

**ITEM 14**  
**FINAL STAFF ANALYSIS**  
**PROPOSED STATEWIDE COST ESTIMATE**

Education Code Sections 37252, 37252.5 (now 37252.2), 48070, and 48070.5

Statutes 1981, Chapter 100  
Statutes 1982, Chapter 1388  
Statutes 1983, Chapter 498  
Statutes 1990, Chapter 1263  
Statutes 1998, Chapters 742 and 743

*Pupil Promotion and Retention (98-TC-19)*

San Diego Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**Summary of the Mandate**

The test claim legislation for *Pupil Promotion and Retention* required school districts to adopt and implement policies regarding the promotion and retention of pupils between specified grade levels, and to offer supplemental instruction, including summer school, to certain students as part of the adopted policies.

The claimant filed the test claim on June 21, 1999. The Commission adopted the Statement of Decision on May 23, 2002, and the parameters and guidelines on September 25, 2003. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by March 22, 2004.

**Statewide Cost Estimate**

The SCO provided unaudited claims totals to the Commission on May 19, 2004. The actual claims data showed that school districts filed 334 claims between fiscal years 1997-1998 and 2002-2003, for a total of \$54.5 million. Concerned about the total, staff conducted a pre-hearing conference on July 29, 2004. At this conference, the California Department of Education (CDE) and the SCO agreed to submit additional information to assist in the development of a proposed statewide cost estimate for this program. A draft staff analysis and proposed statewide cost estimate was issued on September 29, 2004, but no comments were received.

Therefore, based on the data provided by the CDE and SCO, staff made the following assumptions:

1. The actual claiming data is inaccurate because: a) the funds received from CDE specifically for the *Pupil Promotion and Retention* program were not offset from the claims, b) activities associated with summer school instructional programs were claimed beyond the reimbursement period, and c) one-time activities were claimed for multiple fiscal years.

2. Los Angeles Unified School District's claims are excessive.
3. The actual amount claimed will increase when late or amended claims are filed. Five of the top ten school districts have not filed any reimbursement claims for this program. Late claims may be filed until March 2005.
4. The SCO may reduce any reimbursement claim for this program if it is deemed to be excessive or unreasonable.

Staff adjusted the actual reimbursement claims to develop the proposed statewide cost estimate. Specifically, the claims were adjusted for the following reasons: 1) to exclude non-reimbursable costs, or costs claimed beyond the allowed period of reimbursement; 2) to account for offsetting funds provided by CDE; and 3) to account for Los Angeles Unified School District's anticipated amendments.

The estimate includes eight fiscal years for a total of \$72,374,921, which averages to \$9,046,865 annually in costs to the state. The following table details the breakdown of estimated total costs per fiscal year:

Fiscal Year	Estimated Cost
1997-1998	\$ 4,725,031
1998-1999	3,835,186
1999-2000	1,248,816
2000-2001	1,351,928
2001-2002	10,203,166
2002-2003	16,585,279
2003-2004 (estimated)	16,966,740
2004-2005 (estimated)	17,458,775
<b>TOTAL</b>	<b>\$ 72,374,921</b>

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$72,374,921 for costs incurred in complying with the *Pupil Promotion and Retention* program. If the statewide cost estimate is adopted, staff will report the estimate to the Legislature.

## STAFF ANALYSIS

### Summary of the Mandate

The test claim legislation for *Pupil Promotion and Retention* required school districts to adopt and implement policies regarding the promotion and retention of pupils between specified grade levels, and to offer supplemental instruction, including summer school, to certain students as part of the adopted policies.

The claimant filed the test claim on June 21, 1999. The Commission adopted the Statement of Decision on May 23, 2002, and the parameters and guidelines on September 25, 2003. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by March 22, 2004.

### Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

- A. Pupil Promotion and Retention Policies. (Ed. Code, §§ 48070 and 48070.5.)  
(One-time Activities)
1. Develop policies regarding pupil promotion and retention for adoption at a public meeting by the school district governing board and county superintendent of schools. (Ed. Code, § 48070.) (Although this was added by Statutes 1983, chapter 498, operative July 28, 1983, reimbursement is limited to those districts performing the activity for the first time on or after July 1, 1997. *Reimbursement period begins: July 1, 1997.*)
  2. Develop a policy regarding the promotion and retention of pupils between second grade and third grade; third grade and fourth grade; fourth grade and fifth grade; the end of the intermediate grades and the beginning of middle school grades, which typically occurs between sixth grade and seventh grade; and the end of the middle school grades and the beginning of high school, which typically occurs between eighth grade and ninth grade, for approval by the school district governing board and county superintendent of schools. (Ed. Code, § 48070.5, subd. (a).) (*Reimbursement period begins: January 1, 1999.*)
- B. Notification to Parent or Guardian and Appeal Process of Teacher's Decision for Pupils Who are Performing Below the Minimum Standard for Promotion. (Ed. Code, § 48070.5.)  
(Ongoing Activities – *Reimbursement period begins: January 1, 1999.*)
1. Provide and discuss the teacher's evaluation, or written recommendation that retention is not appropriate, with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion. (Ed. Code, § 48070.5, subd. (d)(1).)
  2. Provide parental notification when a pupil is identified as being at risk of retention. Provide a pupil's parent or guardian the opportunity to consult with the teacher or teachers responsible for the decision to promote or retain the pupil. (Ed. Code, § 48070.5, subd. (e).)
  3. Provide a process for appeal of teacher's decision to retain or promote a pupil. If an appeal is made, the burden shall be on the appealing party to show why the decision of the teacher should be overruled. (Ed. Code, § 48070.5, subd. (f).)

C. Summer School Instructional Programs for Pupils Enrolled in Grades 7 through 12, Inclusive, and Pupils Enrolled in Grade 12 During the Prior School Year, Who Were Assessed as Not Meeting the District’s Adopted Standards of Proficiency in Basic Skills Pursuant to Education Code Section 51215. (Ed. Code, § 37252.) (Reimbursement Period: July 1, 1997 – December 31, 1999.)

1. Develop programs of instruction in basic skills in accordance with Education Code section 51215. (One-time Activity.)
2. Purchase materials necessary for the instruction. (Ongoing Activity.)
3. Provide instruction during the summer for pupils specified in Education Code section 37252. (Ongoing Activity.)
4. Provide support services for mandatory pupil instruction programs during the summer. Reimbursement for this activity is limited to facilities, janitorial, and data processing. (Ongoing Activity – only the pro-rata portion used to implement this activity can be claimed.)

*Instructor time for the provision of summer school pursuant to Education Code section 37252 is only reimbursable when it is required to occur outside the normal school schedule. “Outside the normal school schedule,” as used throughout this document, means outside the school district’s minimum daily minutes of instruction and minimum school days in a fiscal year, as defined in Education Code sections 41420, 46112, 46113, 46115, and 46141.*

D. Supplemental Instruction Programs for Pupils Enrolled in Grades 2 through 9, Inclusive, Who Have Been Retained Pursuant to Education Code Section 48070.5. (Former Ed. Code, § 37252.5, now 37252.2.) (Ongoing Activities – Reimbursement period begins: September 23, 1998.)

1. Develop supplemental instruction programs, with the involvement of parents and classroom teachers, for pupils that have been retained pursuant to Education Code section 48070.5. An intensive remedial program in reading and written expression offered shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills. (Former Ed. Code, § 37252.5, subs. (f) and (g); Ed. Code, § 37252.2, subs. (e) and (f).)
  - a. Development of the program includes identifying, purchasing, and distributing texts and materials. (Only the pro-rata portion used to implement this activity can be claimed.)
  - b. Development of the program also includes providing reasonable notices and conducting meetings involving parents and classroom teachers in the development and implementation of supplemental instruction programs. (Former Ed. Code, § 37252.5, subd. (g); Ed. Code, § 37352.2, subd. (f).)

2. Provide supplemental instruction for each pupil that has been retained pursuant to Education Code section 48070.5. Services shall not be provided during the pupil's regular instructional day if it would result in the pupil being removed from classroom instruction in the core curriculum. (Former Ed. Code, § 37252.5, subd. (c); Ed. Code, § 37252.2, subd. (b).)
3. Provide a mechanism for a parent or guardian to decline to enroll his or her child in the supplemental instruction program. (Former Ed. Code, § 37252.5, subd. (a); Ed. Code, § 37252.2, subd. (a).)

*Instructor time for the provision of supplemental instruction pursuant to Education Code section 37252.2 is only reimbursable when it is required to occur outside the normal school schedule.*

E. Pupil Reassessment if the Teacher's Recommendation to Promote is Contingent Upon the Pupil's Participation in a Summer School or Interim Session Remediation Program (Ed. Code, § 48070.5, subd. (d)(1).) (Ongoing Activity – *Reimbursement period begins: January 1, 1999.*)

1. Reassess the pupil's academic performance at the end of the remediation program, and reevaluate the decision to retain or promote the pupil.

*Instructor time for the provision of reassessment activities pursuant to Education Code section 48070.5, subdivision (d)(1), is only reimbursable when it is required to occur outside the normal school schedule.*

### **Statewide Cost Estimate**

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. The actual claims data showed that school districts filed 334 claims between fiscal years 1997-1998 and 2002-2003, for a total of \$54.5 million.<sup>1</sup> Concerned about the total, staff conducted a pre-hearing conference to discuss the claims data and the issue of offsetting savings on July 29, 2004. At this conference, the California Department of Education (CDE) and the SCO agreed to submit additional information to assist in the development of a proposed statewide cost estimate for this program.<sup>2</sup> On August 9, 2004, CDE submitted data regarding the amount of funding provided to school districts for summer school and/or supplemental instruction.<sup>3</sup> On September 14, 2004, the SCO provided a breakdown of costs claimed for each of the program's reimbursable components.

Therefore, based on the data provided by the CDE and SCO, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. A draft staff analysis and proposed statewide cost estimate was issued on September 29, 2004, but no comments were received. If the Commission adopts this statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

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<sup>1</sup> Exhibit C – Claims data reported by the SCO as of May 19, 2004

<sup>2</sup> Exhibit D

<sup>3</sup> Exhibit E

## Assumptions

Staff made the following assumptions:

1. *The actual claiming data is inaccurate.* The 334 actual claims filed by school districts for fiscal years 1997-1998 through 2002-2003 are unaudited and inaccurate.

a. *Funds received from CDE specifically for the Pupil Promotion and Retention program were not offset from the claims.*

The parameters and guidelines provide reimbursement for school districts to provide supplemental instruction programs for pupils enrolled in grades two through nine, inclusive, who have been retained. The parameters and guidelines also state: “Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, ... federal funds and other state funds ... shall be identified and deducted from this claim.”

School districts receive funding from CDE to provide supplemental instruction programs pursuant to the *Pupil Promotion and Retention* program. According to the CDE data, \$124.3 million was disbursed among 708 school districts in fiscal year 2001-2002. Of these districts, 69 filed reimbursement claims with the SCO. Although these 69 districts received over \$38 million in funding altogether, only 12 districts reported offsets for a total of \$14.8 million. Similarly, in fiscal year 2002-2003, \$124.9 million was disbursed among 698 districts. Of these districts, 75 filed reimbursement claims and received funds totaling \$34.8 million. However, only 14 districts reported offsets totaling \$12.9 million (see Exhibit A).

b. *Activities associated with summer school instructional programs were claimed beyond the reimbursement period.*

The adopted parameters and guidelines for this program provide reimbursement for summer school instructional programs (activity group C), but reimbursement was limited to the period between July 1, 1997, and December 31, 1999. Still, several school districts claimed activity group C after fiscal year 1999-2000, as shown in Table 1 below.

**Table 1. School Districts Claiming Reimbursement for Summer School Programs Beyond the Reimbursement Period**

Fiscal Year	2000-01	2001-02	2002-03	
Humboldt CSS	20,557	-	-	
Arcata SD	11,400	-	-	
Covina-Valley USD	695	14,385	12,148	
Kentfield ESD	3,574	8,992	9,005	
Sausalito Marin City SD	48,407	-	-	
Grass Valley ESD	28,044	34,187	-	
Central SD	3,300	2,900	3,200	
San Marcos USD	4,469	4,587	4,683	
Hemet USD	-	4,038	-	
Ramona USD	-	3,147	3,414	
Desert Sands USD	-	-	540	
Colfax ESD	-	-	8,349	
<b>TOTALS</b>	<b>\$ 120,446</b>	<b>\$ 72,236</b>	<b>\$ 41,339</b>	<b>\$234,021</b>

c. *One-time activities were claimed for multiple fiscal years.*

The adopted parameters and guidelines for this program also provide *one-time* reimbursement for the development of pupil promotion and retention policies (activities A1 and A2). Thus, these activities should only be claimed under a single year. However, several school districts claimed these activities for multiple fiscal years, as shown in Tables 2 and 3 below.

**Table 2. School Districts Claiming More than One-Time Reimbursement for Activity A1**

Fiscal Year	1997-98	1998-99	1999-00	2000-01	
Castro Valley USD	7,469	<b>13,643</b>	-	-	
Humboldt CSS	-	-	153	<b>120</b>	
Rosedale Union SD	1,348	<b>1,413</b>	-	-	
Bonita USD	2,621	<b>2,752</b>	-	-	
Los Angeles USD	21,891	<b>84,387</b>	-	-	
Manhattan Beach USD	16,215	<b>19,984</b>	-	-	
Newport-Mesa USD	12,094	<b>12,713</b>	-	-	
Carlsbad USD	1,123	<b>2,396</b>	-	-	
Dehesa SD	4,181	<b>3,926</b>	-	-	
Encinitas Union ESD	9,320	<b>7,879</b>	-	-	
San Ysidro SD	1,089	<b>572</b>	-	-	
Union ESD	-	-	134	<b>194</b>	
<b>TOTALS</b>		<b>\$ 149,665</b>		<b>\$ 314</b>	<b>\$ 149,979</b>

Note: Those in bold are amounts claimed after the first year and are not reimbursable.

**Table 3. School Districts Claiming More than One-Time Reimbursement for Activity A2**

Fiscal Year	1998-99	1999-00	2000-01	2001-02	2002-03	
Castro Valley USD	-	11,053	<b>17,374</b>	<b>11,282</b>	<b>12,762</b>	
Humboldt CSS	-	77	<b>1,601</b>	-	-	
Eureka City SD	5,606	<b>4,423</b>	-	-	-	
Greenfield USD	-	152	<b>1,217</b>	<b>2,281</b>	<b>72</b>	
Rosedale Union SD	-	222	<b>233</b>	<b>243</b>	<b>47</b>	
Bonita USD	-	428	<b>1,091</b>	<b>2,213</b>	<b>2,849</b>	
Charter Oak USD	-	3,927	<b>2,369</b>	<b>1,112</b>	<b>869</b>	
Manhattan Beach USD	-	4,621	<b>4,852</b>	<b>5,309</b>	<b>3,542</b>	
Monrovia USD	-	-	498	-	<b>3,738</b>	
Palos Verdes Peninsula USD	1,685	-	<b>344</b>	-	-	
Redondo Beach USD	-	528	<b>372</b>	<b>686</b>	<b>1,447</b>	
Kentfield ESD	-	-	-	1,428	<b>392</b>	
Newport-Mesa USD	-	1,910	<b>2,062</b>	<b>2,911</b>	<b>1,660</b>	
Sacramento City USD	3,403	<b>1,198</b>	-	-	-	
Cardiff ESD	-	174	<b>183</b>	<b>192</b>	<b>197</b>	
Carlsbad USD	-	5,550	<b>4,292</b>	<b>1,218</b>	<b>1,454</b>	
Encinitas Union ESD	-	3,380	<b>2,834</b>	<b>2,610</b>	<b>1,562</b>	
Julian Union ESD	-	300	<b>304</b>	<b>340</b>	<b>355</b>	
San Ysidro SD	-	549	<b>197</b>	<b>435</b>	<b>243</b>	
Valley Center-Pauma USD	-	-	872	<b>1,588</b>	<b>362</b>	
Warner USD	-	63	<b>68</b>	<b>70</b>	<b>71</b>	
Union ESD	-	417	<b>130</b>	-	<b>2,795</b>	
Live Oak ESD	-	-	-	2,634	<b>2,721</b>	
Cascade Union ESD	9,738	<b>11,328</b>	-	-	-	
Twin Hills Union SD	-	-	-	313	<b>70</b>	
Waterford USD	-	7,911	-	<b>2,457</b>	-	
Corning Union ESD	994	-	<b>1,167</b>	-	-	
<b>TOTALS</b>		<b>\$ 16,949</b>	<b>\$ 40,690</b>	<b>\$ 34,947</b>	<b>\$ 37,208</b>	<b>\$129,794</b>

Note: Those in bold are amounts claimed after the first year and are not reimbursable.

2. *Los Angeles Unified School District's claims are excessive.* The Los Angeles Unified School District alone claimed a total of over \$46.6 million. For fiscal years 2001-2002 and 2002-2003, the district claimed over \$13.8 million and \$25.3 million, respectively. While staff acknowledges that Los Angeles Unified is greater in size and complexity compared to the other districts, the claims are still excessive.

The district's representative stated that when summer school programs were replaced with supplemental instruction programs in 2000, there was a programmatic shift in administration. Thus, the significant increase in the district's claims for fiscal year 2001-2002 and 2002-2003 mostly reflect the operational and oversight costs incurred. The representative also indicated that the district's claims would be amended, but exact figures were not available as they were in the process of conducting a statistical study. However, the representative estimated that the 2001-2002 claim would be reduced to between \$7 and \$9 million, and the 2002-2003 claim to somewhere in the teens. Accordingly, staff reduced the 2001-2002 claims total by \$5 million and the 2002-2003 total by \$10 million to account for the anticipated amendments.



3. *The actual amount claimed will increase when late or amended claims are filed.* Five of the top ten school districts have not filed any reimbursement claims for this program. The amount of reimbursement claims may exceed the statewide cost estimate if reimbursement claims are filed by Fresno Unified School District, San Francisco Unified School District, San Bernardino City Unified School District, Elk Grove Unified School District, and San Juan Unified School District. For this program, late claims may be filed until March 2005.

Staff notes that a high number of late claim filings are not anticipated. According to a claimant representative, many school districts received sufficient funds to offset the actual costs of this program.

4. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

### Methodology

#### *Fiscal Years 1997-1998 through 2000-2001*

The proposed statewide cost estimate for fiscal years 1997-1998 through 2000-2001 is based on the 190 unaudited, actual reimbursement claims filed for these years. As shown below, totals for fiscal years 1998-1999 through 2000-2001 were adjusted for the amounts claimed beyond the first year for activities A1 and A2, and amounts claimed for fiscal year 2000-2001 for activity group C.

**Table 4. Proposed Estimates for Fiscal Years 1997-1998 through 2000-2001**

Fiscal Year	Number of Claims Filed with SCO	Claim Totals (A)	Adjustments for Activity Group A (B)	Adjustments for Activity Group C (C)	Proposed Estimate (A) – (B+C)
1997-1998	17	\$4,725,031	\$ 0	\$ 0	\$ 4,725,031
1998-1999	43	3,984,851	- 149,665	0	3,835,186
1999-2000	67	1,265,765	- 16,949	0	1,248,816
2000-2001	63	1,513,378	- 41,004	- 120,446	1,351,928

#### *Fiscal Years 2001-2002 and 2002-2003*

The proposed statewide cost estimate for fiscal years 2001-2002 and 2002-2003 is based on the actual claims data adjusted by the funding data provided by CDE.<sup>4</sup> For each claim filed in these years, totals were reduced to exclude non-reimbursable costs, including costs claimed beyond the first year for activity A2, any costs claimed for activity group C, and some costs claimed for activity group D. Costs claimed for activity group D were excluded if offsets were not reported and the amount of CDE funding received exceeded the costs claimed. However, if the district did not receive sufficient funds to offset the costs associated with activity group D, the amount was only adjusted by the amount of funding received. If a district reported offsets equal to or

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<sup>4</sup> Since the actual costs claimed increased significantly beginning fiscal year 2001-2002, staff examined costs claimed in 2001-2002 and 2002-2003 more closely.

greater than the amount of funding received, or if the district did not receive any funding, the claimed amount was not changed (see Exhibit B).

As shown in Table 5, the non-reimbursable costs were subtracted from the total claimed amounts. Also, as previously indicated, an adjustment was made to account for Los Angeles Unified School District’s anticipated amendments.

**Table 5. Proposed Estimates for Fiscal Years 2001-2002 and 2002-2003**

Fiscal Year	Total Claimed Amount (A)	Adjustments for Non-Reimbursable Costs (B)	Adjustments for LAUSD’s Claim (C)	Proposed Estimate (A) – (B+C)
2001-2002	\$ 15,970,364	\$ - 767,198	\$ - 5,000,000	\$ 10,203,166
2002-2003	27,126,220	- 540,941	- 10,000,000	16,585,279

*Fiscal Years 2003-2004 and 2004-2005*

Staff estimated fiscal year 2003-2004 costs by multiplying the 2002-2003 estimate by the implicit price deflator for 2002-2003 (2.3%), as forecast by the Department of Finance. Staff estimated fiscal year 2004-2005 costs by multiplying the 2003-2004 estimate by the implicit price deflator for 2003-2004 (2.9%).

The proposed statewide cost estimate includes eight fiscal years for a total of \$72,374,921. This averages to \$9,046,865 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

**Table 6. Breakdown of Estimated Total Costs per Fiscal Year**

Fiscal Year	Estimated Cost
1997-1998	\$ 4,725,031
1998-1999	3,835,186
1999-2000	1,248,816
2000-2001	1,351,928
2001-2002	10,203,166
2002-2003	16,585,279
2003-2004 (estimated)	16,966,740
2004-2005 (estimated)	17,458,775
<b>TOTAL</b>	<b>\$ 72,374,921</b>

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$72,374,921** for costs incurred in complying with the *Pupil Promotion and Retention* program.