

Pupil Promotion and Retention (98-TC-19)

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

Test Claim Filed: June 21, 1999

Reimbursement Period: 1997-1998 through 2004-2005

Initial Reimbursement Claims Filed: March 22, 2004

Eligible Claimants: School Districts⁹

Statewide Cost Estimate: \$9,025,655

Adopted: January 27, 2005

The statewide cost estimate includes eight fiscal years for a total of \$9,025,655. This averages to \$1,128,207 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Estimated Cost
1997-1998	\$ 470,532
1998-1999	665,403
1999-2000	1,248,816
2000-2001	1,351,928
2001-2002	1,389,036
2002-2003	1,267,998
2003-2004 (estimated)	1,297,162
2004-2005 (estimated)	1,334,780
TOTAL	\$ 9,025,655

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.

⁹ Any "school district," as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

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.¹⁰ 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. On August 9, 2004, CDE submitted data regarding the amount of funding provided to school districts for summer school and/or supplemental instruction. On September 14, 2004, the SCO provided a breakdown of costs claimed for each of the program's reimbursable components. 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. A final staff analysis was issued on November 1, 2004, with a proposed estimate of over \$72 million. Since then, staff reanalyzed the data and modified its assumptions, as described below.

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."

¹⁰ Claims data reported by the SCO as of May 19, 2004.

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	
TOTALS	\$ 120,446	\$ 72,236	\$ 41,339	\$234,021

- 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	13,643	-	-	
Humboldt CSS	-	-	153	120	
Rosedale Union SD	1,348	1,413	-	-	
Bonita USD	2,621	2,752	-	-	
Manhattan Beach USD	16,215	19,984	-	-	
Newport-Mesa USD	12,094	12,713	-	-	
Carlsbad USD	1,123	2,396	-	-	
Dehesa SD	4,181	3,926	-	-	
Encinitas Union ESD	9,320	7,879	-	-	
San Ysidro SD	1,089	572	-	-	
Union ESD	-	-	134	194	
TOTALS		\$ 65,278		\$ 314	\$ 65,592

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

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, as shown in Table 1 below. 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.

Table 4. Los Angeles Unified School District's Total Costs per Fiscal Year

Fiscal Year	Claimed Cost
1997-1998	\$ 4,254,499
1998-1999	3,254,170
1999-2000	0
2000-2001	0
2001-2002	13,814,130
2002-2003	25,317,281
TOTAL	\$46,640,080

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. Claimant representatives later stated that they may reduce their claims to zero, but to date, no amended claims have been filed. Accordingly, staff eliminated Los Angeles Unified School District's claims from the data used to develop this statewide cost estimate.

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 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 elimination of Los Angeles Unified’s claims, the amounts claimed beyond the first year for activities A1 and A2, and the amounts claimed for fiscal year 2000-2001 for activity group C.

Table 5. Proposed Estimates for Fiscal Years 1997-1998 through 2000-2001

Fiscal Year	Number of Claims Filed with SCO	Claim Totals (A)	Adjustments for LA Unified’s claims (B)	Adjustments for Activity Group A (C)	Adjustments for Activity Group C (D)	Proposed Estimate (A) – (B+C+D)
1997-1998	17	\$4,725,031	\$ - 4,254,499	\$0	\$0	\$ 470,532
1998-1999	43	3,984,851	- 3,254,170	- 65,278	0	665,403
1999-2000	67	1,265,765	N/A	- 16,949	0	1,248,816
2000-2001	63	1,513,378	N/A	- 41,004	- 120,446	1,351,928

Fiscal Years 2001-2002 and 2002-2003

The 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.¹¹ 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 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 6, the non-reimbursable costs and Los Angeles Unified’s claim totals were subtracted from the total claimed amounts.

¹¹ Since the actual costs claimed increased significantly beginning fiscal year 2001-2002, staff examined costs claimed in 2001-2002 and 2002-2003 more closely.

Table 6. Proposed Estimates for Fiscal Years 2001-2002 and 2002-2003

Fiscal Year	Total Claimed Amount (A)	Adjustments for LA Unified's claims (B)	Adjustments for Non-Reimbursable Costs (C)	Proposed Estimate (A) – (B+C)
2001-2002	\$ 15,970,364	\$ - 13,814,130	\$ - 767,198	\$ 1,389,036
2002-2003	27,126,220	- 25,317,281	- 540,941	1,267,998

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%).