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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim Of:

San Diego Unified School District,
Claimant

No. CSM-4474

Education Code

Section 48900.1

Chapter 1284, Statutes of 1988

Pupil Suspension: Parent Classroom Visits

DECISION

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

This Decision shall become effective on February 29, 1996. IT IS SO ORDERED
February 29, 1996.



Kirk G. Stewart, Executive Director
Commission on State Mandates

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

)	
Claim of:)	No. CSM-4474
San Diego Unified School District,)	Education Code
)	Section 48900.1
Claimant)	Chapter 1284, Statutes of 1988
)	<i>Pupil Suspension: Parent Classroom Visits</i>

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on January 25, 1996, in Sacramento, California, during a regularly scheduled hearing.

Mr. Keith Petersen appeared on behalf of the San Diego Unified School District, Dr. Carol Berg and Mr. William Doyle appeared on behalf of the Education Mandated Cost Network, and Mr. James Apps, Mr. Bob Olsen, and Mr. Tom Dithridge 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 48900.1 of Chapter 1284, Statutes of 1988 (Chapter 1284/88), require local agencies 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 original test claim regarding pupil classroom suspensions (CSM-4458) was filed with the Commission on March 9, 1994, by the San Diego Unified School District. That original test

1 claim was heard on January 19, 1995, and was split in two separate test claims -- one for Pupil
 2 Classroom Suspensions and the other for Pupil Suspensions: Parent Classroom Visits. This
 3 subject test claim was renumbered CSM-4474 and was heard on January 25, 1996.

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

6
 7 Education Code section 48900.1, added by section 1 of Chapter 1284, Statutes of 1988, states
 8 in pertinent part:

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

15 “(b) The policy shall be adopted pursuant to the procedures set forth in Sections 35291 and
 16 35291.5. Parents and guardians shall be notified of this policy prior to its implementation. A
 17 teacher shall apply any policy adopted pursuant to this section uniformly to all pupils within the
 18 classroom.

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

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

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

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

 “(d) 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).

 “(e)

23 The Commission noted that the provisions of former Education Code section 48900.1,
 24 subdivision (e), were deleted by Chapter 2 13, Statutes of 1989, and added to the Labor Code,
 25 and that these provisions prohibit the employer of a parent or guardian required to attend class
 26 pursuant to this section to discharge, threaten with discharge, or treat any employee unfairly in
 27 retaliation for being absent from work pursuant to this section, or the employee may file a
 28 complaint.

1 The Commission observed that Education Code section 48900.1, subdivision (a), requires the
2 governing board of the district to adopt a policy which authorizes teachers to require parents
3 of suspended pupils to make a classroom visit during the school day, and that the policy must
4 take into consideration reasonable factors preventing compliance, and the parent visit is to be
5 limited to the class of suspension.

6
7 The Commission also observed that the statutory requirement for adoption of the parent
8 visitation policy by school districts did not pre-exist Chapter 1284/88 nor is it optional. The
9 Commission therefore found that Education Code section 48900.1, subdivision (a), as added
10 by Chapter 1284/88, does impose a new program or higher level of service upon school
11 districts by requiring that the governing board of each school district adopt a policy which is to
12 include procedures, as set forth therein.

13
14 The Commission noted that Education Code section 48900.1, subdivision (b), sets forth how
15 the policy of classroom visits is to be adopted, including parent notification and the
16 requirement for uniform application of that policy. In addition, subdivision (b) sets forth the
17 requirement in paragraph (1) for the parent or guardian to meet with the school administrator
18 or designee after the classroom visit and in paragraph (2) for an unspecified school employee
19 to contact the parents or guardians who do not respond to the written notice to make a
20 classroom visit.

21
22 The Commission also noted that Education Code section 48900.1, subdivision (c), requires the
23 principal, if the teacher imposes the policy, to send a written notice to the parent or guardian
24 advising them of the legal requirement to attend the conference. Subdivision (d) establishes
25 the parent's or guardian's legal obligation to visit the classroom pursuant to this section.

26
27 The Commission noted that the use of the parent visitation policy is at the discretion of the
28 teacher, as noted below:

1 “(a) The governing board of each school district shall adopt a policy **authorizing**
2 teachers to provide that the parent or guardian of a pupil who has been suspended
3 by a teacher. . . attend a portion of a school day in his or her child’s or ward’s
4 classroom. . . . (Emphasis added.)

5
6 “(c) **If** a teacher imposes the procedure pursuant to subdivision (a), the principal shall
7 send a written notice to the parent or guardian stating that attendance by the parent or
8 guardian is pursuant to law. . . . (Emphasis added.)

9 “(d) . . .” (Education Code section 48900.1, Chapter 1284/88)

10 The Commission noted that in ***City of Merced v. State of California*** (1984) 153 Cal. App. 3d
11 777, 783, the court recognized that when a local government exercises eminent domain, such
12 action is “an option . . . , rather than a mandate of the state. . . . If, however, the power of
13 eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus,
14 payment for loss of goodwill is not a state-mandated cost. ”

15 The Commission observed that, as shown above, section 48900.1 contains wording that
16 appears discretionary with respect to the teacher. Further, Education Code section 48910,
17 under which the pupil suspension occurs which would trigger a parent classroom visit, the
18 teacher’s role gives the appearance of being permissive: “A teacher may suspend any pupil
19 from the teacher’s class.”

20 The Commission also observed that in its statement of decision pertaining to the test claim for
21 section 48910, ***CSM-44.58, Pupil Classroom Suspensions***, the Commission found that,
22 notwithstanding the permissive word “may”, suspensions might at times be an unavoidable
23 choice when less restrictive options or other corrective measures of discipline do not work.
24 This position was determined when the Commission harmonized the provisions. of section
25 48910 with section 48900.5. Section 48900.5 states in pertinent part that “[s]uspension shall
26 be imposed only when other means of correction fail to bring about proper conduct. . . . ”

27 However, the Commission held that even if it were unavoidable, the requirement to suspend
28 pupils existed prior to 1975; thus, no reimbursable mandate was found with respect to the
29 suspension itself. The Commission did find that a particular “downstream” event in section

1 48910 that is triggered by a pupil suspension constitutes a reimbursable state-mandated
2 program: the new post-1975 requirement for a school counselor or psychologist to attend a
3 parent-teacher conference. Had the Commission simply determined that the permissive “may”
4 in section 48910 foreclosed all activities subsequent to the suspension from being found
5 reimbursable, this present test claim under section 48900.1 could have been denied as a part of
6 CSM-4458. Instead, section 48900.1 must be reviewed on its own merit.

7
8 The Commission noted that clearly, once the teacher invokes the parent visitation policy under
9 section 48900.1, certain activities are required of the school administrator or designee. The
10 Commission also noted that the Legislature’s statement of its intent set forth in section 1 of
11 Chapter 1284/88 provides guidance:

12 “(a) Parents and guardians can and must play an active role in the behavior of their
13 children while in school.

14 “(b) Classroom discipline presents a significant problem in many schools and detracts
15 from the amount of time for actual teaching.

16 “(c) It is the intent of the Legislature that implementation of procedures authorized under
17 Section 48900.1 of the Education Code should promote positive parent-child interaction,
18 as well as improved classroom behavior. Schools that involve parents and guardians in
19 the classroom behavior problems of their children or wards are expected, where
20 appropriate, to inform parents and guardians of available resources and counseling in the
21 school and community to assist parents and guardians in developing more effective
22 parental skills. ”

23 The Commission noted that, in enacting Chapter 1284/88, the Legislature appears to have
24 given a strong presumption that its required procedures in that statute would, in fact, be the
25 norm which leads to the desired positive outcomes. In that light, the phrases “authorizing
26 teachers”, “apply any policy . . . uniformly”, and “If a teacher imposes the procedure” seem
27 only to be allowing reasonable deviation from the Legislature’s intent regarding parental
28 visitation when the teacher so chooses, so long as that discretion is applied uniformly among
the pupils in the classroom.

The Commission noted that another test of the existence of a mandated activity would be the
discretion which the district itself has with respect to section 48900.1, and that can be assessed

1 by asking if there is any way possible for the district to avoid having to carry out activities
2 initiated by a teacher's request for a parental classroom visit.

3
4 The Commission also noted that it would appear that only by putting forth a policy or directive
5 that teachers shall not request parental visits could the district governing board avoid the costs
6 that would follow from such a teacher request. A policy or directive of that nature clearly
7 would be contrary to the legislative intent of Chapter 1284/88. The Commission observed that
8 the district, therefore, is left in the position of having to adopt a state-mandated policy which
9 assures no affirmative control over the teachers' authority to request parental classroom visits
10 and then having no control over the initiation of the state-mandated activities that such a
11 teacher request triggers.

12
13 The Commission found that the activities required in Education Code section 48900.1,
14 subdivisions (b), (c), and (d), are not the result of a voluntary local school district's governing
15 board when the teacher, an employee of the school district, opts to trigger the provisions of
16 this code section. Instead, the initiation of these activities is the very practice intended and
17 mandated by the Legislature upon the governing board of a school district except when the
18 teacher chooses not to exercise it.

19
20 The Commission noted that any reimbursable mandate found for the parent or guardian to
21 meet with the school administrator or designee after the classroom visit, should only be
22 allowed if the district certifies that this meeting could not, for practical reasons, be held at the
23 same time as the conference required under Section 48910, subdivision (a), of the Education
24 Code. That particular suspension-related conference already has been found to be a
25 reimbursable mandate under CSM-4458.

26
27 With respect to the matter of reimbursement for activities required of a salaried school
28 administrator, the Commission observed that, at its May 30, 1991 hearing, the Commission

1 decided to continue its interpretation of mandate law that a local entity can incur increased
2 labor costs before reimbursement is provided for those labor costs. That particular decision
3 was made with respect to fixed costs, non-fixed costs having been dealt with at a earlier
4 hearing in 199 1.

5
6 The Commission also observed that there are two existing parameters and guidelines which
7 explicitly allow for districts to claim reimbursement for school administrators: *Collective*
8 *Bargaining* (Chapter 961/75) and *Teacher Evaluators* (Chapter 498/83). (The *Teacher*
9 *Evaluators* parameters and guidelines do, however, prohibit a principal's reimbursement
10 related to *probationary* evaluation of teachers.) The Commission also noted that the existing
11 claiming instructions for *Juvenile Court Records* (Chapter 101 1/84; mandate reimbursement
12 appropriated in the statute) also provide for districts to claim explicitly for principals' costs.

13
14 APPLICABLE LAW RELEVANT TO THE DETERMINATION
15 OF A REIMBURSABLE STATE MANDATED PROGRAM

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

18
19 CONCLUSION

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

22
23 The Commission concludes that the provisions of Education Code section 48900.1, as
24 amended by Chapter 1284188 does impose a new program or higher level of service in an
25 existing program within the meaning of section 6, article XIII B of the California Constitution
26 and Government Code section 17514 by requiring school districts to comply with the activities
27 listed below. The Commission notes that due to the claimant filing the test claim on March 9,
2% 1994, the period of reimbursement begins July 1, 1993.

1 The activities are:

2 For the governing board to adopt a policy authorizing teachers to provide that the parent or
3 guardian of a pupil who has been suspended by a teacher pursuant to Section 48910, for
4 reasons specified in subdivision (i) or (k) of section 48900, visit the pupil's classroom during
5 the school day and this policy should include procedures, as specified therein.

6
7 For teachers to request the principal to notify the classroom suspended pupil's parent or
8 guardian of the requirement to attend the pupil's class while in session, if the pupil is
9 suspended from the classroom for any of the acts enumerated in subdivisions (i) or (k) of
10 Education Code section 48900.

11
12 For principals or the principal's designee to: (1) upon the request of a teacher, send a written
13 notice to the parent or guardian of the classroom suspended pupil to require the parent or
14 guardian to attend the pupil's class while in session; and (2) contact parents or guardians of
15 classroom suspended pupils who do not respond to the written notice to attend the pupil's class
16 while in session.

17
18 For the school administrator or his or her designee to meet with the parent or guardian of the
19 classroom suspended pupil after the classroom visitation. The Commission further concludes
20 that the allowable reimbursement for the parent meeting with the school administrator or
21 designee that is required by section 48900.1, subdivision (b)(1), is limited. in the following
22 manner:

23 There should be no reimbursement claiming for the parent meeting with the
24 school administrator or his or her designee under section 48900.1, subdivision
25 (b)(1), if that meeting is one and the same with the meeting held under section
26 48910, subdivision (a).

27 //

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1 The foregoing conclusion pertaining to Education Code section 48900.1 is subject to the
2 following conditions :

3 The determination of a reimbursable state mandated program does not mean that all
4 increased costs claimed will be reimbursed. Reimbursement, if any, is subject to
5 Commission approval of parameters and guidelines for reimbursement of the mandated
6 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.

7 Dissent: In opposition to this decision, Commission Chairperson Parker requested that there be
8 further discussion of reimbursement for the principal's time involved in the post-classroom
9 visit meeting (Section 48900.1 (b) (1)) as parameters and guidelines are developed.

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