BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:	)	No. CSM-4445
	)	Education Code
	)	Section 48204, Subdivision (f)
San Diego Unified	)	Chapter 172, Statutes of 1986
School District,	)	Chapter 10, Statutes of 1990
	)	Chapter 507, Statutes of 1992
	)	
	)	Education Code
	)	Section 48980, Subdivision (e)
	)	Chapter 10, Statutes of 1990
	)	
Claimant	)	*Interdistrict Transfer Requests: Parent=s Employment*

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 Ms. Janet Finley 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 section 48204, subdivision (f), as added by Chapter 172, Statutes of 1986 (Chapter 172/86), and amended by Chapter 10, Statutes of 1990 (Chapter 10/90), and Chapter 507, Statutes of 1992 (Chapter 507/92), and the provisions of Education Code section 48980, subdivision (d), as added by Chapter 10/90, and later renumbered as subdivision (e) by Chapter 403, Statutes of 1990 (Chapter 403/90), 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 XIIIB of the California Constitution and Government Code section 17514?

BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on December 17, 1993, 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 48204, subdivision (f), as last amended by Chapter 507/92, states:

> ANotwithstanding Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is any of the following:
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> A. . . . . .
>
> A(f) An elementary school pupil, one or both of whose parents, or whose legal guardian, is employed within the boundaries of that school district.
>
> A(1) Nothing in this subdivision requires the school district within which the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.
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> A(2) The school district in which the residency of either the pupil's parents or guardians is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the district's court-ordered or voluntary desegregation plan.
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> A(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.
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> A(4) Any district governing board prohibiting a transfer pursuant to paragraph (1), (2), or (3) shall identify, and communicate in writing to the pupil's parent or guardian, the specific reasons for that determination and shall ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.
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> A(5) The average daily attendance for pupils admitted pursuant to this subdivision shall be calculated pursuant to Section 46607.
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> A(6) Unless approved by the sending district, this subdivision does not authorize a net transfer of pupils out of any given district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in any fiscal year in excess of the following amounts:
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> A(A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.
>
> A(B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2501, 3 percent of the average daily attendance of the district or 25 pupils, whichever is greater.

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> A(C) For any district with an average daily attendance of 2501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever is greater.

> AOnce a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district whose boundaries include the location where one parent or both parents of a pupil is employed, or where a pupil's legal guardian is employed, the pupil shall not have to reapply in the next school year to attend a school within that school district.≅

The Commission observed that the introductory language of Education Code section 48204, in conjunction with the opening sentence of subdivision (f), creates a residency-based right of transfer (also known as Aparental employment transfer≅) for pupils living outside a school district who have a parent or legal guardian employed within the school district. However, the Commission also noted that the right to attend a district in which the parent or guardian is employed is subject to restrictions and considerations set forth in paragraphs (1) through (6) of section 48204, subdivision (f).

The Commission observed that a permissive program of interdistrict transfers based on attendance agreements existed in Education Code 46600 *et seq.* before 1975. The Commission did not identify any prior law which specifically authorized interdistrict transfers based on residency defined as the location of the parent's place of employment. The Commission found that residency-based transfers are different in concept than agreement-based transfers.

The Commission also observed that there is no requirement in Education Code section 48204, subdivision (f), to confirm parental employment at any point in the transfer application process. The Commission found that any activity to confirm a parent=s self-certification on location of employment is discretionary on the part of the school district.

In view of the foregoing, the Commission determined that the introductory language of Education Code section 48204, in conjunction with the opening sentence of subdivision (f), alone do not impose a reimbursable state mandated program upon school districts.

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Regarding paragraph (1) of subdivision (f), the Commission observed that these provisions both

expressly confirm the right of school districts to deny parental employment transfer requests and simultaneously restrict that right by prohibiting denials based on any arbitrary consideration, including ethnicity, sex, parental income, or scholastic achievement.

The Commission found that school districts may refuse to admit transfer pupils under Education Code section 48204, subdivision (f), but not without good reason. Further, the Commission noted that whereas some districts may have adequate cause to deny all applications, as in a policy of "blanket rejection," nonetheless, the governing board of the district must still act to reject an application. The Commission therefore concluded that any application tendered, even with a "blanket rejection" policy in place, must be received and considered, although the degree of actual consideration may vary. Moreover, the Commission concluded that school districts are required to ensure that a request is not denied for arbitrary or impermissible reasons.

The Commission observed that a pupil may apply for transfer under either or both Education Code section 46600 *et seq*. or section 48204, subdivision (f), and found that those sections are separate and alternative methods of interdistrict transfer. In addition, the Commission observed that section 48204, subdivision (f), does not specify how parental employment transfers are to be effected. The Commission noted that interdistrict attendance agreements, even if a separate program, may be a likely mechanism for implementing parental employment transfers but concluded, nonetheless, that no requirement is imposed to use attendance agreements with parental employment transfers. Moreover, the Commission did not find that school districts are required to accept parental employment transfers, provided the reason for rejection is not arbitrary. Hence, since the acceptance of a parental employment transfer is voluntary, the question of method of implementation is moot for purposes of a state mandate determination.

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Regarding paragraph (2) of subdivision (f), the Commission observed that these provisions affirm the Legislature's intent that school districts may maintain control over their court-ordered or voluntary desegregation plan by refusing a parental employment transfer which negatively

impacts that plan. The Commission noted that paragraph (2) of subdivision (f) uses permissive language: A*may prohibit*.≅ Thus, the act of accepting or rejecting a parental employment transfer is voluntary, regardless of the impact on the court-ordered or voluntary desegregation plan. Nonetheless, the Commission also recognized that a district operating under a court-ordered desegregation plan has little option but to manage that plan assertively, despite the permissive wording of paragraph (2).

The Commission found that pre-existing law, which authorizes transfers based on permissive interdistrict attendance agreements, places no restrictions on denial or approval of a transfer request other than requiring concurrence by both districts and granting parents or guardians the right to appeal to the county board of education in the case of denial (Education Code section 46600 *et seq.*). The Commission therefore concluded that Education Code section 48204, subdivision (f), paragraph (2), does impose a new activity on school districts, limited to districts subject to court-ordered desegregation plans. To the extent that a school district is otherwise prepared to approve a parental employment transfer, but the impact of this transfer on the district's court ordered desegregation plan becomes an issue, the Commission found that this section does implicitly require such a district to evaluate that impact.

Regarding paragraph (3) of subdivision (f), the Commission observed that these provisions affirm the Legislature's intent that a school district may deny a transfer if the additional state funding is insufficient for the transferred student's educational needs. The Commission noted that the language contained in paragraph (3) is permissive: "*may prohibit.*" School districts are authorized, but not obligated, to consider funding impacts when considering the transfer application. Accordingly, the Commission concludes that Education Code section 48204,

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subdivision (f), paragraph (3), does not impose a reimbursable state mandated program upon school districts.

Regarding paragraph (4) of subdivision (f), the Commission observed that these provisions explicitly require district governing boards, when denying a transfer, to inform the parent or guardian in writing of the specific reasons for denial and to ensure those reasons are recorded in the minutes of the board meeting. The Commission noted this paragraph is implicitly affirming that the right to deny a parental employment transfer is held by the governing board, rather than by district staff, and may not be delegated. It follows that notification to a parent or guardian would occur after the decision has been made in a board meeting. Therefore, the Commission found that the role of the board in carrying out the duties set forth in paragraph (4) is not necessarily perfunctory and that district staff must first prepare and present information to the board in a fashion the board can reasonably deliberate and act upon, although the format for that information is not specified in the statute.

The Commission did not identify prior law requiring school districts to explain in writing to parents or guardians the reason for denial of a residency-based transfer request, nor to ensure that the reason for denied transfers be included in the minutes of the governing board.

Therefore, the Commission concluded that Education Code section 48204, subdivision (f), paragraph (4), does impose a new program or a higher level of service upon school districts by requiring:

- ∃ District staff to prepare and present information, in a cost-effective manner, to the governing board, facilitating that board=s responsibility to decide whether a proposed parental employment transfer should be prohibited, and the reasons therefor;

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- ∃ The governing board, when denying a parental employment transfer, to communicate in writing to the pupil=s parent or guardian the specific reasons for that determination; and
- ∃ The governing board to ensure that the determination, and the specific reasons therefor,

are accurately recorded in the minutes of the board meeting in which the determination was made.

Regarding paragraph (5) of subdivision (f), the Commission observed that these provisions are cross referenced to Education Code section 46607, which sets for the calculation methods for determining average daily attendance, i.e., the basis for school funding. The Commission noted that paragraph (5) affirms that interdistrict transfers based on parent's employment are accounted for using the section 46607 procedures. The Commission did not find a reimbursable state mandated program in Education Code section 48204, subdivision (f), paragraph (5).

Regarding paragraph (6) of subdivision (f), the Commission observed that these provisions set three thresholds beyond which net transfers are prohibited, unless approved by the sending school district. These thresholds vary by size of the district. The concluding paragraph of subdivision (f) affirms that a pupil is not required to reapply the next year for a parental employment transfer once accepted.

The Commission noted that the language of paragraph (6) specifically withholds the Legislature's approval for net transfers exceeding specified amounts unless the district takes affirmative action to approve transfers beyond those limits. The Commission also noted that no time periods are established for the calculations.

The Commission found that paragraph (6) implies two distinct steps: the calculation of net transfers, and action by the district governing board to exceed the legislative cap on net transfers. Further, the Commission found that the wording of paragraph (6) suggests that the calculation of net transfers is required, whether or not the district then voluntarily chooses to take further action by approving transfers in excess of that amount.

In addition, the Commission found that, absent a specified time period for the calculation, annual

calculation is appropriate. Moreover, the Commission found that the concluding paragraph of Education Code section 48204, subdivision (f), does not impose an affirmative duty upon school districts, but does create a situation in which transfer students may not be readily identifiable in school attendance records because they are not required to resubmit transfer applications each year. It is this situation which lends salience to the argument that an annual accounting of net transfers is needed to comply with the limits set forth in paragraph (6).

The Commission did not locate a prior requirement for the governing bodies of school districts to restrict net transfers in order to conform with legislatively established limits.

Thus, the Commission concluded that Education Code section 48204, subdivision (f), paragraph (6) imposes a state mandated program on sending school districts by requiring them to determine on an annual basis whether net transfers exceed limits set forth therein. The Commission also concluded that the decision to exceed those limits is voluntary and therefore any related deliberation by the district or its governing board is not a state mandated program. And finally, the Commission determined that the concluding paragraph of Education Code section 48204, subdivision (f), which stipulates that pupils need not reapply in order to maintain transfer status, does not impose a state mandated program upon school districts.

The Commission noted that the provisions of Education Code section 48204, subdivision (f), are repealed as of July 1, 1998, pursuant to Chapter 98, Statutes of 1994, and Chapter 1262, Statutes of 1994.

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Chapter 10/90 added subdivision (d) to Education Code section 48980 which was later relettered as subdivision (e) by Chapter 403/90. This subdivision states:

> "Until June 30, 1995, the notification shall also advise the parent or guardian of the availability of the employment-based school attendance options pursuant to subdivision (f) of Section 48204."

The Commission observed that this test claim alleged a state mandated program in Education

Code section 48980, subdivision (e). However, the Commission noted that this subdivision was previously addressed in the test claim entitled *Notification to Parents: Pupil Attendance Alternatives* (CSM-4453), which had filing date of February 22, 1994. In CSM-4453, the Commission determined that a reimbursable state mandated program was contained in Education Code section 48940, subdivision (e) ,and adopted its statement of decision on August 15, 1994. However, the Commission found that Education Code section 48980, subdivision (e), is subject to the earlier filing date of December 17, 1993, for *Interdistrict Transfers: Parent=s Employment.* Accordingly, the Commission determined that the statement of decision in *Notification to Parents: Pupil Attendance Alternatives* (CSM-4453), pertaining to Education Code section 48980, subdivision (e), must be amended to the extent of indicating a test claim filing date of December 17, 1993.

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

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

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 concludes that the provisions of Education Code section 48204, subdivision (f), as added by Chapter 172/86, and amended by Chapter 10/90, and Chapter 507/92, do impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514, as follows:

- Districts must receive and consider requests for transfer and ensure that a request is not

denied for arbitrary or impermissible reasons;

- ∃. Districts subject to court-ordered desegregation plans must evaluate the impact of proposed parental employment transfers on such plans;
- ∃ District staff must prepare and present information to the governing board in a cost-effective manner, facilitating that board=s responsibility to decide whether a proposed parental employment transfer should be prohibited, and the reasons therefor;
- ∃ In the case of a denied request for a parental employment transfer, the governing board must communicate in writing to the pupil=s parent or guardian the specific reasons for that determination;
- ∃ The governing board must ensure that the determination to prohibit a transfer, including the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made; and
- ∃ Sending districts must annually determine whether net transfers fall within the statutory limits as specified therein.

Further, the Commission concludes that, except as set forth in the preceding paragraph, no other reimbursable state mandated programs or activities are contained in Education Code section 48204, subdivision (f), including paragraphs (1) through (6) and the final paragraph, and that the provisions of the section are repealed as of July 1, 1998.

Further, the Commission concludes that the provisions of Education Code section 48980, subdivision (d), as added by Chapter 10/90, and later relettered as subdivision (e) by Chapter 403/90, have already been addressed in another test claim entitled *Notification to Parents: Pupil Attendance Alternatives* (CSM-4453) . Previously, the Commission determined that a reimbursable state mandated program was imposed by the legislation subject to CSM-4453 and adopted its statement of decision on August 15, 1994. However, in hearing this test claim on *Interdistrict Transfers: Parent=s Employment*, the Commission concludes that the statement of decision for CSM-4453, pertaining to Education Code section 48980, subdivision (e), must be

clarified to the extent of indicating a test claim filing date of December 17, 1993.

Accordingly, costs incurred related to the aforementioned reimbursable state mandated programs contained in Education Code section 48204, subdivision (f), are costs mandated by the state and are subject to reimbursement within the meaning of section 6, article XIIIB of the California Constitution. Therefore, the claimant is directed to submit parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California Code of Regulations, section 1183.1, to the Commission for its consideration.

The foregoing conclusions pertaining to the reimbursable state mandated programs contained in Education Code section 48204, subdivisions (f), 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.
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> As provided in Chapter 172/86 and Chapter 10/90, if the statewide cost estimate for this mandate does not exceed on 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).

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