

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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Claim of:) No. CSM-4462
) Education Code Section 35291
) Education Code Section 35291.5
San Diego Unified) Chapter 87, Statutes of 1986
School District,) Chapter 965, Statutes of 1977
Norris School District)
)
Claimant)
_____) *Schoolsite Discipline Rules*

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on July 20, 1995 in Sacramento, California, during a regularly scheduled hearing.

Mr. Keith Petersen appeared on behalf of the San Diego Unified School District, Mr. Richard Pierucci appeared on behalf of the Norris School District, Ms. Carol Berg appeared on behalf of the Education Mandated Cost Network, and Ms. Tamara Yates 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 35291, as amended by Chapter 87/86 and Chapter 965/77, and Education Code section 35291.5, as added by Chapter 87/86, result in the imposition of a reimbursable state mandated program upon school districts within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 17514?

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BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on September 16, 1994, by the San Diego Unified School District and the Norris 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 35291, which was last amended by Chapter 87/86, states the following:

The governing board of any school district shall prescribe rules not inconsistent with law or with the rules prescribed by the State Board of Education, for the government and discipline of the schools under its jurisdiction. The governing board of each school district which maintains any of grades 1 through 12, inclusive, shall, at the time and in the manner prescribed by Sections 48980 and 48981, notify the parent or guardian of all pupils registered in schools of the district of the availability of rules of the district pertaining to student discipline.

Education Code section 35291.5, which was added by Chapter 87/86, states the following:

(a) On or before December 1, 1987, and at least every four years thereafter, each public school, in accordance with the requirements of this section, shall adopt rules and procedures on school discipline applicable to the school. The school discipline rules and procedures shall be consistent with any applicable policies adopted by the governing board and state statutes governing school discipline. In developing these rules and procedures, each school shall solicit the participation, views, and advice of one representative selected by each of the following groups:

- (1) Parents.
- (2) Teachers.
- (3) School administrators.
- (4) School security personnel, if any.
- (5) For junior high schools and high schools, pupils enrolled in the school.

Meetings for the development of the rules and procedures should be developed and held within the school's existing resources, during nonclassroom hours, and on normal schooldays.

The final version of the rules and procedures on school discipline with attendant regulations shall be adopted by a panel comprised of the principal of the school, or his or her designee, and a representative selected by classroom teachers employed at the school.

It shall be the duty of each employee of the school to enforce the rules and procedures on school discipline adopted under this section.

(b) The governing board of each school district shall prescribe procedures to provide written notice to continuing pupils at the beginning of each school year and to transfer pupils at the time of their enrollment in the school and to their parents or guardians regarding the school discipline rules and procedures adopted pursuant to subdivision (a).

(c) Each school shall file a copy of its school discipline rules and procedures with the district superintendent of schools and governing board on or before January 1, 1988.

(d) The governing board may review, at an open meeting, the approved school discipline rules and procedures for consistency with governing board policy and state statutes.

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1 Regarding Education Code section 35291, the Commission observed that this section includes
2 the same requirement specified in the law prior to 1975 (recodified, but otherwise unchanged, by
3 Chapter 1010/76) for each school district to establish rules regarding the government and
4 discipline of schools within that district congruous to those established by law or by the State
5 Board of Education. Furthermore, this section requires all school districts maintaining grades 1
6 through 12, inclusive, to notify the parent or guardian of all registered pupils in each district of
7 the availability of that district's student discipline rules by following the time and method
8 specified in sections 48980 and 48981.

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10 The Commission observed that the law prior to 1975 (recodified by Chapter 1010/76) did not
11 require the governing boards of school districts to notify parents/guardians of the availability of
12 discipline rules. However, the law did require governing boards to prescribe such rules.
13 Chapter 965, Statutes of 1977 imposed a new or higher level of service upon school districts
14 related to parent notification. Therefore, the Commission found that a reimbursable state
15 mandated program exists by requiring governing boards to annually notify the parent or guardian
16 of all pupils of the availability of rules of the district pertaining to student discipline. The
17 Commission noted that additional costs should be minimal. The Commission further
18 acknowledged the claimant's offer to omit this component of the test claim if the Commission
19 found the notice component of Education Code section 35291 to be reimbursable under
20 Education Code section 48980, subdivision (a); however, the Commission noted that claimant
21 did not include section 35291 in the Education Code section 48980 (CSM-4461) test claim.
22 Therefore, the Commission found the notification requirement contained in Education Code
23 section 35291 is a reimbursable state mandated program, subject to the provisions of Education
24 Code section 35291.7.

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26 The Commission determined that the use of an allocation formula or uniform allowance for cost
27 reimbursement for the state mandated activities described above should be examined at the
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1 parameters and guidelines stage. Further, the Commission recognized that the claimant has
2 submitted three test claims possessing notification requirements, which include the following:
3 CSM-4453, *Notification to Parents: Pupil Attendance Alternatives* (as amended in the Statement
4 of Decision to reflect the filing date of CSM-4445); CSM-4461, *Annual Parent Notification*; and
5 Education Code section 35291 and the notification requirement in Education Code section
6 35291.5, subdivision (b), both of CSM-4462, *Schoolsite Discipline Rules*. The Commission
7 observed that consideration should be given to combining the notification components of these
8 test claims and noted that the remainder of Education Code section 35291.5 of CSM-4462 would
9 then be the subject of its own parameters and guidelines.

10 Regarding Education Code section 35291.5, subdivision (a), the Commission observed that this
11 subdivision requires school principals to quadrennially and from various specified groups elicit
12 participation in establishing schoolsite rules and procedures (consistent with governing board and
13 state statutory policies) regarding school discipline for that school. These individuals should
14 assemble on scheduled workdays, during nonclassroom hours and on existing school property.
15 The principal, or designee, and a classroom teacher representative of that school shall adopt the
16 final version of rules and procedures. All school employees are required to implement these final
17 rules and procedures.

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19 The Commission observed that the law prior to 1975 (recodified by Chapter 1010/76) did not
20 require school principals to quadrennially engage the participation of various sources in order to
21 develop rules of discipline for each schoolsite, and therefore did not require a specified panel to
22 adopt these rules and procedures.

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24 The Commission found that the requirement for school principals to engage the participation of
25 various specified sources in order to develop rules of discipline for each schoolsite is a
26 reimbursable state mandated program, limited to a quadrennial reimbursement schedule and to
27 reimbursement for only one member per group required to attend, and subject to the provisions
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1 of section 35291.7 [all as required in subdivision (a)]. The Commission noted that, although
2 section 35291.5 specifies these meetings “should be” held on schooldays, during nonclassroom
3 hours and within existing resources, the language is permissive and therefore this is an advisory,
4 not a requirement.

5 The Commission found that the requirement for the school principal or designee and
6 representative classroom teacher to adopt the final version of the discipline rules and procedures
7 is a reimbursable state mandated program. The Commission further found that reimbursement
8 should be limited to reflect the quadrennial requirement and is subject to the provisions of
9 Education Code section 35291.7.

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11 In addition, Education Code section 35291.5 states that “[i]t shall be the duty of each employee
12 of the school to enforce the rules and procedures on school discipline adopted under this
13 section.” The Commission noted that under the law prior to 1975 (recodified by Chapter
14 1010/76), Education Code sections 44805 and 44807 indicate that school teachers were required
15 to enforce the rules and regulations prescribed for schools. Education Section 44805 states in
16 pertinent part that: “Every teacher in the public schools shall enforce . . . the rules and
17 regulations prescribed for schools.” Education Code section 44807 states in pertinent part:
18 “Every teacher in the public schools shall hold pupils to a strict account for their conduct on the
19 way to and from school, on the playgrounds, or during recess period.”
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21 Moreover, in *Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal.3d 731, 747, the California
22 Supreme Court held that “[w]hile school districts and their employees have never been
23 considered insurers of the physical safety of students, California law has long imposed on school
24 authorities a duty to ‘supervise at all times the conduct of the children on the school grounds and
25 to enforce those rules and regulations necessary to their protection. . . .’”

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1 Accordingly, the Commission concluded that the responsibility for school personnel to enforce
2 the rules and procedures on school discipline, including schoolsite rules, is not a new program or
3 a higher level of service.
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5 Regarding Education Code section 35291.5, subdivision (b), the Commission observed that this
6 subdivision requires the governing board of each school district to prescribe procedures for
7 furnishing a written notice regarding the schoolsite discipline rules adopted under subdivision (a)
8 to continuing and transfer students and their parents or guardians.
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10 The Commission observed that the law prior to 1975 (recodified by Chapter 1010/76) did not
11 require school districts to prescribe procedures to provide written notice to continuing and
12 transfer pupils and their parents or guardians regarding schoolsite discipline rules and
13 procedures.
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15 The Commission determined that, although subdivision (b) does not explicitly require
16 distribution of the notice, the statute implicitly necessitates distribution by requiring the
17 procedures to provide the rules be in place. The Commission recognized that, in order to
18 reasonably enforce the schoolsite rules, pupils must receive a copy of these rules in advance.
19 [The Commission noted that the schoolsite rules, unlike the district rules, are to be provided
20 directly to the pupil (as well as the parent or guardian) and that informing pupils of the
21 availability of schoolsite discipline rules is not sufficient in order to enforce those rules, rather,
22 an actual copy of those rules must be provided.]
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24 Therefore, the Commission found that subdivision (b) does contain a reimbursable state
25 mandated program by requiring the governing boards of school districts to prescribe procedures
26 to provide written notice of the school's discipline rules and procedures adopted pursuant to
27 subdivision (a). Further, the Commission noted that, in order to distribute this information,
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1 certain activities must take place. (Steps the claimant alleged to be necessary to distribute
2 information are discussed in CSM-4461, *Annual Parent Notification*, but are addressed below for
3 the purposes of this test claim). First, the Commission found that the requirements for school
4 districts to draft, review and have approved the information and to review and modify the content
5 to incorporate changes are required under subdivision (a) of this section and therefore do not
6 impose a reimbursable state mandated program for the purposes of this subdivision. However,
7 the Commission did find that the requirements to print and to distribute the information
8 constitute a reimbursable state mandated program which is subject to the provisions of Education
9 Code section 35291.7. The Commission further determined that cost effective methods of
10 printing and distribution should be addressed in the parameters and guidelines. The Commission
11 also observed that consideration should be given to combining this notification requirement
12 contained in Education Code section 35291.5, subdivision (b), with the notification requirements
13 contained in Education Code section 35291 of this same test claim, and with Education Code
14 section 48980, contained in CSM-4453 (as amended in the Statement of Decision to reflect the
15 filing date of CSM-4445) and CSM-4462 at the parameters and guidelines stage.

16 Regarding Education Code section 35291.5, subdivision (c), the Commission observed that this
17 subdivision requires that both the district superintendent of schools and the governing board must
18 receive from each school a file copy of its school discipline rules and procedures by January 1,
19 1988.

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21 The Commission observed that prior law (Chapter 1010/76) did not address the requirement of
22 this subdivision.

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24 The Commission found a reimbursable state mandated program in Education Code section
25 35291.5, subdivision (c). The Commission determined that, although the code does not
26 explicitly require school districts to file a current copy of schoolsite discipline rules with the
27 district superintendent of schools and governing board every four years, one reason for filing a
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copy would be for reference -- an outdated copy of rules would not be beneficial. Furthermore, the Commission found that this subdivision refers to January 1, 1988, as the first date in which a copy must be filed, but implicitly requires that a new copy of the rules must be filed every four years thereafter in order to reflect any changes made pursuant to the quadrennial adoption of schoolsite rules required under subdivision (a). However, the Commission noted that the section does not specify the person responsible for filing a copy of the school discipline rules. Finally, the Commission added that, based on the test claim filing date, reimbursement should begin July 1, 1993, and is subject to the provisions of Education Code section 35291.7.

Regarding Education Code section 35291.5, subdivision (d), the Commission observed this subdivision authorizes the governing boards of school districts, at an open meeting, to determine if the approved school discipline rules and procedures are in agreement with governing board policy and state statutes.

The Commission noted that this subdivision specifies that the governing board “may” review the approved school discipline rules and procedures, but does not require school districts to do so. Therefore, the Commission found that this permissive language does not impose a new or higher level of service upon school districts and therefore no reimbursable state mandated program exists within subdivision (d).

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

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

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CONCLUSION

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

In view of all of the foregoing, the Commission approved the test claim in part. Regarding Education Code sections 35291 and 35291.5, the Commission found the following:

Regarding Education Code section 35291, the Commission found that a reimbursable state mandated program exists by requiring governing boards to annually notify the parent or guardian of all pupils of the availability of rules of the district pertaining to student discipline.

The Commission further observed that consideration should be given to combining this information about which to notify parents or guardians contained in Education Code section 35291 with the annual notification to parents required under Education Code section 48980 at the parameters and guidelines stage.

Regarding Education Code section 35291.5, subdivision (a), the Commission found that the requirement for school principals to engage the participation of various specified sources in order to develop rules of discipline for each schoolsite is a reimbursable state mandated program, limited to a quadrennial reimbursement schedule and to reimbursement for only one member per group required to attend, and subject to the provisions of section 35291.7 [all as required in subdivision (a)]. The Commission also found that the requirement for the school principal or designee and representative classroom teacher to adopt the final version of the discipline rules and procedures is a reimbursable state mandated program, limited to reflect the quadrennial requirement and subject to the provisions of Education Code section 35291.7. Further, the Commission found that the requirement that all school employees enforce these adopted schoolsite discipline rules and procedures is not a reimbursable state mandated program.

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1 The Commission found that subdivision (b)¹⁰ does contain a reimbursable mandated program
2 by requiring the governing boards of school districts to prescribe procedures to provide
3 written notice of the school's discipline rules and procedures adopted pursuant to subdivision
4 (a). Further, the Commission found that, in order to distribute this information, the
5 requirements for school districts to draft, review and have approved the information and to
6 review and modify the content to incorporate changes are required under subdivision (a) of
7 this section and therefore do not impose a reimbursable state mandated program for the
8 purposes of this subdivision. However, the Commission did find that the requirements to
9 print and to distribute the information constitute a reimbursable state mandated program,
10 subject to the provisions of Education Code section 35291.7. Furthermore, the Commission
11 determined that cost effective methods of printing and distribution should be addressed in the
12 parameters and guidelines. The Commission also observed that consideration should be
13 given to combining this information with the notification requirement contained in Education
14 Code section 48980 at the parameters and guidelines stage.

15 The Commission found that a reimbursable state mandated program exists in Education Code
16 section 35291.5, subdivision (c), by implicitly requiring school districts to file a current copy
17 of schoolsite discipline rules and procedures with the district superintendent and governing
18 board every four years. However, the Commission noted that the section does not specify the
19 person responsible for filing a copy of the school discipline rules. Finally, the Commission
20 added that, based on the test claim filing date, reimbursement should begin July 1, 1993, and
21 is subject to the provisions of Education Code section 35291.7.

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23 Further, the Commission determined that the use of an allocation formula or uniform cost
24 allowance for reimbursement for the state mandated activities described above should be
25 examined at the parameters and guidelines stage. In addition, the Commission added that
26 consideration should be given to combining the notification requirements in the following test
27 claims at the parameters and guidelines stage: CSM-4453, *Notification to Parents: Pupil*
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Attendance Alternatives (as amended in the Statement of Decision to reflect the filing date of CSM-4445); CSM-4461, *Annual Parent Notification*; and Education Code section 35291 and the notification requirement in Education Code section 35291.5, subdivision (b), both of CSM-4462, *Schoolsite Discipline Rules*. (The Commission noted that the remainder of Education Code section 35291.5 of CSM-4462 would then be the subject of its own parameters and guidelines).

Finally, the Commission found no reimbursable state mandated program in subdivision (d) of Education Code section 35291.5.

The foregoing conclusions pertaining to the requirements contained in Education Code sections 35291 and 35291.5 are subject to the following conditions:

The determination of a reimbursable state mandated program does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the 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.

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