BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 48204.5 and 48204.6, Revenue and Taxation Code Section 97.3, and Section 5 of Statutes of 1995, Chapter 309 as amended by Statutes of 1995, Chapter 309; Filed on November 19, 1996; By Sweetwater Union High School District and South Bay Union School District Co-Claimants	NO. CSM 96-348-01 *Pupil Residency Verification and Appeals* *STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7* *(Adopted on June 24, 1999)*

STATEMENT OF DECISION

The attached Statement of Decision is hereby adopted by the Commission on State Mandates on June 24, 1999. The decision is effective on June 25, 1999.

Dated: June 25, 1999

PAULA HIGASHI
Executive Director

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STATEMENT OF DECISION

This test claim was heard by the Cornmission on State Mandates (Comrnission) on May 27, 1999, during a regularly scheduled hearing. Mr. Lawrence Hendee appeared for the Sweetwater Union High School District; Dr. Carol Berg appeared for the Education Mandated Cost Network; and Mr. Jim Apps and Ms. Michelle Chaffee appeared for the Department of Finance.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken. The Commission approved the staff recommendation to find a reimbursable state mandated program by a vote of 6-l.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., section 6, article XIII B of the California Constitution, and related case law.

BACKGROUND AND FINDINGS OF FACT

Issue: Does the test claim legislation impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B

of the California Constitution' and Government Code section 17514[2] by setting guidelines for the verification of pupil residency and requiring an appeal process for those pupils denied access based on a residency determination?

In order for a statute or an executive order, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory and regulatory language (1) must direct or obligate an activity or task upon local governmental entities, and (2) the required activity or task must be new, thus constituting a "new program", or it must create an increased or "higher level of service" over the former required level of service. The court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.[3]

The test claim legislation involves residency verification of pupils in public education. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, public education constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[4]

Legislative Findings and Declaration Concerning Pupil Verifications

Education Code section 48204.5 provides : [5]

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[1] Section 6, article XIII B of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. "

[2] Government Code section 175 14 provides: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[3] *County of Los Angeles v. State of California (1987) 43* Cal.3d *46, 56; Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, *537; Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d *830, 835.*

[4] *Long Beach Unified School Dist. v. State* ***of*** *California* (1990) 225 Cal.App.3d 155, 172.

[5] Statutes of 1995, Chapter 309, added section 48204.5 to the Education Code.

"(a) The Legislature finds that school districts that are adjacent to the international border, because of their geographic position, face unique circumstances in conducting the verification of pupil's residency.

"(b) The Legislature declares that international border school districts *may* need to employ certain efforts to verify residency. " (Emphasis added.)

According to legislative history, the purpose of section 48204.5 "'is to establish a procedure to keep school districts in compliance with residency requirements in current law. "

The claimant contended that when section 48204.5 is read in light of legislative intent and the additional funding available to border school districts for verifications,[6] it is clear "there is an *expectation* that international border districts will be *required* to make special efforts" to verify residency. (Emphasis added, emphasis in original.) The Cornmission disagreed with the claimant's contention that the foregoing facts illustrate the Legislature's expectation that international border school districts "will be required to make special efforts" to verify residency.

The Cornmission recognized that subdivision (a) details the Legislature's findings regarding pupil residency in international border school districts and, as such, does not impose any mandated activities upon school districts. Subdivision (b) provides that international border school districts *may* need to employ certain efforts to verify residency. It does not *require* international border school districts to engage in activities they are not already required to perform under prior law. Therefore, the Cornmission found that section 48204.5 does not constitute a reimbursable state mandated program.

Proof of Residency

Education Code section 48204.6, subdivision (a), provides :[7]

"(a) Any school district that is adjacent to an international border **may** *accept a wide range* ***of*** *documents and representations from the parent or guardian* ***of*** *a pupil as reasonable evidence that the pupil meets the residency requirements for school attendance in the school district as set forth in Section 48204. Reasonable evidence* ***of*** *residency* **may** *be established by documentation, including, but not limited to, any* ***of*** *the following documentation.*

"(1) Property tax payment receipts.

"(2) Rent payment receipts.

"(3) Utility service payment receipts.

"(4) Declaration of residency executed by the parent or guardian of the pupil. " (Emphasis added.)

[6] Chapter 309 provides the additional funding to international border school districts for pupil residency verifications.

[7] Statutes of 1995, Chapter 309, added section 48204.6, subdivision (a), to the Education Code.

On March 3, 1995, the California Department of Education (CDE) released a Legal Advisory (Advisory) entitled 'Verification of Residency. " The Advisory is intended to assist districts and county offices regarding the information they can rely on to determine that a child is a resident for purposes of public school attendance. In an attempt to clarify the phrase "reasonable proof of residency" in section 48204.6, the General Counsel of the CDE states in the Advisory that the "general rule is that districts *may* accept a wide range of documents and parent representations. . . . " (Emphasis added.) This language parallels that of subdivision (a).

The Commission recognized that both subdivision (a) and the Advisory contain *discretionary* language regarding what school districts *may* accept as reasonable proof of residency. They do not impose any mandated activities upon school districts. Therefore, the Comrnission found that Education Code section 48204.6, subdivision (a), and the portion of the Advisory relating to section 48204.6, subdivision (a), do not constitute a reimbursable state mandated program.

Verification of Pupils' Residency

Education Code section 48204.6, subdivision (b) , provides : [8]

> "(b) If any employee of a school district that is adjacent to an international border reasonably believes that the parent or guardian of a pupil has provided false or unreliable evidence of residency, the school district *shall* make reasonable efforts to determine that the pupil actually meets the residency requirements set forth in Section 48204. "[9] (Emphasis added.)

In addition, the Advisory provides that if information comes to the attention of employees of the district indicating that a parent or guardian has provided false or unreliable evidence of residency, the district *shall* either *disenroll* the child or make a *reasonable effort* to determine that the child actually resides within the district.

The Commission found that although prior law requires school districts to annually verify a pupil's residency, subdivision (b), coupled with the Advisory, impose an increased level of service upon school districts. Now, pupil residency must be verified *any time* a district employee reasonably believes that it is necessary. International border school districts may engage in multiple residency verifications over the course of a school year. In addition, the method of residency verification required under section 48204.6, subdivision (b), may be different than the method used during the annual verification.

In addition, the Commission noted that Section 6 of the test claim legislation appropriated $147,575 from the General Fund to the Superintendent of Public Instruction to be allocated to the County Superintendent of Schools of Imperial and San Diego Counties, for the purpose of

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[8] Statutes of 1995, Chapter 309, added section 48204.6, subdivision (b), to the Education Code.

[9] With respect to the proof or verification of residency, the Advisory issued by the CDE on March 3, 1995, provides that any reasonable evidence of residence is sufficient. The Advisory further states that it is within the discretion of district officials to develop reasonable procedures for the annual verification of each pupil's residence within the district. Title 5, California Code of Regulations, section 432 requires school districts to annually verify "the name and address of the parent and the residence of the pupil. "

assisting school districts that are adjacent to the international border with pupil residency verification. [10] The Cornmission found that any portion of this additional allocation received by international border school districts shall be treated as an offset in the Parameters and Guidelines. [11], [12]

Accordingly, the Commission found that any "reasonable efforts" to determine a pupil's residency are reimbursable state mandated activities *if* the verification occurs at a time other than the annual residency verification that is required under Title 5, California Code of Regulations, section 432.

Adoption of Appeals Procedure

Statutes of 1995, Chapter 309, section 5, provides:

> "SEC. 5. The County Superintendents, of Schools of Imperial and San Diego Counties *shall not allocate funds pursuant to this act* to any school district that is adjacent to the international border that has not adopted an appeals procedure for pupils who fail to adequately verify residency. The appeals procedure adopted *shall* be substantially similar to the appeals procedure set forth in Administrative Regulation 5111 as adopted by the Mountain Empire Unified School District on February 16, 1994. " (Emphasis added.)

Section 5 requires school districts adjacent to the international border to adopt an appeals procedure substantially similar to Mountain Empire Unified School District's. The Commission recognized that before the enactment of the test claim legislation, international border school districts were not required to have an appeals procedure for pupils who fail to adequately verify residency.

The Department of Finance contended that Section 5 does not constitute a reimbursable state mandated activity because Section 5 only requires that international border school districts have an appeals procedure as a condition of receiving additional funds. These school districts can

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[10] $26,950 is to be allocated to the County Superintendent of Schools of Imperial County and $120,625 is to be allocated to the County Superintendent of Schools of San Diego County.

[11] The declaration for Sweetwater estimates that, "the district incurred approximately $47,245 in staffing and other costs for the period July 1, 1995 through June 30, 1996 to implement these new duties. . . . " The declaration for South Union estimates that, "the district incurred approximately $4 1,029 in staffing and other costs for the period July 1, 1995 through June 30, 1996 to implement these new duties. . . ." Regarding the costs incurred to implement these new duties, both declarations state that, "the district has not been reimbursed by any federal, state, or local governmental agency, and for which it cannot otherwise obtain reimbursement." Claimants acknowledge the appropriation in the test claim but allege that, "funds appropriated are insufficient to reimburse the actual costs incurred."

[12] Government Code section 17556, subdivision (e), provides, in pertinent part: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no *net costs* to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." (Emphasis added.) In this case, section 17556, subdivision (e), *does not apply* since the additional appropriation was insufficient to fund the claimant's costs.

choose not to adopt an appeals procedure and not receive any additional funding pursuant to Chapter 309. The Commission disagreed.

Statutes of 1995, Chapter 309, also amends Revenue and Taxation Code section 97.3. [13] Section 97.3 governs the allocation of property tax revenue to local governments and school districts under article XIII A of the California Constitution (Proposition 13). Article XIII A limited the maximum amount of ad valorem taxes on real property to 1% of the full cash value of the property and requires counties to collect and apportion the tax revenue to local agencies and school districts within the county. [14] Of particular importance to the present test claim is section 97.3, subdivision (d)(2), which provides:

> "*The county auditor shall,* based on information provided by the county superintendent of schools pursuant to this paragraph, *allocate that proportion of the revenue in the Educational Revenue Augmentation Fund . . . to school districts and county offices* ***of*** *education.* . . . The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and the school districts within the county. . . . " (Emphasis added.)

School districts are entitled to receive the funds described in Revenue and Taxation Code section 97.3 and it includes money earmarked for school districts through the county's Educational Revenue Augmentation Fund (ERAF). The Commission found that international border school districts are without any discretion regarding the adoption of an appeals procedure. If an international border school district does not adopt an appeals procedure, Section 5 will prohibit county superintendents from allocating *all* funds to school districts under "this act, " *including the additional appropriation found in Section 6 and tax revenue funds* allocated through ERAFs under the Revenue and Taxation Code. [15]

Accordingly, the Commission found that the Legislature has imposed a new program or higher level of service upon international border school districts by prohibiting county superintendents to allocate ERAF funds without adoption of an appeals procedure.

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[13] Section 97.3 now requires that if, after making the allocations pursuant to subdivisions within section 97.3, the county auditor determines that excess funds are available, those funds must be allocated to the county superintendents of schools and counted as property tax revenues for special education programs in augmentation of the amount of property tax revenues allocated for those programs.

[14] California Constitution, article XIII A, section 1, subdivision (a).

[15] The Department of Finance contended that Section 5 was never intended to apply to the amendments of sections 97.2 and 97.3 found in Statutes of 1995, Chapter 309. Rather, the language in Chapter 309 relating to sections 97.2 and 97.3 was intended as legislative clean up for AB 825 (Statutes of 1995, Chapter 308). The Commission found that a plain reading of Chapter 309 does not support this conclusion. Chapter 309 does not state that it is linked to Chapter 308. Furthermore, a plain reading of Section 5 provides that school districts will not receive funds pursuant to the act, i.e., Chapter 309, unless they adopt an appeals procedure.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation constitutes a reimbursable state mandated program for the following activities :

- Any "reasonable efforts" to determine a pupil's residency *if* the verification occurs at a time other than the annual residency verification that is required under Title 5, California Code of Regulations, section 432.
- The one-time activity of adopting an appeals procedure substantially similar to Mountain Empire Unified School District's for pupils who fail to adequately verify residency.