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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:)
San Diego unified) No. CSM-4437
School District,) Education Code
Claimant) Sections 47605 and 47607
) Chapter 781, Statutes of 1992
) Charter Schools
)
)

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on May 26, 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 sections 47605 and 47607 of Chapter 781, Statutes of 1992 (Chapter 781/92), 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

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3 The test claim was filed with the Commission on December 1, 1993,
4 by the San Diego Unified School District.

5
6 The elements for filing a test claim, as specified in section 1183
7 of Title 2 of the California Code of Regulations, were satisfied.

8
9 Chapter 781/92 added Education Code section 47605 as follows:

10 "(a) A petition for the establishment of a charter school
11 within any school district may be circulated by any one
12 or more persons seeking to establish the charter school.
13 After the petition has been signed by **not** less than 10
14 percent of the teachers currently employed by the school
 district, or by not less than 50 percent of the teachers
 currently employed at one school of the district, it may
 be submitted to the governing board of the school
 district for review.

15 "(b) No later than 30 days after receiving a petition, in
16 accordance with subdivision (a) , the governing board of
17 the school district shall hold a public hearing on the
18 provisions of the charter, at which time the board shall
19 consider the level of employee and parental support for
20 the petition. Following review of the petition and the
21 public hearing, the governing board shall either grant or
22 deny the charter within 60 days of receipt of the
23 petition, provided, however, that the date may be
 extended by an additional 30 days if both parties agree
 to the extension. A school district governing board may
 grant a charter for the operation of a school under this
 part if it determines that the petition contains the
 number of signatures required by subdivision (a), a
 statement of each of the conditions described in
 subdivision (d) , and descriptions of all of the
 following:

24 "(1) A description of the educational program of the
25 school, designed, among other things, to identify those
26 whom the school is attempting to educate, what it means
27 to be an 'educated person' in the 21st century, and how
 learning best occurs. The goals identified in that
 program shall include the objective of enabling pupils to
 become self-motivated, competent, and lifelong learners.

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1 "(2) The measurable pupil outcomes identified for use by
2 the charter school. 'Pupil outcomes,' for purposes of
3 this part, means the extent to which all pupils of the
4 school demonstrate that they have attained the skills,
5 knowledge, and attitudes specified as goals in the
6 school's educational program.

7 "(3) The method by which pupil progress in meeting those
8 pupil outcomes is to be measured.

9 "(4) The governance structure of the school, including,
10 but not limited to, the process to be followed by the
11 school to ensure parental involvement.

12 "(5) The qualifications to be met by individuals to be
13 employed by the school.

14 "(6) The procedures that the school will follow to ensure
15 the health and safety of pupils and staff. These proce-
16 dures shall include the requirement that each employee of
17 the school furnish the school with a criminal record
18 summary as described in Section 44237.

19 "(7) The means by which the school will achieve a racial
20 and ethnic balance among its pupils that is reflective of
21 the general population residing within the territorial
22 jurisdiction of the school district to which the charter
23 petition is submitted.

24 "(8) Admission requirements, if applicable.

25 "(9) The manner in which an annual audit of the financial
26 and programmatic operations of the school is to be
27 conducted.

28 "(10) The procedures by which pupils can be suspended or
29 expelled.

30 "(11) The manner by which staff members of the charter
31 schools will be covered by the State Teachers' Retirement
32 System, the Public Employees' Retirement System, or
33 federal social security.

34 "(12) The public school attendance alternatives for
35 pupils residing within the school district who choose not
36 to attend charter schools.

37 "(13) A description of the rights of any employee of the
38 school district upon leaving the employment of the school
39 district to work in a charter school, and of any rights
40 of return to the school district after employment at a
41 charter school.

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1 "(c) Charter schools shall meet the statewide performance
2 standards and conduct the pupil assessments required
pursuant to Section 60602.5.

3 "(d) In addition to any other requirement imposed under
4 this part, a charter school shall be nonsectarian in its
5 **programs**, admission policies, employment practices, and
6 all other operations, shall not charge tuition, and shall
7 not discriminate against any pupil on the basis of
8 ethnicity, national origin, gender, or disability,
9 Admission to a charter school shall not be determined
10 according to the place of residence of the pupil, or of
11 his or her parent or guardian, within this state, except
12 that any existing public school converting partially or
13 entirely to a charter school under this part shall adopt
14 and maintain a policy giving admission preference to
15 pupils who reside within the former attendance area of
16 that public school.

17 "(e) No governing board of a school district shall
18 require any employee of the school district to be
19 employed in a charter school,

20 "(f) No governing board of a school district shall
21 require any pupil enrolled in the school district to
22 attend a charter school.

23 "(g) The governing board may require that the petitioner
24 or petitioners provide information regarding the proposed
25 operation and potential effects of the school, including,
26 but not limited to, the facilities to be utilized by the
27 school, the manner in which administrative services of
28 the school are to be provided, and potential civil
liability effects upon the school and upon the school
district.

1 "(h) In reviewing petitions for the establishment of
2 charter schools within the school district, the school
3 district governing board shall give preference to
4 petitions that demonstrate the capability to provide
5 comprehensive learning experiences to pupils identified
6 by the petitioner or petitioners as academically low
7 achieving pursuant to the standards established by the
8 State Department of Education under Section 54032.

9 "(i) Upon the approval of the petition by the governing
10 board of the school district, the petitioner or
11 petitioners shall provide written notice of that
12 approval, including a copy of the petition, to the State
13 Board of Education.

14 "(j) (I) If the governing board of the school district
15 denies a charter, the county superintendent of schools,
16 at the request of the petitioner or petitioners, shall
17 select and convene a review panel to review the action of
18

1 the governing board, The review panel shall consist of
2 three governing board members from other school districts
3 in the county and three teachers from other school
4 districts in the county unless only one school district
is located in the county, in which case the panel members
shall be selected from school districts in adjoining
counties.

5 "(2) If the review panel determines **that** the governing
6 board failed to appropriately consider the charter
7 request, or acted in an arbitrary manner in denying the
8 request, the review panel shall request the governing
board to reconsider the charter request. In the case of
a tie vote of the panel, the county superintendent of
schools shall vote to break the tie.

9 "(3) If, upon reconsideration, the governing board denies
10 a charter, the county board of education, at the request
11 of the petitioner or petitioners, shall hold a public
12 hearing in the manner described in subdivision (b) and,
13 accordingly, may grant a charter. A charter school for
which a charter is granted by a county board of education
pursuant to this paragraph shall qualify fully as a
charter school for all. funding and other purposes of the
part."

14 The Commission observed that Education Code section 47605 does not
15 contain a requirement for school districts or county boards of
16 education to plan and prepare procedures for implementation of the
17 Charter Schools Act of 1992 prior to the receipt by the school
18 district or county board of education of a charter school petition.

19
20 The Commission found that the State Board of Education and the
21 California Department of Education have distributed advisory
22 bulletins to school districts and county boards of education, and
23 that these bulletins provide a framework to school districts which
24 will enable them to respond to a charter petition in a timely
25 manner.

26
27 The Commission observed that Education Code section 47605 does not
28 contain a requirement for school districts or county boards of

1 education to disseminate information regarding charter school
2 programs to staff, students, parents, and the community.

3
4 The Commission noted that Education Code Section 47615 requires the
5 State Board of Education to distribute information announcing the
6 availability of the charter school process to each school district,
7 county office of education, and public postsecondary educational
8 institution, and, through press releases, to each major newspaper
9 in the state.

10
11 The Commission noted that, in many cases, questions will be
12 directed to the school district or county board of education as the
13 local point of contact with the charter school petition process.

14
15 Further, the Commission found that responding to direct inquiries
16 from the public for information regarding charter schools, although
17 limited in scope, is an implicit requirement.

18
19 The Commission observed that Education Code section 47605,
20 subdivision (b), established requirements for school districts to
21 conduct a public hearing within thirty days of receipt of a
22 petition to determine community support for the petition.

23
24 The Commission observed that Education Code section 47605,
25 subdivision (b), established requirements for school districts to
26 grant or deny the petition within sixty days of receipt, subject to
27 a thirty-day extension upon agreement of the parties.

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1 The Commission observed that Education Code section 47605,
2 subdivision (j) , established requirements for school districts to
3 respond to the request of the review panel selected and convened by
4 the county superintendent of schools, pursuant to an appeal of any
5 petition denied by the district.

6

7 The Commission found that, while section 47605 phrases this as a
8 request., it is clear that a school district cannot simply ignore
9 such a request from the review panel..

10

11 The Commission further found, since the school district must
22 respond, this request for reconsideration is an integral part of
13 the appeals process established by Education Code section 47605,
14 subdivision (j).

15

16 The Commission recognized that Education Code section 47605
17 established requirements for county boards of education to hear a
18 petition following a denial on reconsideration by the governing
19 board of a school district, to conduct a public hearing within
20 thirty days of receipt of a petition to determine community support
21 for the petition, when the petition has been denied by the school
22 district, and to grant or deny the petition within sixty days of
23 receipt, subject to a thirty-day extension upon agreement of the
24 parties, when the petition has been denied by the school district.

25

26 The Commission found that the activities required in Education Code
27 section 47605 were not required under prior law.

28 //

1 Chapter 781/92 added Education Code section 47607 as follows:

2 "(a) A charter may be granted pursuant to Sections 47605
3 and 47606 for a period not to exceed five years. A
4 charter granted by a school district governing board or
5 county board of education may be granted one or more
6 subsequent renewals by that entity. Each renewal shall
7 be for a period not to exceed five years. A material
8 revision of the provisions of a charter petition may be
9 made only with the approval of the authority that granted
10 the charter.

11 "(b) A charter may be revoked by the authority that gran-
12 ted the charter under this chapter if the authority finds
13 that the charter school did any of the following:

14 "(1) Committed a material violation of any of the
15 conditions, standards, or procedures set forth in the
16 charter petition.

17 "(2) Failed to meet or pursue any of the pupil outcomes
18 identified in the charter petition.

19 "(3) Failed to meet generally accepted accounting
20 standards of fiscal management.

21 "(4) Violated any provision of law.

22

23 The Commission observed that Education Code section 47607
24 established requirements for school districts or county boards of
25 education to monitor the charter school performance to determine if
26 it has achieved its goals and objectives.

27

28 The Commission noted that Education Code section 47667 authorizes
the authority that granted the charter (i.e., school districts or
county boards of education) to determine if the charter school is
or is not in compliance with Education Code section 47607,
subdivision (b).

29

30 The Commission recognized that Education Code section 47607,
31 subdivision (b), lists four grounds on which the charter granting

1 | authority may revoke the charter, The authority that granted the
2 | charter cannot know if any of these grounds applies without in some
3 | way monitoring what is going on at the charter school.

4 |
5 | Further, the Commission noted that Education Code section 47610
6 | requires that a charter school comply with all of the provisions
7 | set forth in its charter petition.

8 |
9 | Therefore, the Commission found that monitoring by the granting
10 | authority is implicit in Education Code section 47607, which
11 | permits revocation of the charter for specified actions or
12 | omissions on the part of the charter school.

13 |
14 | The Commission observed that Education Code section 47607
15 | established requirements for school districts or county boards of
16 | education to decide upon requests for revision or extension of
17 | approved charters.

18 |
19 | The Commission found that school districts or county boards of
20 | education will engage in renewal activities only if they have
21 | previously granted a charter in response to a petition for the
22 | establishment of a charter school.

23 |
24 | The Commission further noted that, while there is no express
25 | statutory requirement that a petition be granted if specified
26 | criteria are met, governing boards of school districts or county
27 | boards of education lack unfettered discretion to deny charter
28 | school petitions which meet or exceed all of the 'criteria set forth

1 in Education Code section 47605 for such a petition, without
2 leaving themselves open to charges of acting in an arbitrary manner
3 in denying the request.

4
5 The Commission observed that, while Education Code section 47607,
6 subdivision (a) , does not lay out an explicit renewal. process, it
7 requires Jay its language that the renewal process, as well as the
8 material revision process, take place. It is clear that the
9 granting authority is not required to automatically grant renewal
10 or material revision, and that the charter school must request that
11 its charter be renewed or materially revised. Even SO' the
12 granting authority has no choice but to entertain requests for
13 renewal or material revision of a charter.

14
15 The Commission found that, since granting authorities cannot refuse
16 to receive a petition for the establishment of a charter school,
17 and lack unfettered discretion to deny charter school petitions,
18 they also cannot refuse to receive a request for renewal or
19 material revision of the charter,

20
21 The Commission found that the activities required in Education Code
22 section 47607 were not required under prior law.

23
24 APPLICABLE LAW RELEVANT TO THE DETERMINATION
25 OF A REIMBURSABLE STATE MANDATED PROGRAM

26
27 Government Code section 17500 and following, and section 6,
28 article XIII B of the California Constitution and related case law.

CONCLUSION

1

2

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

6

7 The Commission concludes that the provisions of Education Code
8 section 47605, of Chapter 781/92, do not impose a new program or
9 higher level of service in an existing program within the meaning
10 of section 6 of article XIIIIB of the California Constitution and
11 Government Code section 17514 by requiring school districts or
12 county boards of education to plan and prepare procedures for
13 implementation of the Charter Schools Act of 1992 or to disseminate
14 information regarding charter schools to staff, students, parents,
15 and the community.

16

17 The Commission concludes that the provisions of Education Code
18 section 47605, of Chapter 781/92, do impose a new program or higher
19 level of service in an existing program within the meaning of
20 section 6 of article XIIIIB of the California Constitution and
21 Government Code section 17514 by requiring school districts to
22 respond to requests from the public for information on the charter
23 school program; conduct a public hearing within thirty days of
24 receipt of a petition to determine community support for the
25 petition; grant or deny the petition within sixty days of receipt,
26 subject to a thirty-day extension upon agreement of the parties;
27 provide persons to take part in a review panel to review the
28 decision of the governing board of the school district and, if

1 necessary, request the governing board of the school district to
2 reconsider the charter request; and, respond to any request of the
3 review panel selected and convened by the county superintendent of
4 schools pursuant to an appeal of any petition denied by the school
5 district.

6
7 The Commission concludes that the provisions of Education Code
8 section 47605, of Chapter 781/92, do impose a new program or higher
9 level of service in an existing program within the meaning of
10 section 6 of article XIIIIB of the California Constitution and
11 Government Code section 17514 by requiring county boards of
12 education to select and convene a review panel to review the
13 decision of the governing board of the school district and, if
14 necessary, request the governing board of the school district to
15 reconsider the charter request; hear a petition following a denial
16 on reconsideration by the governing board of a school district;
17 conduct a public hearing within thirty days of receipt of a
18 petition to determine community support for the petition; and,
19 grant or deny the petition within sixty days of receipt, subject to
20 a thirty-day extension upon agreement of the parties.

21
22 The Commission concludes that the provisions of Education Code
23 section 47607, of Chapter 781/92, do impose a new program or higher
24 level of service in an existing program within the meaning of
25 section 6 of article XIIIIB of the California Constitution and
26 Government Code section 17514 by requiring school districts to
27 monitor the performance of charter schools for which they have
28 granted charters to determine if they have achieved their goals and

1 objectives and to evaluate and decide upon requests for revision or
2 extension of approved charters,

3
4 The Commission concludes that the provisions of Education Code
5 section 47607, of Chapter 781/92, do impose a new program or higher
6 level of service in an existing program within the meaning of
7 section 6 of article XIII B of the California Constitution and
8 Government Code section 17514 by requiring county boards of
9 education to monitor the performance of charter schools for which
10 they have granted charters to determine if they have achieved their
11 goals and objectives and to evaluate and decide upon requests for
12 revision or extension of approved charters,

13
14 Accordingly, costs incurred related to the aforementioned
15 reimbursable state mandated programs contained in Education Code
16 sections 47605 and 47607, are costs mandated by the state and are
17 subject to reimbursement within the meaning of section 6,
18 article XIII B of the California Constitution, Therefore, the
19 claimant is directed to submit parameters and guidelines, pursuant
20 to Government Code section 17557 and Title 2, California Code of
21 Regulations, section 1183.1, to the Commission for its
22 consideration.

23
24 The foregoing conclusions pertaining to the requirements contained
25 in Education Code sections 47685 and 47607, are subject to the
26 following conditions:

27 The determination of a reimbursable state mandated
28 program does not mean that all increased costs claimed
will be reimbursed, Reimbursement, if any, is subject to

1 Commission approval of parameters and guidelines for
2 reimbursement of the mandated program; approval of a
3 statewide cost estimate; a specific legislative
4 appropriation for such purpose; a timely-filed claim for
5 reimbursement; and subsequent review of the claim by the
6 State Controller's Office,
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