

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 02/09/2011

TIME: 01:35:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: Kevin Culhane

CLERK: E. Brown

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2010-00090983-CU-OE-GDS** CASE INIT.DATE: 11/05/2010

CASE TITLE: **County Of Sacramento, et al. vs. State Of California, et al.**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion for Judgment on the Pleadings - Civil Law and Motion - Demurrer/JOP

APPEARANCES

Nature of Proceeding: Ruling on Submitted Matter (Motion for Judgment on the Pleadings) taken under submission on 1/7/11

TENTATIVE RULING

Appearance required.

The parties should be prepared to discuss their views regarding:

1. Whether the statutory requirements of Government Code section 17612(c) are established in this case.
2. What is the effect, legally and factually, of the fact that, following the Governor's actions, \$76 million was forwarded to the Counties by the California Department of Education?
3. Whether the procedural requirements for a plaintiff's motion for judgment on the pleadings been met in this case.

COURT RULING

The matter was argued and submitted.

The matter was taken under submission.

The Court, having taken the above-entitled matter under submission on 01/07/2011 and having fully considered the arguments of all parties, now rules as follows:

RULING ON SUBMITTED MATTER

The motion for judgment on the pleadings filed by Plaintiffs came on for hearing in Department 53 of this Court on January 7, 2011. The Plaintiffs were represented by Rick Heyer, Esq. of the Office of the County Counsel for Sacramento County and Timothy M. Barry, Esq. of the Office of the County Counsel for San Diego County. Tamar Pachter, Esq. of the Office of the Attorney General appeared for Defendants. Intervenors were represented by Deborah B. Caplan, Esq. of Olson Hagel & Fishburn, LLP, and Karen E. Samman, Esq. of Atkinson, Andelson, Loya, Ruud & Romo.

Plaintiffs, the County of Sacramento, and numerous other California counties, have filed suit against Defendants the State of California ("State"), Governor Arnold Schwarzenegger, Controller John Chiang, and Director of Finance Ana Monsanto; each person is sued in his or her official capacity. The complaint seeks a declaration that the State has not appropriated funding to Plaintiffs to provide for disabled students certain services required under state and federal law, and that Plaintiffs are not obligated to provide such services or incur costs therefor until the Legislature has appropriated such funds to pay Plaintiffs.

Plaintiffs' motion for judgment on the pleadings asserts that Plaintiffs are entitled to declaratory relief pursuant to Government Code section 17612(c) because (1) the State has failed to appropriate any funding to Plaintiffs for providing services to disabled students required under state and federal law, and (2) that the State mandate to Plaintiffs to provide such services has been suspended for the fiscal year 2010-2011, effective October 8, 2010, and that Plaintiffs are not obligated to provide these services without full good faith funding from the State.

Defendants do not oppose Plaintiffs' motion.

California School Boards Association and Clovis Unified School District (hereinafter, "Intervenors"), have filed a complaint in intervention and opposed Plaintiffs' motion for judgment on the pleadings.

The Court is mindful that there is no optimal outcome to these proceedings. All parties agree that the State has not provided adequate funds or reimbursement monies for these state and federally mandated services to disabled students. Moreover, the State has failed to adequately fund these services in years past. If Plaintiffs are excused from complying with the State mandate, local education agencies, such as Intervenors, will be required to furnish services to disabled students without the assistance of sufficient monies. On the other hand, if Plaintiffs do not obtain relief from complying with the State mandate for this fiscal year, Plaintiffs must expend monies for these services without adequate funding. Although a reimbursement process exists, neither Plaintiffs nor Intervenors are hopeful that such process will furnish them with timely relief. For present purposes, it suffices to note that because any outcome in this proceeding will cause one or more of the parties to face serious budgetary challenges, fidelity to the procedural and substantive law provides the only meaningful guidepost to the Court under such circumstances.

Standard for Motion for Judgment on the Pleadings

A plaintiff may make a motion for judgment on the pleadings if "the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc. § 438(c).) "The grounds for [such motion] shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code Civ. Proc. § 438(d).) A motion for judgment on the pleadings

must be denied when there are material factual issues that require evidentiary resolution. (*Scharbarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.)

Funding for State-Mandated Programs

Proposition 13, which added article XIII A to the State Constitution, limits the power of state and local governments to adopt and levy taxes. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.) Proposition 4, adopted shortly after Proposition 13, added article XIII B to the California Constitution, which imposes a spending limit on state and local governments. (*Department of Finance, supra*, 30 Cal.4th at 735; *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 573-74.) Both provisions work in tandem, together restricting local and state governments' power both to levy and to spend taxes for public purposes. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.) Article XIII B, section 6 generally requires the State to reimburse local governments whenever it requires a new program or higher level of service, and provides in part:

- 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 that local government for the costs of the program or increased level of service...

(Cal. Const., art. XIII B, § 6(a).)

Article XIII B, section 6 recognizes that articles XIII A and B severely restrict the taxing and spending powers of local governments. Its purpose "is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.)

The Legislature implemented article XIII B, section 6 by creating a statutory scheme for its enforcement and administrative procedures for claims arising out of this provision and requiring the State to reimburse local agencies for mandated costs. (Gov. Code §§ 7500 *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 331.) The Legislature established the Commission on State Mandates ("Commission"), which, among other duties, determines whether legislation imposes a state-mandated program. If this is the case, the Commission resolves claims by local agencies for reimbursement from mandated programs. (Gov. Code §§ 17500 *et seq.*; *Kinlaw, supra*, 54 Cal.3d at 331-333.) The Commission also reports to the Legislature at least twice a year of the mandates it has found, and the estimated costs thereof. (Gov. Code § 17600.) The Legislature must then adopt a "local government claims bill." (*Kinlaw, supra*, 54 Cal.3d at 333.) If that bill does not include funding for a state mandate, an affected local agency may seek declaratory relief that the mandate is unenforceable. (*Kinlaw, supra*, 54 Cal.3d at 333 (citing Gov. Code § 17612).) "[T]he exclusive remedy for a claimed violation of section 6 lies in these procedures" set forth in the Government Code. (*Ibid.*)

Funding for AB 3632 Services

The federal "Individuals with Disabilities Education Act" ("IDEA") provides that all children with disabilities are entitled to a free appropriate education that emphasizes special education and related services to meet their unique needs. (*Grossmont Union High Sch. Distr. v. State Dept. of Educ.* (2008) 169 Cal.App.4th 869, 878 (citing 20 U.S.C. §§ 1400 *et seq.*.) Under IDEA, states are eligible to receive federal financial assistance for providing public education to disabled students if states meet certain conditions. (20 U.S.C. § 1412(a).) The State implements IDEA by delegating duties to both counties and local educational agencies: the State requires local educational agencies to provide necessary educational and related services under a student's individual education plan, and it requires counties to fund and furnish mental health assessments and services included in that plan. (Gov. Code §§ 7570 *et*

seq.; *Grossmont, supra*, 169 Cal.App.4th at 883; *Tri-County Special Educ. Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4^f 563, 571.) These services are often described as "AB 3632 Services,"[1] and shall be referred to herein as the same.

Although the State has delegated some responsibility to counties to provide mental health services under IDEA, federal law independently requires local educational agencies to provide such services. "If a public agency other than an educational agency fails to provide or pay for the special education and related services...the local educational agency...shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services...." (20 U.S.C. § 1412(a)(12); see also *Grossmont, supra*, 169 Cal.App.4th at 885.)

Various statutes require the State to reimburse counties for providing AB 3632 services, and in 1990, the Commission determined that the Government Code imposes a reimbursable mandate on counties to provide mental health assessments. Here, all parties agree that the requirements imposed by AB 3632 are a State mandate and that the Plaintiffs are entitled to reimbursement by the State for providing AB 3632 services.

Motion for Declaratory Relief under Government Code section 17612(c)

The Government Code establishes three avenues of relief if a local agency claims that the State has failed to reimburse funds for mandates as required by article XBIII, section 6. (*Tri-County, supra*, 123 Cal.App.4th at 571.) First, local governments have the "self-executing" remedy of choosing not to implement a mandated program if the Legislature or Commission has (1) identified the new program as a mandate, and (2) the Legislature has "specifically" identified the program as a mandate for which no funding is provided.[2] (*Ibid.*; Gov. Code § 17581.) Second, if a local agency believes that funding for a mandated program is inadequate, it may file a claim with the Commission, and if the claim is denied, seek review by writ of administrative mandate in superior court. (*Tri-County, supra*, 123 Cal.App.4th at 572.) Additionally, after spending funds on the program, the local agency can also file a reimbursement claim with the Commission, which decision is judicially reviewable. (*Ibid.*; Gov. Code § 17559.) Lastly, local agencies may file an action for declaratory relief in this Court to declare a mandate unenforceable pursuant to Government Code section 17612, as Plaintiffs have done in this case. (*Ibid.*; Gov. Code §§ 17612(c); 17515.) That statute provides in part:

(c) If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.

(Gov. Code § 17612(c).) Thus, to obtain declaratory relief under Government Code section 17612(c): the Legislature must "fail[] to include finding in a local government claims bill following a determination by the Commission that a state mandate exists." (*Kinlaw, supra*, 54 Cal.3d at 330.)

Here, the parties agree that the Commission determined that that the AB 3632 services constitute a mandate and that the State is obligated to reimburse the counties. The dispute presented here centers on whether the Legislature has "deleted" funding for this mandate. Stated otherwise, Plaintiffs claim that they are entitled to declaratory relief under Government Code section 17612(c) because (1) the counties are mandated to provide AB 3632 services under State law and (2) the Legislature deleted funding for the mandate for these services from the annual Budget Act.

According to the pleadings, the Legislature passed the Budget Act for fiscal year 2010-2011, which initially included approximately \$133 million for "outstanding mandate claims" for AB 3632 services. (Complaint ¶¶ 18, 20; Answer ¶ 25.) At oral argument, Plaintiffs and Defendants noted that this \$133

million amount represented reimbursement for AB 3632 services rendered in past years and that this amount was for "costs in arrears, not for going forward." [RT, 12:14-28; 14:1-6.] The budget passed by the Legislature also failed to appropriate funds to counties for performing specific mental health services in fiscal year 2010-2011 that are separately appropriated pursuant to Welfare and Institution Code section 18355. (Complaint ¶ 19; Answer ¶ 26.) When the Governor signed the Budget Act on October 8, 2010, the Governor eliminated the \$133 million amount by line-item veto and declared that the mandate was suspended. (Complaint ¶¶ 20-21; Answer ¶¶ 27-28.) The Legislature then failed to override the Governor's line-item veto. The Legislature also did not appropriate the additional funding required by Welfare and Institutions Code section 18355. (Complaint ¶ 22; Answer ¶ 29.) Thus, Plaintiffs argue, and Defendants concede, that by these actions, the Legislature deleted funding from the AB 3632 mandate from the annual Budget Act.

Intervenors argue that the Legislature has *not* deleted funding, and that the Legislature has provided more than nominal funding to Plaintiffs for AB 3632 services. Although Intervenors dispute whether the \$133 million amount has been "deleted by the Legislature," Intervenors also note that the Legislature appropriated \$76 million in federal funds for mental health services under AB 3632. Specifically, Intervenors point to item 6110-161-0890 of the 2010-2011 Budget Act, which appropriated monies from the Federal Trust Fund for various programs. Within this budget item, approximately \$76 million of these monies was appropriated to be "used exclusively to support mental health services that are provided during the 2010-11 fiscal year by county mental health agencies [for AB 3632 services] that are included within an individualized education program pursuant to the federal Individuals With Disabilities Act (20 U.S.C. Sec 1400 et seq.)." (See Complaint in Intervention ¶ 36; Intervenors' Opposition to Motion for Judgment on the Pleadings, pp. 8-9; Intervenors' Request for Judicial Notice, Exh. A.)

At oral argument, Plaintiffs submitted that this \$76 million amount is "pass-through" funding from the federal government for the IDEA program, and does not represent an appropriation from the State. Plaintiffs and Defendants also noted that although the \$76 million amount represents funding for services "going forward," it is not adequate funding. [RT, 14:24-26; 26:14-20.] Therefore, it appears that although the \$133 million for reimbursement for past AB 3632 services had been eliminated from the Budget Act—at least in the sense that the Governor exercised a line-item veto that the Legislature did not override—\$76 million in federal monies is being distributed to support county mental health services in complying with the IDEA program for the 2010-2011 fiscal year.

Thus, the issue in this case is whether the elimination of \$133 million in reimbursement monies for AB 3632 services, and the distribution of \$76 million in federal monies to counties to provide AB 3632 services during the 2010-2011 fiscal year is a "deletion" of funds under Government Code section 17612(c).[3]

Regarding the \$133 million in funds now eliminated from the budget, the Court first observes that the complaint and answer do not clearly state whether this amount is solely for reimbursement for AB 3632 services performed in past fiscal years, or whether these monies also include an appropriation for AB 3632 for the 2010-2011 fiscal year. However, to the extent that this amount represents reimbursement for services rendered in past years, it seems that the absence of this funding alone would not give rise to declaratory relief under Government Code section 17612(c). Courts have noted that declaratory relief under this section applies only prospectively, "and not as to funds previously paid out by a local agency to satisfy a state mandate." (*Lucia Mar Unified Sch. Dist. v. Honig* (1988) 44 Cal.3d 830, 834, fn.3; see also *Berkeley Unified Sch. Dist. v. State of California* (1995) 33 Cal.App.4th 350, 361, fn.7 ("The prospective remedy provided by section 17612, by its very nature, does not extend retrospectively to funds already expended prior to the date it accrues."))

Plaintiffs and Defendants have also noted that article XIIB, section 6(b), added in 2004, suggests that the failure to provide reimbursement for mandated services in past fiscal years provides an additional

basis on which declaratory relief may be granted. This section provides that:

(b)(1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

Here, the parties agree that the Legislature did not provide for the appropriation of "the full payable amount [of the mandate] that has not been previously paid." Moreover, it seems that the Legislature also did not state that it was suspending operation of the mandate. However, "Section 6[] does not address remedies against the State for violation of the provision's reimbursement requirement. In line with the presumption that an official duty will be regularly performed [citation], the provision contemplates the State will comply with its requirement to reimburse local governments for the costs of providing state-mandated programs and services and is silent as to the consequences of the state's failure to do so." (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 609-10.) Accordingly, and in light of the discussion below, the Court does not decide whether this Constitutional provision provides a basis for declaratory relief under Government Code section 17612(c).-

More concerning to the Court is Intervenors' assertions, and the parties' remarks at oral argument, that indicate that at least some monies were distributed to Plaintiff counties to provide AB 3632 services for the 2010-2011 fiscal year. Of course, "[w]hen the Legislature provides only nominal funding for a mandate ... the local agency's remedy is to file an action under [Government Code] section 17612, subdivision (c), to declare the mandate unenforceable and to enjoin its enforcement for that fiscal year." (*County of San Diego, supra*, 164 Cal.App.4th at 613.) For example, funding of \$1000 to all counties for providing mental health services under IDEA was previously held to be "nominal funding" by the Legislature for which declaratory relief under section 17612(c) is appropriate. (*Id.*; see also *Tri-County, supra*, 123 Cal.App.4th at 572, fn. 1.)

In the instant case, however, there are outstanding factual questions about the effect of the elimination of the \$133 million in funds and the distribution of \$76 million in monies for AB 3632 services. The complaint and answer state that \$133 million for AB 3632 services was eliminated from the 2010-2011 budget. However, it seems that most or all of this amount represented reimbursement for AB 3632 services performed by counties in past fiscal years, not funding for the 2010-2011 fiscal year. The parties acknowledge that the Legislature distributed \$76 million in federal funds to counties to perform AB 3632 services for the 2010-2011 fiscal year. The pleadings contain no statement about the total amount of federal and/or state monies needed for counties to provide AB 3632 services during the 2010-2011 fiscal year. However, it appears that the \$76 million in funding is more than a "nominal amount." The pleadings also contain no statement of the amount of State monies are needed to supplement the \$76 million amount to provide AB 3632 services for the 2010-2011 fiscal year. Accordingly, there are material factual questions as to the amount of AB 3632 funds provided[4] to counties for the 2010-2011 fiscal year. Given this record, the Court is unable to conclude that the State has in fact "deleted funding" as required for relief under Government Code section 17612(c). In the absence of such a finding, the Court cannot grant the motion for judgment on the pleadings.

The Court finds that the pleadings establish and that none of the parties contest that funds for county services provided pursuant to Welfare and Institutions Code section 18355 were not appropriated by the Legislature. Accordingly, the Legislature has failed to provide funding for this mandate, and Plaintiff is entitled to declaratory relief with regard to the services funded by Welfare and Institutions Code section 18355. (Gov. Code § 17612(c); *Kinlaw, supra*, 54 Cal. 3d at 330, 333, 336.)

THEREFORE, IT IS ORDERED THAT:

- Defendants' request for judicial notice is granted;
- Intervenor's request for judicial notice is granted;
- Plaintiff's motion for judgment on the pleadings is GRANTED in PART in that the Court declares that the Legislature has failed to provide funding to Counties for services pursuant to Welfare and Institutions Code section 18355, and that this is a failure to fund a state-mandated program;
- Plaintiff's motion for judgment on the pleadings is DENIED in all other respects. (Code Civ. Proc. § 438(h)(3).

/n

[1] "AB 3632" refers to the adoption of what is now chapter 26.5 of division 7 of title I of the Government Code, section 7570 *et seq*, entitled "Interagency Responsibilities for Providing Services to Children with Disabilities." (*Grossmont, supra*, 169 Cal.App.4th at 880.)

[2] Plaintiffs do not contend that this remedy is appropriate here.

[3] Intervenor's also dispute the legality of the Governor's actions in support of their argument that the *Legislature* did not act to delete the funds under Government Code section 17612(c). Because the Court resolves the motion for judgment on the pleadings on different grounds, it does not address this argument.

[4] Although Plaintiff noted during oral argument that this distribution of \$76 million in federal funding was not an appropriation, the Court disagrees with Plaintiffs' characterization. First, the Budget Act, in describing these monies, clearly uses the word "appropriation" and states that of this "appropriation," \$76 million is to be provided for mental health services by county mental health agencies. Second, the fact that money comes from federal funds does not preclude it from being an item of appropriation. The Budget Act sets forth appropriations for the forthcoming fiscal year. (*St John's Well Child & Family Ctr. v. Schwarzenegger* (2010) 50 Cal.4th 960, 967.) An appropriation is defined as "a specific setting aside of an amount, not exceeding a definite fixed sum for the payment of certain particular claims or demands." (*Id.* at 974 (quoting *Wood v. Riley* (1923) 192 Cal. 293, 303-04.) Even if a provision takes no additional funds from the state treasury, it may constitute an appropriation. (*Id.* at 974-75.) Appropriations may be financed from a variety of nontax revenue sources "including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (*See County of Fresno, supra*, 53 Cal.3d at 487.)

Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: February 9, 2011

E. Brown, Deputy Clerk _____ s/ E. Brown _____

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