

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 48262 as added by Chapter 1184, Statutes of 1975, [recodified by Chapter 1010, Statutes of 1976], and filed on September 28, 1995; and

Education Code Section 48264.5 as added by Chapter 1023, Statutes of 1994, and filed on December 16, 1996;

By the Tustin Unified School District, Claimant.

NO. CSM - 4487 and 4487A

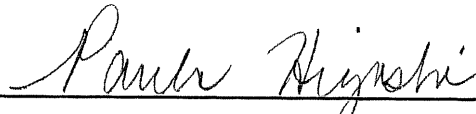
Habitual Truant

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on September 25, 1997.

This Decision shall become effective on September 29, 1997.



PAULA HIGASHI, Executive Director

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PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ. ; TITLE 2, CALIFORNIA CODE
OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

[Presented for adoption on
September 25, 1997]

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on May 6, 1996 and July 31, 1997, during regularly scheduled hearings. At the first hearing, Mr. Bradley Lantz appeared for the Tustin Unified School District; and Mr. Keith Petersen, Dr. Carol Berg, and Mr. William Doyle appeared for the Education Mandated Cost Network. At the second hearing, Mr. Lantz and Dr. Berg were joined by Mr. James Cunningham, representative for the San Diego Unified School District, and Ms. Caryn Becker, 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 et seq. and section 6, article XIII B of the California Constitution and related case law.

Issue: Do the provisions of Education Code sections 48262 and 48264.5 impose upon school districts a new program or higher level of service in an existing program within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code, by requiring school districts to make a conscientious effort to hold a parent-pupil conference before classifying a repeatedly truant pupil as an habitual truant?

BACKGROUND AND FINDINGS OF FACT

The Tustin Unified School District alleges that Education Code section 48262, the definition of habitual truant, and section 48264.5 impose a reimbursable state mandated program upon school districts for the cost of district personnel conducting a parent-pupil conference prior to declaring a pupil an habitual truant.

On May 6, 1996, the Commission heard the original test claim filed on Education Code section 48262, which defines habitual truant. At that hearing, no action was taken. However, the Commission directed staff to look into legislative intent and to describe a "conscientious effort to confer with the parent or guardian or truant. " On December 16, 1996, the claimant amended the test claim to add Education Code section 48264.5. The hearing on the amended test claim was held on July 3 1, 1997.

THE COMMISSION FINDS THAT:

THE ORIGINAL TEST CLAIM: EDUCATION CODE SECTION 48262

The original test claim contained only the definitional section of habitual truant. Nonetheless, the Tustin Unified School District alleged that it imposed a new state requirement for district personnel to conduct a parent-pupil conference prior to declaring a pupil a habitual truant. The Commission recognized the language of Education Code section 48262 is clearly definitional. It describes a habitual truant, but contains no language requiring the application of this definition to a repeatedly truant pupil. Therefore, the Commission determined that standing alone, this section does not impose upon school districts a reimbursable state mandated program, However, the Commission noted that when section 48262 is harmonized with section 48264.5, subdivision (d), there is a different result.

THE AMENDED TEST CLAIM: EDUCATION CODE SECTIONS 48262 AND 48264.5

First Truancy

Education Code section 48264.5, subdivision (a) reads as follows:

“(a) Upon the first truancy, the pupil may be personally given a written warning by any peace officer specified in Section 830.1 of the Penal Code. A record of the written warning may be kept at the school for a period of not less than two years, or until the pupil graduates, or transfers, from that school. If the pupil transfers, the record may be forwarded to any school receiving the pupil’s school records. A record of the written warning may be maintained by the law enforcement agency in accordance with that law enforcement agency’s policies and procedures.” (emphasis added.)

The “first truancy” occurs when “any pupil subject to compulsory full-time education is absent from school without a valid excuse more than 3 days, or is tardy in excess of 30 minutes on each of more than 3 days in one school year.” (Ed. Code, § 48260.)

The terms “shall” and “may” are included in Education Code section 48264.5. When used in the Education Code, section 75 defines the meaning of these terms, as follows:

“‘Shall’ is mandatory and ‘may’ is permissive.”

It is evident from the terminology of subdivision (a), and specifically the use of the word “may,” that no new requirements are imposed upon school districts by this subdivision. If a peace officer issues a warning to a pupil, the school district is not required to do anything with the written warning. Therefore, the Commission determined that subdivision (a) does not impose a reimbursable state mandated program upon school districts.

Second Truancy

Education Code Section 48264.5, subdivision (b), states:

“(b) Upon the second truancy within the same school year, the pupil may be assigned by the school to an after school or weekend study program located within the same county as the pupil’s school. If the pupil fails to successfully complete the assigned study program, the pupil shall be subject to subdivision (c).”

State law provides that any pupil who has once been reported as a truant and is again absent from school without valid excuse for one or more days, or tardy on one or more days, must again be reported as a truant to the attendance supervisor or to the superintendent of the school district. (Ed. Code, § 48261.) When this occurs, Education Code section 48264.5,

¹ Education Code section 48260.5 requires the school district, upon the initial classification of the pupil as a truant, to notify the pupil’s parent or guardian by first-class mail or other reasonable means of several facts, including the fact the parent has the right to meet with appropriate school personnel to discuss solutions to the pupil’s truancy. The Commission on State Mandates previously determined that these requirements impose a reimbursable state mandated program or higher level of service upon school districts. Based on this determination, school districts are currently being reimbursed for the following ongoing activities: “Identifying the truant pupils to receive the notification, preparing and distributing by mail or other method the forms to parent’s guardian, and associated recordkeeping.” See Parameters and Guidelines, adopted 8/27/87, amended on 7/28/88, and amended on 7/22/93, for Chapter 498, Statutes of 1983, Education Code section 48260.5, *Notification of Truancy*, p. 2.

subdivision (b), authorizes but does not require the school to assign the pupil to an after school or weekend study program located within the same county as the pupil's school, and if the pupil does not successfully complete such program, authorizes the school to subject the pupil to third truancy pursuant to subdivision (c). Since the assignment of such pupils is optional or discretionary, as evidenced by the use of the word "may," the Commission determined that subdivision (c) does not impose a reimbursable state mandated program upon school districts.

Third Truancy

Education Code Section 48264.5, subdivision (c), states:

"(c) Upon the third truancy within the same school year, the pupil may be referred to, and required to attend, an attendance review board or a truancy mediation program pursuant to Section 48263 or pursuant to Section 601.3 of the Welfare and Institutions Code. If the district does not have a truancy mediation program, the pupil may be required to attend a comparable program deemed acceptable by the school district's attendance supervisor. If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (d)."

Upon the third truancy, school districts are authorized under subdivision (c), to refer and require pupils to attend an attendance review board or a truancy mediation program, Since referring or requiring a pupil to attend the review board or truancy mediation program are optional or discretionary, as evidenced by the use of the word "may", The Commission determined that subdivision (c) does not impose a reimbursable state mandated program upon school districts.

Fourth Truancy - Classification as a Habitual Truant

Education Code Section 48264.5, subdivision (d), states in pertinent part:

"(d) Upon the fourth truancy within the same school year, the pupil shall be classified a habitual truant, as defined in Section 48262, and shall be within the jurisdiction of the juvenile court which may adjudge such pupil to be a ward of the court pursuant to Section 601 of the Welfare and Institutions Code. . . ." (Underlining added for emphasis .)

Prior to the 1975 amendment, state law defined habitual truant but did not require school districts to perform any activities in order to classify a pupil as a habitual truant. Unlike previous subdivisions (a), (b), and (c), subdivision (d) includes the term **shall**. As noted above, the Education Code defines the term shall as mandatory. Therefore, the Commission found that section 48264.5, subdivision (d), requires school districts to act upon the fourth truancy, The required activities to classify a pupil as a habitual truant are defined in section 48262.

Education Code section 48262 defines "habitual truant" as follows:

"Any pupil is deemed an habitual truant who has been reported as a truant three or more times per school year, provided that no pupil shall be deemed an habitual truant unless an appropriate district officer or employee has made a conscientious effort to

hold at least one conference with a parent or guardian of the pupil and the pupil himself. after the filing: of either of the reports required by Section 48260 or Section 48261.” (The underlined text was added by Chapter 1284, Statutes of 1975. Chapter 10 10, Statutes of 1976 recodified the section and updated the section numbers referenced in the last two lines.)

While the provisions of Education Code section 48262 alone do not impose a reimbursable state mandated program, the Commission found that the amended test claim, which identifies both section 48262 and subdivision (d) of section 48264.5, impose a reimbursable state mandated program.

Legislative Intent: A conscientious effort to hold at least one conference...after the filing of either of the reports required for first (Ed. Code, 948260) or second truancy (Ed. Code, § 48261.).

At the May 1996 hearing on the original test claim, there was considerable testimony and discussion on legislative intent and the activities that are required to constitute a conscientious effort under Education Code section 48262. Accordingly, the Commission directed staff to review the legislative history and intent of the test claim legislation, to determine what activities denote a conscientious effort, and how the meeting (conference) fits into that effort.

The author’s bill file, containing the legislative history of section 48262, was reviewed to determine the meaning of the phrase “conscientious effort to hold at least one conference with a parent or guardian. . . .” The Commission noted the following from legislative history:

A Legislative Counsel draft of the proposed amendment, dated December 12, 1974, and entitled “Author’s Copy, ” states in pertinent part:

“ . . . an appropriate district officer or employee has had at least one conference., . . .”
(Underlining added.)

This version required school districts to actually hold a conference before classifying the pupil as a habitual truant. An untitled and undated note to Legislative Counsel states:

“to legislative counsel--please redraft this bill as follows: . . . , ”

In this document the word “had” was changed to “made a reasonable effort to hold.” When introduced on March 31, 1975, SB 658 stated, in pertinent part:

“ . . .an appropriate district officer or employee has made a reasonable effort to hold at least one conference. . . .” (Underlining added.)

In May 6, 1975, Ms. Mary Bergan, Legislative Director of the California Federation of Teachers, wrote to Senator Stull:

“We basically like your SB 658, requiring an attempt at a parent conference prior to deeming a student to be a habitual truant. Have you given any consideration to tightening the language.. . ?”

“So often it seems that ‘reasonable’ efforts are not made very vigorously. ”

Also included in the archival file was the author’s statement to the Senate Education Committee on May 7, 1975, in which Senator Stull stated:

“Senate Bill 658 is a time bill in that it will allow (require) a school district to make every effort to meet with the student or his parents before filing the third “habitual truant report. . . . it is my intent to relax the time requirements in the codes to insure that such conferences may reasonably occur. Additionally, the bill meshes with Senator Rodda’s measure on School Attendance Review Boards designed to resolve the problems which may be causing the trancies by providing time for such meetings to occur before the filing of the third truancy report.”

On May 20, 1975, the bill was amended. The word “reasonable” was stricken and replaced by the word “conscientious. ”

The June 12, 1975 Senate Education Committee Report and the June 26, 1975 Assembly Education Committee Report state, as follows:

“requires.. . conscientious effort . . . to confer at least one time with a parent or guardian of a truant, [or the] truant pupil himself, . . .The effort to confer shall occur after either the first or second truancy report is made. ”

In his letter to the Governor dated September 15, 1975 Senator Stull again refers to the bill as a “ . . . time flexibility measure. . . ”

The documents in the author’s bill file establish that the test claim statute does not require the holding of the parent-pupil conference in order to deem a pupil a habitual truant. However, it is evident from these materials that the author wanted more than just a reasonable effort to be made.

In light of the additional archival evidence; the Commission found that a “conscientious effort” requires more than a school official’s effort to contact the pupil’s parent or guardian to attend a conference, after reports of the first and second truancy have been made. Some further effort, but not the actual holding of a parent-pupil conference is required before a pupil may be deemed a habitual truant. If the statute required an actual conference, a parent’s refusal to confer, or failure to respond to the district’s request to confer, would make it impossible for the district to classify a truant as a habitual truant thereby frustrating the intent of the statutory scheme for resolution of truancy problems. Consequently, a “conscientious effort” must require more. For example, sending another letter to the parent or guardian, and making a final attempt to contact the parent or guardian by telephone. These examples are not defined in statute or regulation. However, the Commission viewed these activities as a reasonable explanation of what was intended by the author to make a conscientious effort.

The Commission found that the requirement to classify a truant pupil as a habitual truant under subdivision (d) and section 48264.5 cannot be accomplished until a school district makes the requisite conscientious effort required under the definition of habitual truant. (§ 48262.) Consequently, the Commission found that the school district must assure that:

- The pupil has been reported as a truant three or more times during the same school year², and

² Education Code 48260 absent from school more than 3 days, or tardy more than 30 minutes, This means 9 days unexcused absence; 9 or more tardies.

- An appropriate district officer or employee has made a conscientious effort to hold at least one conference with a parent or guardian and the pupil after the filing of either of the reports required by sections 48260 or 48261, but before classification of the pupil as an habitual truant.

Although a conscientious effort must be made to invite the parent or guardian and pupil to a conference, the holding of a conference is not a prerequisite for deeming a pupil a habitual truant. However, if as a result of the required conscientious effort, the parent or guardian and pupil agree to a conference, a school official would be required to schedule and hold the conference.

During the July 31, 1997 hearing, the Commission considered the Department of Finance's disagreement with the claimant and the staff analysis. The Department of Finance contended that Education Code section 48264.5 (d) automatically classifies a pupil a habitual truant, upon the fourth truancy within the same school year, and "relieves a district from having to make a 'conscientious effort' to hold a conference unless the district chooses to exercise its option under section 48262 to deem a pupil an habitual truant after only three trancies in the school year."

However, based on the foregoing analysis, the Commission determined Education Code sections 48262 and 48264 .5, subdivision (d), require designated school officials to perform the following activities to deem a pupil a habitual truant, as defined in section 48262:

1. Verify that the pupil has been reported as a truant at least four times during the same school year.
2. Make a conscientious effort, as described below:
 - A. Sending notice (by certified mail, if necessary) and;
 - B. Making a final effort by placing a phone call to the parent/guardian, and by placing return calls to the parent/guardian.
3. If the conscientious effort results in the parent or guardian's agreement to confer; schedule and hold this conference.
4. Reclassify the pupil as a habitual truant.

CONCLUSION

Therefore, based on the foregoing analysis, the Commission concludes that the requirements of the test claim statutes impose a reimbursable state mandated program or higher level of service upon school districts within the meaning of section 6 or article XIII B of the California Constitution and section 17514 of the Government Code by requiring designated school officials to perform the following activities to deem a pupil a habitual truant, as defined in section 48262:

1. Verify that the pupil has been reported as a truant at least four times during the same school year.
2. Make a conscientious effort, as described below:

- A. Sending notice (certified mail, if necessary) and;
 - B. Making a final effort by placing a phone call to the parent/guardian, and by placing return calls to the parent/guardian.
3. If the conscientious effort results in the parent or guardian's agreement to confer; schedule and hold this conference.
 4. Reclassify the pupil as a habitual truant.

The Commission further concludes that –

- Education Code sections 48262 and 48264.5 do not require school districts to hold a parent-pupil conference as a prerequisite to classifying a pupil as a habitual truant.
- If the requisite conscientious effort results in the agreement of the parent or guardian and pupil to hold a conference, school districts shall be entitled to reimbursement for scheduling and conducting the conference.
- Subdivisions (a), (b), and (c), of Education Code section 48264.5, do not impose a reimbursable state mandated program upon school districts.