (hereafter cited as *Abella*), a California appellate court held that the procedure followed by a school district in excluding children from school attendance, denied children so excluded due process of law.'

The Cornmission further noted that a California federal court considered an action brought against a school district and school officials by the parents of a child infected with the AIDS virus. The child's parents sought an injunction to require the district to allow a child to attend regular kindergarten classes. Following entry of a preliminary injunction, the parties stipulated to entry of a permanent injunction. Although the Court declined to rule on numerous constitutional and state based claims, in both the preliminary and permanent injunction, defendants were prohibited and enjoined from *excluding* Plaintiff's son from attending kindergarten, "unless such exclusion . . . *occurs in strict compliance with Cal. Education Code § 48213 and due process as required by the United States and California Constitutions. " (Thomas v. Atascadero Unified School District (1987) 662* F.Supp.376, 382.) Thus, the Commission noted the *Thomas* court's recognition that school districts must comply *with section 48213 and due process, as required by the United States and California Constitutions,* before an exclusion may occur.

The responsibility to set minimal requirements of due process is the responsibility of each state and not the United States Supreme Court. (*Morrissey* v. *Brewer, (1972) 408* U.S. 47 1, 488 .) ". . .The law must require notice to them, and give them the right to a hearing and an opportunity to be heard. This notice must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace. The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion. The law itself must save the parties rights, and not leave them to the discretion of the courts. " (Coe v. *Armour Fertilizer Works* (1915) 237 U.S. 413, 59 L.Ed. 1027, 35 S.Ct. 625.) The Commission further noted that if a legislative response is not forthcoming, the minimal requirements of due process will be defined by judicial decision.

The Cornmission found that the Legislature enacted Chapter 668, Statutes of 1978, an urgency bill, for the express purpose of alleviating the uncertainty that had been expressed concerning the proper application of the recently revised laws relating to pupil discipline in California schools. (See last paragraph of chaptered legislation.) According to the *Pacific Law Journal*, a recognized chronicler of legislative intent, [section 482131 ". . . . appears to extend the requirements of procedural due process mandated by the Supreme Court in Goss v. *Lopez* (1975) 4 19 U. S , 565, 58 1, to California public school students facing exclusion from attendance at school. . . . " *(Selected 1978 California Legislation,* 10 Pac. L.J. 449, 453.)

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[8] The pupil was exempted from attendance pursuant to former section 12152. However, after the court concluded that section 12152 did not establish grounds for involuntary removal or exclusion, it considered whether the action could be sustained under its authority to exclude pursuant to former section 10553. The court found that it did not. Section 10553 stated: "The governing board may exclude any child whose physical or mental disability is such as to cause his attendance to be inimical to the welfare of other pupils. " The court also found that the procedure followed by defendant school district in excluding children from school attendance under section 12152 denied those children due process of law.

The claimant maintained that the rudimentary due process under Goss, to give oral or written notice to the student and to give the student an opportunity to present their side of the story is all that federal due process requires schools to do when excluding a pupil from school.'

The Cornmission observed that due process allows for the adoption of different rules to address different situations or contexts: In *Cafeteria and Restaurant Workers, 367* U.S. 886, 894, 8 1 S.Ct. 1743, 1748, 6 L.Ed.2d 1230, the U.S. Supreme Court stated that due process of law does not require a hearing 'in every conceivable case of government impairment of private interest. ' '"For all its consequence, *due process* has never been, and perhaps can never be, precisely defined. ' [U]nlike some legal rules, ' due process "is not a technical conception with a fixed content unrelated to time, place and circumstances. ' *(Id.* at 895 .) "Rather, the phrase expresses the requirement of fundamental fairness' . . . Applying the Due Process Clause is therefore an uncertain enterprise which must discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake. " *(Lassiter v. Dept. of Social Services of Durham County, North Carolina* (1981) 452 U.S. 18, 22, 101 S.Ct. 2153, 2157.)

The Commission recognized that the Legislature enacted a different procedure for exclusions because of the different circumstances facing the pupil, the competing interests of the parent as to health and welfare decisions concerning their child, and the school district's interest.

Based on the foregoing, the Commission found that the exclusion of a pupil from school can only be accomplished by procedures meeting the requisites of the federal Due Process Clause. Moreover, the Commission determined that the procedures prescribed by section 482 13 were enacted to meet the requirements of Due Process.

<u>Notice to the Parent or Guardian and Their Right to a Meeting with Governing; Board (First and Second Sentences and Four Subparagraphs of § 48213)</u>

The first sentence of the opening paragraph of section 48213 references section 482 11 in its statement requiring school districts to send a notice to the parent/guardian *prior* to excluding a child from school attendance.

Section 48211 states that " [t]he governing board of any school district *may* exclude children of filthy or vicious habits or children suffering from contagious or infectious diseases. [10]" (emphasis added). The use of the word *may* indicates that pupil exclusions are discretionary decisions to be made by governing boards of school districts. The Commission observed that section 48211 is identical to prior law's former section 10552. However, prior law did not require governing boards to send notice to the parent or guardian prior to making the exclusion.

The second sentence of section 48213 further specifies what should be included in this notice and details in subparagraphs (1) through (3) the requisite elements of procedural due process that a pupil is entitled to prior to exclusion from school attendance.

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[9] October 31, 1996 Hearing Transcript, p. 198 and following. District's analysis was more fully set forth in the District's letter, dated October 16, 1996.

[10] Throughout the test claim process, there was disagreement on the meaning of "contagious, infectious diseases or conditions. " Attachment A includes definitions of these and related terms that were noted by the Commission.

Section 48213 specifies that *prior to exclusion*, the governing board must send notice to the child's parent or guardian containing information relating to the reasons for the proposed exclusion. The Cornmission observed that notice must be provided to parents instead of directly to the pupil because responsibility for " [t]he custody, care and nurture of the child resides first in the parent . . . . " *Prince v. Massachusetts* (1944) 321 U.S. 158, 166, 64 S. Ct. 438, 442, 88 L.Ed. 645. The Commission recognized that when a child suffers from an infectious, contagious, or communicable disease, it is the responsibility of the parent or guardian to arrange for their child's medical care. Therefore, instead of discussing the reason for an exclusion with the pupil, as in a pupil suspension pursuant to Goss, the Commission noted that section 48213 was appropriately tailored to require the governing board to provide written notice of the facts leading to a decision to propose exclusion of the child to the parent or guardian.

The Commission found that the duty of the governing board (set forth in section 48213) to provide written notice of the facts leading to a decision to propose exclusion of the child to the parent or guardian is a codification to satisfy the requisites of procedural due process under the Fourteenth Amendment to the United States Constitution.

Further, section 48213 in the second sentence and the following three subparagraphs require that the notice state the right of the parent or guardian to meet with the governing board to address the proposed exclusion, to inspect all documents used by the governing board in reaching its decision of exclusion, to dispute evidence, confront and question witnesses, to present oral and documentary evidence, including witnesses, for the child, and the right to designate representatives. These requirements, other than the requirement that the notice state the right of the parent or guardian to inspect documents, in effect provide an "informal hearing" to permit the student and his or her parent to give their version of the pupil's health status. As explained in Goss, the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of competing interests involved. The student's interest is to avoid unfair or mistaken exclusion from the educational process with all of its unfortunate consequences. The school's interest is to protect the health, safety and welfare of its other pupils and employees from a pupil suffering from an infectious, contagious, or communicable disease. Consistent with its finding in the Pupil Expulsions Test Claim, CSM-4455, the Commission found that the requirement for the notice to inform the parent or guardian of the right to inspect documents exceeded minimum federal due process rights.

The Commission further found that the codification of the parent or guardian's right to meet with the governing board concerning the exclusion set forth in the third subparagraph of section 48213 was intended by the Legislature to satisfy the requisites of procedural due process under the Fourteenth Amendment to the United States Constitution.

Section 48213, subparagraph (4), requires the governing board to include in the notice to a parent or guardian, a statement that the decision to exclude the child is subject to periodic review and a statement of the procedures set by the governing board for such periodic review.

Finally, the Commission found that that the inclusion of the subparagraph (4) information into the notice is outside the scope of procedural due process because it concerns activities which occur after an exclusion is made.

Federal Family Educational Rights and Privacy Act of 1974 (FERPA)

The Commission further observed that: "The courts have concluded that no state mandate exists if the requirements or provisions of a state statute are, nevertheless, required by federal law. 'When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no 'true choice' in the manner of implementation of the federal mandate. ' *(Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 [citation omitted] ; *see* also *City of Sacramento v. State of California* (1990) 50 Cal. 3d 5 1, 76 [citation omitted] ; *County of Fresno v. Lehman* (1991) 229 Cal. App. 3d 340, 349 [citation omitted] .)" *(County of Los Angeles v. Commission on State Mandates, supra*, 32 Cal.App.4th 805, 816-817.)

The Commission then found that under the Family Educational Rights and Privacy Act of 1974 (FERPA, 20 U.S.C.A. 1232g), federal subventions to California school districts would have been cut unless school districts granted parents or guardians or 18-year old students the right to inspect and review, and challenge any and all official records, files, and data directly related to their children.

Consequently, the Commission also found that certain provisions of section 48213 implemented the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA) that prohibited states and local educational agencies receiving federal funds from failing to adopt a policy to ensure that parents and guardians have a federal right to inspect, review, and challenge educational records. (See 20 U.S.C.A. § 1232g; 34 C.F.R. § 99.1 et seq.)

Specifically, the Commission made the following additional findings regarding the requirements in subparagraph (3) of section 48213 and their relationship to federal requirements :

- Any document that the governing board relies on in its decision to propose exclusion of a child, containing information directly related to the child and that is not otherwise privileged or confidential, is an "education record" under FERPA;
- The right to inspect and challenge such document is granted to parents or guardians and students who are 18 years of age or older under FERPA;
- A school district's response to the exercise of this right by the parent or guardian of a student who is under 18 years of age is mandated by FERPA.

Notwithstanding these findings related to FERPA, the Commission found that a school district's response to the exercise of this right by the parent or guardian of a student who is 18 years of age or older is a reimbursable state mandated program.

Emergency Exclusions [Last Paragraph of Section 48213]

In Goss v. *Lopez,* the United States Supreme Court recognized 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 . . . 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 recognized that the last paragraph of section 48213 codifies compelling reasons to justify the *postponement of federal due process requirements of notice and hearing* in order to make an emergency exclusion and that this postponement is consistent with Goss.

Notwithstanding a governing board's discretion to *exclude* pursuant to section 48211, the Commission noted that a Department of Education regulation states: "A pupil while infected with any contagious or infectious disease may not remain in any public school. " (Title 5, California Code of Regulations, § 202, undated.)

The opening sentence of the last paragraph of section 48213 exempts governing boards from sending *prior* notice of an exclusion to the parent or guardian of a child when the exclusion is made pursuant to:

- Health and Safety Code section 3 118
- Education Code section 4945 1, or
- When a principal/designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of pupils or school personnel.

The next sentence specifies that the governing board is required to send the parental notice as soon as is reasonably possible after any of the exclusions falling within one of the aforementioned emergency situations.

- **Health and Safety Code section 3118** pre-dates 1975 and is limited to persons residing in specific areas where any contagious, infectious, or communicable disease exists or has recently existed and which is subject to strict isolation or quarantine of contacts. [11] Therefore, the direct involvement or communication from the county health officer to the school district is required prior to implementation. There is no language in section 3 118 which expressly links this section to an exclusion carried out by the governing board pursuant to section 48211. A school official will have no choice but to implement an exclusion based on Health and Safety Code section 3 118.

Accordingly, the Comrnission found that the notice sent by a governing board to the parent or guardian, as soon as is reasonably possible after the exclusion, is mandated by the procedural due clause under the Fourteenth Amendment to the United States Constitution. However, the Commission also found that implicit in section 48213 is a new requirement for the principal or other responsible school official to report the facts surrounding a section 3 118 exclusion to the governing board. This report must be made in order for the governing board to carry out the parental notification.

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[11] Recodified Health and Safety Code section 120175 states that: "Every health officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases. (Former § 3110, added by Chapter 205/1957, amended by Chapter 1593/1971 and Chapter 1252/1977.) Specific diseases and conditions are addressed by Title 17, California Code of Regulations § 2550 et seq.

**Education Code section 49451** expressly authorizes a child's parent or guardian to withhold consent to a physical examination of his or her child. The authorization further provides that this child will be sent home from school whenever there is good reason to believe that the child is suffering from a *recognized contagious or infectious disease.* Section 49451 also pre-dates the test claim legislation, does not include any language expressly linking this section to an exclusion carried out by the governing board pursuant to section 48211, and does not include any requirements for notice and hearing. [12]

Thus, the Commission found that the governing board's notice that is sent to the parent or guardian as soon as is reasonably possible, after the section 4945 1 exclusion, is mandated by the procedural due process clause under the Fourteenth Amendment to the United States Constitution. However, the Commission also found that implicit in section 48213 is a new requirement for the principal or other responsible school official to report the facts surrounding the section 4945 1 exclusion to the governing board. This report must be made in order for the governing board to carry out the parental notification.

**Clear and Present Danger...** And finally, the last paragraph of section 48213 also recognizes that a principal is authorized to exclude a child if it is determined that the continued presence of the child would constitute *a clear and present danger to the life, safety, or health of other pupils and employees.* Although the plain text of this provision does not mandate such exclusions, the Commission noted that to construe this provision as optional would be unreasonable. Therefore, if it is determined that the continued presence of a child would constitute a clear and present danger to the life, safety, or health of other pupils and employees, the Commission construed the statute to require the principal to exclude that child.

Again, the Commission found that the governing board's notice that is sent to the parent or guardian as soon as is reasonably possible, after the clear and present danger exclusion, is mandated by the procedural due process clause under the Fourteenth Amendment to the United States Constitution. However, the Commission further found that implicit in section 48213 is a new requirement for the principal or other responsible school official to report the facts surrounding a clear and present danger exclusion to the governing board. This report must be made in order for the governing board to carry out the parental notification.

Regarding Education Code section 482 13, the Commission found that:

- The requirement to include in the parental notice: (a) a statement that at any meeting with the governing board held to discuss such proposed exclusion, the parent or guardian shall have an opportunity to inspect all documents which the governing board relied on in its decision to propose exclusion of the child; (b) a statement that the decision to exclude the child is subject to periodic review and (c) a statement of the procedures set by the governing board for such periodic review" is outside the scope of minimal due process, and thus constitutes a reimbursable state mandated program.
- The requirement for the governing board to allow the parent or guardian of a pupil who is 18 years of age or older, to inspect all documents which the governing board relied on in its

[12] Derivation of section 4945 Chapter 10 10/1976, § 2, derived from former § 11822, formerly § 11902, Chapter 2/1959, § 11902 renumbered § 11822 and amended by Chapter 1048/1968, § 14.

decision to propose exclusion of the child, exceeds federal due process, and thus constitutes a reimbursable state mandated program.

- The requirement for the governing board to send notice to the parent or guardian as soon as is reasonably possible after the emergency exclusions described in the last paragraph of section 48213 is not a reimbursable state mandated program because it codifies the requisites of procedural due process under the Fourteenth Amendment to the United States Constitution.
- The new requirement implicit in section 48213 for the principal or other responsible school official to report the facts surrounding emergency exclusions (described in the last paragraph of section 48213) to the governing board, is outside the scope of due process and thus imposes a reimbursable state mandated program.

Education Code Section 48214

Section 48214 expressly requires governing boards to adopt rules and regulations governing periodic reviews of its decisions to exclude children from attendance pursuant to section 48211. This requirement did not exist in prior law and therefore, does impose a reimbursable state mandated program.

Although a one-time cost for the initial development of the rules and regulations would have been eligible for reimbursement after enactment of the subject chapter, the eligible claiming period for this test claim begins on July 1, 1993, fourteen years after the original enactment in Chapter 66811978. Accordingly, much of the reimbursable cost mandated by the state for adoption of regulations required by the subject chapter, is not covered by this test claim. The Commission noted that any state mandated regulations required on or after July 1, 1993, will be negligible, but reimbursable.

Claimant alleges that section 48214 also requires school districts to monitor the status of excluded pupils to determine when the child may return to school. There is no language in section 48214 which requires school districts to monitor the status of excluded pupils to determine when the child may return to school. Therefore, claimant's allegation is without merit.

Moreover, the pre-1975 provisions of section 3 118 and section 4945 1 and following, indicate that such monitoring was a pre-existing requirement. Specifically, section 4945 1 provides in relevant part that excluded pupils "shall not be permitted to return until the school authorities are satisfied that any contagious or infectious disease does not exist. " Section 3 118 specifies that the approval of the county health officer is required.[13] Since these requirements pre-dated

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[13] Title 17, California Code of Regulations, section 2526, adopted by the Department of Health Services:

"§ 2526. Exclusion and Readmission by School Authorities

It shall be the duty of the principal or other person in charge of any public, private or Sunday School to exclude therefrom any child or other person affected with a disease presumably communicable, until the expiration of the prescribed period of isolation for the particular communicable disease. If the attending physician, school physician, or health officer finds upon examination that the person is not suffering from a communicable disease, he may submit a certificate to this effect to the school authority who shall readmit the person." (Note: Authority cited: Sections 207, 208 and 3123, Health and Safety Code. Reference: Sections 200, 207, 3051, 3053, 3 110, 3 118 and 3 123, Health and Safety Code. HISTORY: 1. Amendment filed 3-30-89; operative 3-30-89 (Register 89, No. 14).)

the subject chapter, the Commission concluded that section 48214, does not contain a reimbursable state mandated program or higher level of service regarding exclusions based upon section 3 118 of the Health and Safety Code and section 4945 1 of the Education Code.

## CONCLUSION

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

Specifically, the Commission determines that:

Portions of the test claim statute, 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 exclusion from school, and to comply with the federal Family Educational Rights and Privacy Act of 1974. (FERPA, 20 U.S.C.A. § 1232g.)

The following provisions of the test claim statue, as specified above, impose a new program or higher level of service upon school districts within the meaning of section 6, article XIIIB of the California Constitution and section 17514 of the Government Code, by requiring school districts to perform the following activities:

- Reporting to the governing board the facts relied upon to support a decision to exclude a child from attendance pursuant to Health and Safety Code section 3 11 8[14] and Education Code section 49451. (§ 48213.)
- Reporting to the governing board the facts relied upon to support a decision to exclude a pupil when it is determined that the pupil's continued presence at school would constitute a clear and present danger to the life, safety, or health of pupils or school personnel. (§ 48213.)
- Including in the notice to the pupil's parent or guardian: (a) a statement that the parent or guardian shall have the opportunity to inspect all documents which the governing board relied upon in its decision to exclude or propose to exclude; (b) a statement that the decision to exclude the child is subject to periodic review; and (c) a statement of the procedures set by the governing board for such periodic review. (§ 48213 .)
- Allowing the parent or guardian of a pupil who is 18 years of age or older to inspect all documents which the governing board relied upon in its decision to exclude or propose to exclude. (§ 48213.)
- Adopting rules and regulations governing periodic reviews of its decisions to exclude pupils pursuant to Education Code section 4821 I. (§ 48214.)

Further, the Commission determines that the remaining portions of Education Code sections 48213 and 48214, as added by Chapter 668, Statues of 1978, do not impose a new program or higher level of service upon school districts within the meaning of section 6, article XIIIB of the California Constitution and section 175 14 of the Government Code.

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[14] See note 4.

ATTACHMENT A

## Definitions

Throughout the test claim process, there was disagreement on the meaning of contagious, infectious diseases or conditions, between the claimant and the Department of Finance. The following definitions are included to clarify how the Commission itself understood these terms.

According to Black's Law Dictionary, the definition of exclusion is "Denial of entry or admittance. "

From the *American Heritage Dictionary,* 2nd College Ed., 1985.

> "Contagious. 1. Transmissible by direct or indirect contact. 2. Carrying or capable of carrying disease. Spreading or tending to spread from one to another; catching."
>
> "Infectious. 1. Capable of causing infection. 2. Capable of being transmitted by infection without actual contact. 3. Caused by a microorganism. 4. Easily or readily communicated. "
>
> ""Communicable. Capable of being transmitted."
>
> "Disease. An abnormal condition of an organism or part, esp. as a consequence of infection, inherent physiological functioning.. . . "
>
> "Condition. 1. The particular mode or state of being of a person or things. 2.A. A state of health. B. A state of readiness or physical fitness. 3. *Informal.* A disease or ailment: *a heart condition. . . . "*

From the Department of Health Services' regulations, Title 17 Cal.Code of Regs., § 2500 (7).):

> "'Communicable disease' means an illness due to a specific microbiological or parasitic agent or its toxic products which arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the inanimate environment. "