

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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5 Claim of:)
6 San Diego Unified)
School District,)
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8 Claimant)
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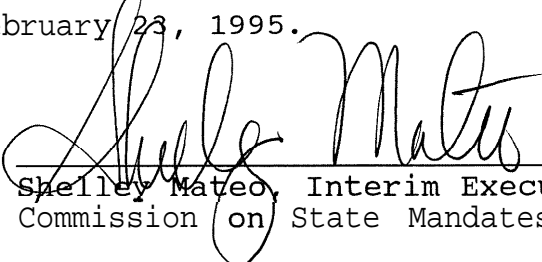
No. CSM-4458
Education Code
Section 48900.1
Chapter 1284, Statutes of 1988
Education Code
Section 48910
Chapter 965, Statutes of 1977
Chapter 498, Statutes of 1983
Pupil Classroom Suspensions

DECISION

The attached Proposed 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 February 23, 1995.

IT IS SO ORDERED February 23, 1995.



Shelley Mateo, Interim Executive Director
Commission on State Mandates

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:)	No. CSM-4458
)	Education Code
)	Section 48900.1
San Diego Unified School District,)	Chapter 1284, Statutes of 1988
)	Education Code
)	Section 489 10
)	Chapter 965, Statutes of 1977
)	Chapter 498, Statutes of 1983
Claimant)	<i>Pupil Classroom Suspensions</i>

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on January 19, 1995, in Sacramento, California, during a regularly scheduled hearing.

Mr. Keith Petersen appeared on behalf of the San Diego Unified School District, Dr. Carol Berg appeared on behalf of the Education Mandated Cost Network, and Mr. Robert Olson 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 48900.1, as added by Chapter 1284, Statutes of 1988 (Chapter 1284/88), and 48910, as added by Chapter 965, Statutes of 1977 (Chapter 965/77), and amended by Chapter 498, Statutes of 1983 (Chapter 498/83), 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 March 3, 1994, by the San Diego Unified School District.

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

Education Code section 48900.1, added by Chapter 1284/88, and amended by Chapter 213, Statutes of 1989, states:

“(a) The governing board of each school district shall adopt a policy authorizing teachers to provide that the parent or guardian of a pupil who has been **suspended** by a teacher pursuant to Section 48910 for reasons specified in subdivision (i) or (k) of Section 48900, attend a portion of a school day in his or her child’s or ward’s classroom. The policy shall take into account reasonable factors that may prevent compliance with a notice to attend. The attendance of the parent or **guardian** shall be limited to the class from which the pupil was **suspended**.

“(b) The policy shall be adopted pursuant to the procedures set forth in Sections 35291 and 35291.5. Parents and guardians shall be notified of this policy prior to its implementation. **A** teacher shall apply any policy **adopted** pursuant to this section uniformly to all pupils within the classroom.

“The **adopted** policy shall include the procedures that the district will follow to accomplish the following:

“(1) Ensure that parents or guardians who **attend** school for the purposes of this section meet with the school administrator or his or her designee after completing the classroom visitation **and** before leaving the schoolsite.

“(2) Contact parents or **guardians** who do not respond to the request to attend school pursuant to this section.

“(c) If a teacher imposes the procedure pursuant to subdivision (a), the principal shall **send** a written notice to the parent or guardian stating that attendance by the parent or guardian is pursuant to law. This section shall apply only to a parent or guardian who is actually living with the pupil.

“(cl) A **parent** or **guardian** who has received a written notice pursuant to subdivision (c) shall attend class as specified in the written notice. The notice may specify that the parent’s or **guardian’s** attendance be on the day in which the pupil is **scheduled** to return to class, or within a reasonable period of time thereafter, **as** established by the policy of the board adopted pursuant to subdivision (a).”

During the presentation of this test claim, the Commission decided to continue this portion of the claim related to Education Code section 48900.1 to a future date. The claimant proposed that Education Code section 48900.1 of Chapter 1284/88 be resubmitted to the Commission as a separate test claim using the original filing date for CSM-4458 of March 3, 1994. The Commission concurred with this proposal and therefore limits the statement of decision for

1 CSM-4458 to Education Code section 48910, as added and amended by Chapter 965/77 and
 2 Chapter 498/83. A new CSM number will be assigned to this resubmission. No observations
 3 or findings are made in this statement of decision regarding Education Code section 48900.1 of
 4 Chapter 1284/88.

5
 6 Education Code section 48910 as amended by Chapter 498/83 states:

7 “(a) A teacher may **suspend** any pupil from the teacher’s class, for any of the acts enumerated in Section
 8 48900, for the day of suspension **and** the day following. The teacher shall immediately report the
 9 suspension to the principal of the school **and** send the pupil to the principal or the principal’s designee for
 10 appropriate action. If that action requires the continued presence of the pupil at the school site, the pupil
 11 shall be under appropriate supervision, as **defined** in policies **and** related regulations adopted by the
 12 governing board of the school district. As soon as possible, the teacher shall ask the parent or **guardian** of
 the pupil to attend a parent-teacher conference regarding the suspension. Whenever practicable, a school
 counselor or a school psychologist shall attend the conference. A school **administrator** shall attend the
 conference if the teacher or the parent or guardian so requests. The pupil shall not be returned to the class
 from which he or she was **suspended**, during the period of the suspension, without the concurrence of the
 teacher of the class **and** the principal.

13 “(b) A pupil suspended from a class shall not be placed in another regular class during the period of
 14 suspension. However, if the pupil is assigned to more than one class per day this subdivision shall apply
 only to other regular classes scheduled at the same time as the class from which the pupil was suspended.

15 “(c) A teacher may also refer a pupil, for any of the acts enumerated in Section 48900, to the principal or
 16 the principal’s designee for consideration of a suspension from the school.”

17 The Commission observed that the phrasing of Education Code section 48910, subdivision (a),
 18 is permissive, namely, “(a) A teacher may suspend any pupil from the teacher’s class, for any
 19 of the acts enumerated in Section 48900,. . . .” (emphasis added). The Commission found that
 20 the introductory words of subdivision (a) merely authorize, not require, a teacher to suspend a
 21 pupil from the classroom for acts enumerated in Education Code section 48900.

22
 23 The Commission observed that Education Code section 48900 does not require suspensions;
 24 rather, it prohibits them unless the superintendent or principal of the school determines that the
 25 pupil has committed any of the enumerated acts set forth therein. Even when such a
 26 determination is made, the Commission found that teachers are *not* then *required* to suspend,
 27 citing as evidence Education Code section 48900.5 of Chapter 498/83 which stated in pertinent
 28 part: “Suspension shall be imposed **only** when other means of correction fail to bring about

1 proper conduct. . . ” (emphasis added). The Commission observed that the statutory provisions
2 of Education Code section 48900.5 stem from prior law contained in former Education Code
3 section 48907 of Chapter 1010/76, which was later renumbered as section 48900.2 by Chapter
4 965/77, and later renumbered as section 48900.5 and amended by Chapter 498/83.

5
6 The Commission found that Education Code section 48900 does not remove discretion to
7 suspend; rather it further clarifies that suspension is a corrective tool of last resort. The
8 Commission therefore concluded that teachers retain discretion over when to use classroom
9 suspension as a disciplinary method.

10
11 The Commission noted that current Education Code sections 48910, 48900, and 48900.5, all
12 derive from Chapter 1010/76 which was a recodification of pre-existing law. The Commission
13 reviewed former Education Code sections 48900, 48902, and 48903, of Chapter 1010/76 and
14 observed that the definition of “good cause” used in prior law was broadly worded and non-
15 exclusive. The Commission found that current Education Code section 48900 differs from the
16 relevant provisions of Chapter 1010/76 in that it provides a closed listing of the offenses which
17 can lead to suspension. Nonetheless, the Commission also found that most of these current
18 enumerations are still broadly worded, and all are consistent with the concept of “good cause”
19 under prior law. Thus, the Commission concluded that the authorization for teachers to
20 suspend pupils from the classroom for inappropriate behavior has been in existence since
21 before 1975, and that the behaviors defined as inappropriate under current law would have met
22 the definition of “good cause” for suspension under prior law.

23
24 In addition, the Commission noted that pertinent provisions under prior law, i.e., Chapter
25 1010/76, acknowledged that suspension as a disciplinary tool may be necessary, but that other
26 methods of discipline should first be attempted. When comparing this prior law with current
27 Education Code section 48900.5, the Commission found that the continuity in legislative intent
28 is clear: suspension may in fact be necessary, but other methods of discipline should first be

1 considered. Hence, to the extent the suspensions are at times unavoidable, the requirement to
2 suspend nonetheless existed in prior law. To the extent that alternatives to suspension must be
3 considered, that requirement also existed in prior law. Accordingly, the Commission
4 concluded the provisions of Education Code section 48910, subdivision (a), do not impose a
5 new responsibility upon school districts to suspend students from the classroom.

6
7 The Commission then examined claimant's allegation that the repeal and replacement of
8 classroom suspension provisions of Education Code section 48910 in Chapter 965/77, and
9 again in Chapter 498/83, vacated prior law and, therefore, created a new, post-1975 program
10 of classroom suspensions. In reviewing Government Code section 17514, the Commission
11 observed that Government Code section 175 14 addresses "program" and "service" in the
12 finding of a state mandated program. Thus, the Commission found that the section calls for a
13 state mandate determination based on substance rather than form.

14
15 Further, the Commission noted that former Education Code section 48900, Chapter 1010/76,
16 provided that "A teacher may suspend, for good cause any pupil. . ." Subsequent to Chapter
17 10 10/76, the Legislature repealed section 48900 and moved or added these provisions to
18 Education Code section 48901 in Chapter 965/77. This section 48901 stated that "(a) A
19 teacher may suspend any pupil from his or her class, for any of the acts enumerated in Section
20 48900.. ." Later, in Chapter 498183, the Legislature repealed Education Code section 48901
21 and moved or added these provisions to Education Code section 48910, subdivision (a).

22
23 The Commission found that Chapter 965/77 simultaneously repealed former Education Code
24 section 48900 and reenacted essentially the same requirements in Education Code section
25 48901. Then, Chapter 498/83, simultaneously repealed former Education Code section 48901
26 and reenacted essentially the same requirements in Education Code section 48910. Thus,
27 while the current provisions of section 48910, subdivision (a), were added by Chapter 498/83,
28 a post-1975 statute, the Commission determined that these provisions are derived,

1 nevertheless, from previous provisions of the Education Code.

2
3 Also, the Commission found that the statutory provisions pertaining to the authority of a
4 teacher to suspend pupils from the classroom existed prior to the test claim legislation and
5 remained continuously in effect even though the Legislature may have repealed, reenacted or
6 renumbered the provisions within the same piece of legislation. Accordingly, the Commission
7 concluded that the restructuring of the Education Code by the Legislature in Chapter 965175
8 and Chapter 498183 does not impose a reimbursable state mandated program upon school
9 districts.

10
11 The Commission observed that under prior law, i.e., former Education Code section 48900 of
12 Chapter 1010/76, the teacher was required to report the classroom suspension to the principal
13 immediately. Further, the Commission found that the addition of the words “or principal’s
14 designee” to the section 48910, subdivision (a), does not alter the meaning or scope of this
15 pre-existing activity.

16
17 In addition, the Commission found that current law clarifies the principal’s responsibility
18 under prior law for taking “appropriate action” to include supervision of the pupil if the pupil
19 remains at school. Further, the Commission noted that former Education Code section 13557,
20 as last amended by Chapter 603, Statutes of 1971, and renumbered by Chapter 1010/76 as
21 section 44807, sets out school supervision duties for pupils outside the classroom. The
22 Commission observed that the courts have interpreted this section to mean that schools are
23 responsible for supervision of pupils on school grounds during school hours (*Dailey v. Los*
24 *Angeles Unified Sch. Dist.* (1970) 2C.3d 741, 747.). The Commission found that the
25 requirement existed in prior law to provide appropriate supervision for students who are
26 suspended from the classroom but who remain on the school site. The Commission therefore
27 concluded that the phrase “appropriate supervision” contained in Education Code section
28 48910, subdivision (a), falls within the meaning of “appropriate action” contained in prior

1 law, and that the supervision of pupils outside the classroom, but on the school site during
2 school hours, was required under prior law.

3
4 The Commission then addressed the claimant's allegations regarding the conference after the
5 suspension. With respect to requesting parent participation in the conference, the Commission
6 noted that this activity was required in prior law in former Education Code section 48900 of
7 Chapter 1010/76. With respect to participation by a school counselor or school psychologist,
8 the Commission observed that attendance of a counselor or psychologist is not mandatory for
9 the conference to proceed, but, if a counselor or psychologist is reasonably available,
10 attendance is required. The Commission did not identify any relevant prior law regarding
11 attendance by a counselor or psychologist. With respect to the principal's or designee's
12 participation in the conference, the Commission noted this activity has a clear antecedent in
13 prior law under former Education Code section 48900 of Chapter 1010/76 which stated, ". . . A
14 school administrator shall attend the conference if the teacher or the parent or guardian so
15 requests. . ." The Commission found that the specification of the principal or designee, in lieu
16 of the more general term "school administrator" under prior law, is not a substantial change.

17
18 In summary regarding the conference, the Commission found that parent or guardian
19 involvement in the parent teacher conference existed in prior law, as did the requirement for a
20 school administrator's participation, upon request. Further, the Commission found that the
21 requirement for a school counselor or psychologist to attend the conference, when practicable,
22 did not exist in prior law and, although limited in scope to resources readily available, does
23 create a higher level of service within an existing program.

24
25 The Commission then addressed claimant's allegations regarding the return of the pupil to the
26 classroom. The Commission observed that Education Code section 48910, subdivision (a),
27 requires the concurrence of the teacher of the class and the principal before the pupil is
28 returned to the class of suspension and noted that this activity was required in prior law , i.e.,

1 former Education Code section 48900 of Chapter 1010/76.

2
3 The Commission reviewed Education Code section 48910, subdivision (b), added for the first
4 time by Chapter 498/83, which directs that a pupil suspended from a classroom shall not be
5 placed in another regular classroom during the period of that suspension. The Commission
6 noted that the claimant did not claim any activity specifically related to this subdivision.

7 However, the claimant alleged that upon referral of a classroom-suspended pupil to the
8 principal or designee, if the pupil remains on the school site, supervision must be arranged.

9 The Commission found that its observations on Education Code section 48910, subdivision (a),
10 pertain here and that this alleged new activity was previously required.

11
12 Regarding Education Code section 48910, subdivision (c), the Commission observed that this
13 section authorizes the teacher to recommend that a pupil be suspended from school. The
14 Commission noted that this authorization is contained within the provisions of subdivision (a)
15 of section 48910 and reasoned that this type of referral would likely stem from, or stand in lieu
16 of, a classroom suspension.

17
18 Noting that prior law, former Education Code section 48900, Chapter 1010/76, stated in
19 pertinent part: “. . . The teacher shall immediately report the suspension to the principal of the
20 school and send the pupil to the principal for appropriate action. . . .”, the Commission found
21 that one form of appropriate action following a classroom suspension is suspension from
22 school. Thus, the Commission found that the provisions of subdivision (c) of Education Code
23 section 48910 stem from prior law. Moreover, the Commission found that the referral for
24 school suspension by the teacher is discretionary.

25
26 APPLICABLE LAW RELEVANT TO THE DETERMINATION

27 OF A REIMBURSABLE STATE MANDATED PROGRAM

28 Government Code section 17500 and following, and section 6, article XIII B of the California

1 Constitution and related case law.

2
3 CONCLUSION

4 The Commission determines that it has the authority to decide this claim under the provisions
5 of Government Code sections 17500 and 1755 1, subdivision (a).

6
7 The Commission concludes that the claimant may resubmit Education Code section 48900.1 of
8 Chapter 1284/88 as a separate test claim using the original filing date for CSM-4458 of March
9 3, 1994. The Commission therefore limits this statement of decision to Education Code
10 section 48910 of Chapter 965/77 and Chapter 498/83. A new CSM number will be assigned
11 to this resubmission.

12
13 In view of all of the foregoing findings on the provisions of Education Code section 48910,
14 subdivision (a), as added by Chapter 965/77 and amended by Chapter 498183, the Commission
15 concludes that those provisions do impose a new program or higher level of service in an
16 existing program upon school districts within the meaning of section 6 of article XIII B of the
17 California Constitution and Government Code section 17514, by requiring, whenever
18 practicable, school counselors or school psychologists to attend the parent-teacher conference
19 required by the subject subdivision. This state mandated activity is limited in scope to
20 resources readily available by the school districts.

21
22 Further, the Commission concludes that, except as specified above, the remainder of
23 Education Code section 48910, subdivisions (a), (b), and (c), of Chapter 965177 and Chapter
24 498/83, does not impose a new program or higher level of service in an existing program upon
25 school districts within the meaning of section 6 of article XIII B of the California Constitution
26 and Government Code section 175 14.

27
28 Accordingly, costs incurred related to the aforementioned reimbursable state mandated

1 program contained in Education Code section 489 10, subdivision (a), are costs mandated by
2 the state and are subject to reimbursement within the meaning of section 6, article XIII B of the
3 California Constitution. Therefore, the claimant is directed to submit parameters and
4 guidelines, pursuant to Government Code section 17557 and Title 2, California Code of
5 Regulations, section 1183.1, to the Commission for its consideration.

6
7 The foregoing conclusion pertaining to the reimbursable state mandated program contained in
8 Education Code section 48910, subdivision (a), is subject to the following conditions:

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

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