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DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Education Code Sections 37252, 37252.2 (formerly 37252.5), 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
10-PGA-03 (98-TC-19)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request to amend the parameters and guidelines for the *Pupil Promotion and Retention* program filed by the State Controller's Office to update the language of the parameters and guidelines to be consistent with a recent budget trailer bill that relieved school districts of the obligation to perform some of the reimbursable activities for a specified period of time, and to update the boilerplate language.

I. Background

This program requires 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.

On May 23, 2002, the Commission on State Mandates (Commission) adopted its statement of decision finding that Education Code sections 37252, 37252.5 (now 37252.2),¹ 48070, and 48070.5 require new activities, as specified below, which constitute new programs or higher levels of service for school districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

Specifically, the Commission approved this test claim for the increased costs of performing the following activities:

- The governing board of each district maintaining any or all of grades 7 through 12, shall offer summer school instructional programs for pupils who were assessed as not meeting the district's adopted standards of proficiency in basic skills pursuant to Education Code section 51215. The summer school programs shall also be offered to pupils enrolled in grade 12 the prior school year, who were assessed as not

¹ Education Code section 37252.5 was automatically repealed on January 1, 2003, and the substance of the statute was renumbered as Education Code section 37252.2 by Statutes 2000, chapter 72.

meeting the district's adopted standards of proficiency in basic skills. (Ed. Code, § 37252.)

- The governing board of each district maintaining any or all of grades 2 to 9, inclusive, shall offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been retained pursuant to Education Code section 48070.5. (Ed. Code, § 37252.5.)
- The school district shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the supplemental instruction program. (Ed. Code, § 37252.5.)
- Each school district shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instruction programs provided pursuant to Education Code section 37252.5. (Ed. Code, § 37252.5.)
- The governing board of each school district and each county superintendent of schools shall adopt policies regarding pupil promotion and retention. (One-time activity.) (Ed. Code, § 48070.)
- The school district shall promote or retain any pupil only as provided in such adopted policies. (Ed. Code, § 48070.)
- The governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils between second grade and third grade; third grade and fourth grade; fourth 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; the end of the middle school grades and the beginning of high school which typically occurs between eighth grade and ninth grade. The policy shall provide for the identification of pupils who should be retained and who are at risk of being retained in their current grade level on the criteria specified in Education Code section 48070.5. (One-time activity.) (Ed. Code, § 48070.5.)
- If a pupil is performing below the minimum standard for promotion, the pupil shall be retained in his or her current grade level, unless the pupil's regular classroom teacher determines, in writing, that retention is not the appropriate intervention for the pupil's academic deficiencies. (Ed. Code, § 48070.5.)
- If the teacher's recommendation to promote is contingent upon the pupil's participation in a summer school or interim session remediation program, reassess the pupil's academic performance at the end of the remediation program, and reevaluate the decision to retain or promote the pupil. (Ed. Code, § 48070.5.)
- Provide and discuss the teacher's evaluation with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion. (Ed. Code, § 48070.5.)
- 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.)

- Provide a process for appeal of teacher’s decision to retain or promote a pupil. (Ed. Code, § 48070.5.)
- Adopt the pupil promotion and retention policy at a public meeting of the governing board of the school district. (One-time activity.) (Ed. Code, § 48070.5.)

Teacher time is reimbursable for the provision of summer school and other supplemental instruction pursuant to Education Code sections 37252 and 37252.5 (now renumbered as 37252.2), which by its very nature occurs outside of the normal school schedule.

In addition, the statement of decision notes that “any funds received for the costs of providing summer school to pupils who were assessed as not meeting the district’s adopted standards of proficiency in basic skills, ...” and “any funds received for the costs of providing supplemental instruction to pupils retained pursuant to Education Code section 48070.5, must be accounted for in the parameters and guidelines and in any reimbursement claims.” Specifically, Statutes 1998, chapter 942 appropriated \$105 million specifically to fund the cost of remedial instruction pursuant to the policies adopted pursuant to Statutes 1998, chapters 742 and 743. Statutes 1998, chapter 942 also put a ten percent cap in place on total reimbursement for pupil attendance in summer school. In addition, the Budget Act of 1999 provides over \$309 million for summer school and remedial programs, \$108 million of which is specifically provided to fund remedial instruction pursuant to Section 37252.5.

On September 25, 2003, the Commission adopted the parameters and guidelines for this program.

On October 19, 2010, the Legislature enacted Statutes 2010, chapter 724 (AB 1610) as an education budget trailer bill. As part of the effort to reduce state costs for mandated programs, AB 1610 amended Education Code section 37252.2 to relieve school districts of the obligation to perform the activities required by Education Code section 37252.2 as follows:

- (i) School districts are relieved from the obligation to perform any activities under this section that are deemed to be reimbursable state mandates pursuant to Section 6 of Article XIII B of the California Constitution from the date that the act amending this subdivision in 2010 is enacted until July 1, 2013.

Education Code section 37252.2(i) as amended by AB 1610 was enacted and became operative on October 19, 2010. Thus, the plain language of Education Code section 37252.2(i) as amended by AB 1610, no longer mandates the activities listed below, and reimbursement is not required for these activities (including reimbursement for teacher time on these activities) from October 19, 2010 through June 30, 2013:

- The governing board of each district maintaining any or all of grades 2 to 9, inclusive, shall offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been retained pursuant to Education Code section 48070.5. (Ed. Code, § 37252.2 , former Ed. Code, § 37252.5.)
- The school district shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the supplemental instruction program. (Ed. Code, § 37252.2, former Ed. Code, § 37252.5.)
- Each school district shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instruction

programs provided pursuant to Education Code section 37252.5. (Ed. Code, § 37252.2, former Ed. Code, § 37252.5.)

II. Party Positions

Position of the State Controller's Office

On March 7, 2011, the State Controller's Office (SCO) requested amendment of the parameters and guidelines to define which activities are not reimbursable, add boilerplate language regarding claiming for indirect costs, and, to update the parameters and guidelines to provide notice of existing law regarding offsets and the legal and factual basis for parameters and guidelines.² Specifically, the SCO requested the following amendments to the parameters and guidelines:

1. Define which activities are not reimbursable pursuant to Education Code section 37252.2. Specifically:

I. Summary of the Mandate

Revise this section to describe the amendments made to Education Code section 37252.2 by AB 1610. Include language stating that applicable activities, pursuant to Education Code section 37252.2(i), and teacher time, pursuant to Education Code section 37252.2, are not reimbursable from October 19, 2010 through June 30, 2013.

III. Period of Reimbursement

Amend this section to say:

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before February 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On March 7, 2011, the SCO requested that these parameters and guidelines be amended. This filing date would make the proposed amendments effective July 1, 2010.

However, the legislation making Education Code section 37252.2 activities ineligible for reimbursement is operative October 19, 2010 through June 30, 2013. Thus annual claims for these activities for the 2010-2011 fiscal year may only be filed for the period July 1, 2010 through October 18, 2010.

IV. Reimbursable Activities

Include language stating that applicable activities, pursuant to Education Code section 37252.2, are not eligible for reimbursement for the period July 1, 2010 through October 18, 2010.

2. Add boilerplate language regarding claiming for indirect costs.

V. Claim Preparation and Submission

Provide that school district and county offices of education must use indirect cost rates from the Restricted Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

Program cost accounting (J-380) and (J-580) reports are no longer applicable. In 2003-2004, when all districts converted to SACS (Standardized Account Code Structure), CDE discontinued the software.

² See Exhibit A.

3. Clarify and provide notice of existing law regarding offsets and the legal and factual basis for parameters and guidelines.

VII. Offsetting Savings and Reimbursements

Revise the title of this section for the sake of clarity, to delete “savings” and replace it with “revenues” and make changes to the text of this section to make it consistent with that change.

X. Legal and Factual Basis for the Parameters and Guidelines

Add a new section X, which states the following:

The statement of decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the statement of decision, is on file with the Commission.

III. Discussion

A. Define Which Activities are Not Reimbursable

In 2010, as part of the effort to reduce state costs for mandated programs, the Legislature enacted AB 1610 to relive school districts of the following mandated activities required by Education Code section 37252.2 from October 19, 2010 to June 2013:

- The governing board of each district maintaining any or all of grades 2 to 9, inclusive, shall offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been retained pursuant to Education Code section 48070.5. (Ed. Code, § 37252.2, former Ed. Code, § 37252.5.)
- The school district shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the supplemental instruction program. (Ed. Code, § 37252.2, former Ed. Code, § 37252.5.)
- Each school district shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instruction programs provided pursuant to Education Code section 37252.5. (Ed. Code, § 37252.2, former Ed. Code, § 37252.5.)

The remainder of the program, including offering summer school to certain students who are assessed as not meeting the district’s adopted standards of proficiency in basic skills and providing teacher time for that instruction; and implementing policies for promotion to a new grade level or retention of pupils in their current grade level, remains reimbursable.

The SCO’s proposed amendments to the parameters and guidelines to define the Education Code section 37252.2 activities as not reimbursable, with minor technical and clarifying changes proposed by Commission staff, make the parameters and guidelines consistent with AB 1610.

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before February 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On March 7, 2011, the SCO requested that these parameters and guidelines be amended. This filing date would make the proposed budget changes to activities in the parameters and guidelines effective July 1 2010. AB 1610 made the above bulleted activities ineligible for reimbursement from October 19, 2010 through June 30, 2013. Consequently,

annual claims for Education Code section 37252.2 activities for the 2010-2011 fiscal year may only be filed for the period July 1, 2010 through October 18, 2010.

Therefore staff recommends that the Commission adopt the following amendments to Section III, Period of Reimbursement:³

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before February 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On March 7, 2011, the State Controller's Office requested that these parameters and guidelines be amended to reflect Statutes 2010, chapter 724 (AB 1610). Thus, the amendment to Section IV of the parameters and guidelines addressing the reimbursable activities under Education Code section 37252.2 is effective July 1, 2010.

However, the legislation makes Education Code section 37252.2 activities ineligible for reimbursement (Stats. 2010, ch. 724, AB 1610) from October 19, 2010 through June 30, 2013. Thus, any annual claims filed for the activities required by Education Code section 37352.2 for the 2010-2011 fiscal year may only be claimed for the period July 1, 2010 through October 18, 2010.

~~Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on June 21, 1999. Therefore, costs incurred for compliance with Statutes 1981, chapter 100; Statutes 1982, chapter 1388; Statutes 1983, chapter 498; and Statutes 1990, chapter 1263 are eligible for reimbursement on or after July 1, 1997.~~

~~The reimbursement period for activities required by Education Code section 37252, as added by Statutes 1981, chapter 100, and amended by Statutes 1982, chapter 1388, and Statutes 1990, chapter 1263, is July 1, 1997, through December 31, 1999. The reimbursement period concludes upon the operation of the substantive amendments of Statutes 1999, 1st Extraordinary Session, chapter 1, operative January 1, 2000.~~

~~Statutes 1998, chapter 742 was operative January 1, 1999. Therefore, costs incurred for compliance with Statutes 1998, chapter 742 are eligible for reimbursement on or after January 1, 1999.~~

~~Statutes 1998, chapter 743, which added Education Code section 37252.5 (now 37252.2), was operative September 23, 1998. Therefore, costs incurred for compliance with Statutes 1998, chapter 743 are eligible for reimbursement on or after September 23, 1998.~~

~~Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the claiming instructions by the State Controller.~~

~~If the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.

³ Changes are in underline and strike out.

2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

Staff further recommends that the Commission add the following introductory paragraph to section IV (D), Reimbursable Activities:

Statutes 2010, Chapter 724, which amended Education Code section 37252.2(i) is operative from October 19, 2010 through June 30, 2013. Therefore, the following activities pursuant to Education Code section 37252.2 are not eligible for reimbursement from October 19, 2010 through June 30, 2013.

B. Boilerplate Changes

The SCO has proposed a boilerplate change to the indirect cost rate source for school districts. Specifically, the SCO requests an amendment to update the source from which school districts and county offices of education must get the indirect cost rates since program cost accounting (J-380) and (J-580) reports are no longer applicable. In 2003-2004, when all districts converted to SACS (Standardized Account Code Structure), the California Department of Education discontinued the software. The proposed amendments to Section V. B. Indirect Cost Rates are as follows:

School district and county offices of education must use indirect cost rates from the Restricted Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

~~School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.~~

~~County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.~~

Government Code section 17557(d)(2)(H),⁴ which addresses changes to boilerplate language, provides that a request for amendment of parameters and guidelines “that does not increase or decrease reimbursable costs shall limit the eligible filing period commencing with the fiscal year

⁴ As amended by Statutes 2011, chapter 144 (SB 112), effective January 1, 2012.

in which the amended parameters and guidelines were adopted. There is no evidence in the record that this change to boilerplate language would increase or decrease the reimbursable costs. Therefore, the proposed changes to section V (Claim Preparation and Submission), regarding indirect costs rates, will be effective beginning July 1, 2011.

Staff recommends that the Commission amend Section V of the parameters and guidelines as requested by the State Controller's Office, and to clarify that the change to this section becomes effective beginning July 1, 2011, pursuant to Government Code section 17557(d)(2)(H).

C. Clarify and provide notice of existing law regarding offsets and the legal and factual basis for parameters and guidelines.

The following proposed amendments to the parameters and guidelines have no effective date since they are statements of existing law and do not change any requirements. The California Supreme Court has found that "a statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment" "because the true meaning of the statute remains the same."⁵ The following amendments are proposed for purpose of clarification and to provide notice of the law to the claimants:

VII. Offsetting Savings and Reimbursements

Revise title of this section for the sake of clarity, to delete "savings" (since there are no offsetting savings for this mandate) and replace it with "revenues" (since there may be offsetting revenues for this mandate) and make changes to the text of this section to make it consistent with the changes to the title.

X. Legal and Factual Basis for the Parameters and Guidelines

Add a new section X, which states the following:

The statement of decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the statement of decision, is on file with the Commission.

The proposed amendment to Section VII simply updates the language regarding offsetting revenue to conform to current boilerplate changes and to make the provision in this set consistent with section 1183.1(a)(7) of the Commission's regulations. Section 1183.1(a)(7) requires that the parameters and guidelines contain a section on offsetting revenues and reimbursements to the extent applicable. Likewise, the proposed addition of Section X to the parameters and guidelines updates the document consistent with existing law. Section 1183.1(a)(11) of the Commission's regulations requires that the parameters and guidelines contain ". . .notice that the legal and factual basis for the parameters and guidelines are found in the administrative record for the test claim, which is on file with the commission." Therefore, these changes are merely statements of existing law that clarifying the parameters and guidelines and have no effective date.

Staff recommends that the Commission amend these sections of the parameters and guidelines as requested.

⁵ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

Staff Recommendation

Staff recommends the Commission adopt the attached proposed amendments to the parameters and guidelines which represent the SCO's requested language with minor technical and clarifying changes made by Commission staff, beginning on page 10.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Education Code Sections 37252, 37252.5~~2~~ (formerly 37252.5), 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
10-PGA-03 (98-TC-19)

I. SUMMARY OF THE MANDATE

On May 23, 2002, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Education Code sections 37252, 37252.5 (now 37252.2),¹ 48070, and 48070.5 require new activities, as specified below, which constitute new programs or higher levels of service for school districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

Specifically, the Commission approved this test claim for the increased costs of performing the following specific new activities:

- The governing board of each district maintaining any or all of grades 7 through 12, shall offer summer school instructional programs for pupils who were assessed as not meeting the district's adopted standards of proficiency in basic skills pursuant to Education Code section 51215. The summer school programs shall also be offered to pupils enrolled in grade 12 the prior school year, who were assessed as not meeting the district's adopted standards of proficiency in basic skills. (Ed. Code, § 37252.)
- The governing board of each district maintaining any or all of grades 2 to 9, inclusive, shall offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been retained pursuant to Education Code section 48070.5. (Ed. Code, § 37252.5, now Ed. Code § 37252.2).
- The school district shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the supplemental instruction program. (Ed. Code, § 37252.5, now Ed. Code § 37252.2).

¹ Education Code section 37252.5 was automatically repealed on January 1, 2003, and the substance of the statute was renumbered as Education Code section 37252.2 by Statutes 2000, chapter 72.

- Each school district shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instruction programs provided pursuant to Education Code section 37252.5. (Ed. Code, § 37252.5, now Ed. Code §37252.2).
- The governing board of each school district and each county superintendent of schools shall adopt policies regarding pupil promotion and retention. (One-time activity.) (Ed. Code, § 48070.)
- The school district shall promote or retain any pupil only as provided in such adopted policies. (Ed. Code, § 48070.)
- The governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils between second grade and third grade; third grade and fourth grade; fourth 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; the end of the middle school grades and the beginning of high school which typically occurs between eighth grade and ninth grade. The policy shall provide for the identification of pupils who should be retained and who are at risk of being retained in their current grade level on the criteria specified in Education Code section 48070.5. (One-time activity.) (Ed. Code, § 48070.5.)
- If a pupil is performing below the minimum standard for promotion, the pupil shall be retained in his or her current grade level, unless the pupil's regular classroom teacher determines, in writing, that retention is not the appropriate intervention for the pupil's academic deficiencies. (Ed. Code, § 48070.5.)
- If the teacher's recommendation to promote is contingent upon the pupil's participation in a summer school or interim session remediation program, reassess the pupil's academic performance at the end of the remediation program, and reevaluate the decision to retain or promote the pupil. (Ed. Code, § 48070.5.)
- Provide and discuss the teacher's evaluation with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion. (Ed. Code, § 48070.5.)
- 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.)
- Provide a process for appeal of teacher's decision to retain or promote a pupil. (Ed. Code, § 48070.5.)
- Adopt the pupil promotion and retention policy at a public meeting of the governing board of the school district. (One-time activity.) (Ed. Code, § 48070.5.)

Teacher time is reimbursable for the provision of summer school and other supplemental instruction pursuant to Education Code sections 37252 and 37252.5 (now § 37252.2), which by its very nature occurs outside of the normal school schedule.

In addition, the Statement of Decision notes that “any funds received for the costs of providing summer school to pupils who were assessed as not meeting the district’s adopted standards of proficiency in basic skills, ...” and “any funds received for the costs of providing supplemental instruction to pupils retained pursuant to Education Code section 48070.5, must be accounted for in the parameters and guidelines and in any reimbursement claims.” Specifically, Statutes 1998, chapter 942 appropriated \$105 million specifically to fund the cost of remedial instruction pursuant to the policies adopted pursuant to Statutes 1998, chapters 742 and 743. Statutes 1998, chapter 942 also put a ten percent cap in place on total reimbursement for pupil attendance in summer school. In addition, the Budget Act of 1999 provides over \$309 million for summer school and remedial programs, \$108 million of which is specifically provided to fund remedial instruction pursuant to Section 37252.5.

On January 27, 2012, the Commission amended the parameters and guidelines to reflect amendments made by Statutes 2010, chapter 724 (AB 1610), an education budget trailer bill, to Education Code section 37352.2. AB 1610 added subdivision (i) to Education Code section 37352.2 as follows:

School districts are relieved from the obligation to perform any activities under this section that are deemed to be reimbursable state mandates pursuant to Section 6 of Article XIII B of the California Constitution from the date that the act amending this subdivision in 2010 is enacted until July 1, 2013.

Education Code section 37252.2(i) as amended by AB 1610 was enacted and became operative on October 19, 2010. Thus, from October 19, 2010 through June 30, 2013, the plain language of Education Code section 37252.2(i) no longer mandates the activities required by Education Code section 37252.2, and reimbursement is not required for these activities during that time period.

II. ELIGIBLE CLAIMANTS

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.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before February 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On March 7, 2011, the State Controller’s Office requested that these parameters and guidelines be amended to reflect Statutes 2010, chapter 724 (AB 1610). Thus, the amendment to Section IV of the parameters and guidelines addressing the reimbursable activities under Education Code section 37252.2 is effective July 1, 2010.

However, the legislation makes Education Code section 37252.2 activities ineligible for reimbursement (Stats. 2010, ch. 724, AB 1610) from October 19, 2010 through June 30, 2013. Thus, any annual claims filed for the activities required by Education Code section 37352.2 for the 2010-2011 fiscal year may only be claimed for the period July 1, 2010 through October 18, 2010.

~~Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on June 21, 1999. Therefore, costs incurred for compliance with Statutes 1981,~~

~~chapter 100; Statutes 1982, chapter 1388; Statutes 1983, chapter 498; and Statutes 1990, chapter 1263 are eligible for reimbursement on or after July 1, 1997.~~

~~The reimbursement period for activities required by Education Code section 37252, as added by Statutes 1981, chapter 100, and amended by Statutes 1982, chapter 1388, and Statutes 1990, chapter 1263, is July 1, 1997, through December 31, 1999. The reimbursement period concludes upon the operation of the substantive amendments of Statutes 1999, 1st Extraordinary Session, chapter 1, operative January 1, 2000.~~

~~Statutes 1998, chapter 742 was operative January 1, 1999. Therefore, costs incurred for compliance with Statutes 1998, chapter 742 are eligible for reimbursement on or after January 1, 1999.~~

~~Statutes 1998, chapter 743, which added Education Code section 37252.5 (now 37252.2), was operative September 23, 1998. Therefore, costs incurred for compliance with Statutes 1998, chapter 743 are eligible for reimbursement on or after September 23, 1998.~~

~~Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the claiming instructions by the State Controller.~~

~~If the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source

document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

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.² (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.³ (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 The cost to prepare and post an agenda item for a public meeting of the governing board of the district is claimable under the *Open Meetings Act* Parameters and Guidelines (Stats. 1986, ch. 641).

³ See Appendix A for the minimum criteria required to be contained in the policy pursuant to Education Code section 48070.5.

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.⁴ 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.)⁵ (Reimbursement Period: July 1, 1997 – December 31, 1999.)⁶

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.

⁴ Since each school district may perform this activity differently, the following is an example of an appeal process:

- a. Convene a meeting with the assigned classroom teacher, counselor, and parent or guardian, to be conducted in the primary language of the parent or guardian.
- b. Contact the parent or guardian regarding the disposition of the appeal and provide a written notice shortly thereafter.

⁵ As added by Statutes 1981, chapter 100, and amended by Statutes 1982, chapter 1388, and Statutes 1990, chapter 1263.

⁶ The reimbursement period for this activity concludes upon the operation of the substantive amendments of Statutes 1999, 1st Extraordinary Session, chapter 1, operative January 1, 2000.

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.)⁷ (~~Ongoing Activities—Reimbursement period begins: September 23, 1998.~~)

Statutes 2010, Chapter 724, which amended Education Code section 37252.2(i) is operative from October 19, 2010 through June 30, 2013. Therefore, the following activities pursuant to Education Code section 37252.2 are not eligible for reimbursement from October 19, 2010 through June 30, 2013.

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.⁸ (Former Ed. Code, § 37252.5, subd. (a); Ed. Code, § 37252.2, subd. (a).)

⁷ As added by Statutes 1998, chapter 743, operative September 23, 1998. This section was amended by Statutes 1999, chapter 78, operative July 7, 1999, and Statutes 2000, chapter 72, operative July 5, 2000. However, the activities identified are still required following the amendments. Regarding renumbering, see footnote 1.

⁸ Since each school district may perform this activity differently, the following is an example of a "mechanism":

Provide a form to parents or guardians in which they can check the "I decline" box if in disagreement with the placement. The parent or guardian should complete the name and signature portion of a form letter regarding supplemental instruction and return it to the school principal.

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.⁹

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.¹⁰

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied. Only the pro-rata portion of materials and supplies used to implement the reimbursable activities can be claimed.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the

⁹ “Outside the normal school schedule” is defined under section IV. C.

¹⁰ “Outside the normal school schedule” is defined under section IV. C.

contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

~~School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.~~

~~County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.~~

Beginning July 1, 2011, school district and county offices of education must use indirect cost rates from the Restricted Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the

¹¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS REVENUES AND REIMBURSEMENTS

~~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.~~

~~Offsetting revenue includes, but is not limited to, annual budget act appropriations (Item 6110-104 0001).¹²~~

Any offsetting revenue 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 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.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

¹² ~~See Budget Act of 1998, Statutes 1998, chapter 942; Budget Act of 1999, Statutes 1999, chapter 50; Budget Act of 2000, Statutes 2000, chapter 52; Budget Act of 2001, Statutes 2001, chapter 106; Budget Act of 2002, Statutes 2002, chapter 379; and Budget Act of 2003, Statutes 2003, chapter 157.~~

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

APPENDIX A

Education Code section 48070.5, as added by Statutes 1998, chapter 742, states:

(a) In addition to the policy adopted pursuant to Section 48070, the governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils between the following grades:

(1) Between second grade and third grade.

(2) Between third grade and fourth grade.

(3) Between fourth and fifth grade.

(4) Between the end of the intermediate grades and the beginning of middle school grades which typically occurs between sixth grade and seventh grade, but may vary depending upon the grade configuration of the school or school district.

(5) Between the end of the middle school grades and the beginning of high school which typically occurs between eighth grade and ninth grade, but may vary depending upon the grade configuration of the school or school district.

(b) The policy shall provide for the identification of pupils who should be retained and who are at risk of being retained in their current grade level on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupil's grades and other indicators of academic achievement designated by the district.

(c) The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraph (1) and (2) of subdivision (a) primarily on the basis of the pupil's level of proficiency in reading. The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraphs (3) through (5) of subdivision (a) on the basis of the pupil's level of proficiency in reading, English language arts, and mathematics.

(d)(1) If either measure identified in paragraph (1) or (2) of subdivision (b) identifies that a pupil is performing below the minimum standard for promotion, the pupil shall be retained in his or her current grade level unless the pupil's regular classroom teacher determines in writing that retention is not the appropriate intervention for the pupil's academic deficiencies. This written determination shall specify the reasons that retention is not appropriate for the pupil and shall include recommendations for interventions other than retention that in the opinion of the teacher are necessary to assist the pupil to attain acceptable levels of academic achievement. If the teacher's recommendation to promote is contingent upon the pupil's participation in a summer school or interim session remediation program, the pupil's academic performance shall be reassessed at the end of the remediation program, and the decision to retain or promote the pupil shall be reevaluated at that time. The teacher's

evaluation shall be provided to and discussed with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion.

(2) If the pupil does not have a single regular classroom teacher, the policy adopted by the school district shall specify the teacher or teachers responsible for the promotion or retention decision.

(e) The policy shall provide for parental notification when a pupil is identified as being at risk of retention. This notice shall be provided as early in the school year as practicable. The policy shall 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.

(f) The policy shall provide a process whereby the decision of the teacher to retain or promote a pupil may be appealed. If an appeal is made, the burden shall be on the appealing party to show why the decision of the teacher should be overruled.

(g) The policy shall provide that pupils who are at-risk of being retained in their current grade be identified as early in the school year, and as early in their school careers, as practicable.

(h) The policy shall indicate the manner in which opportunities for remedial instruction will be provided to pupils who are recommended for retention or who are identified as being at risk for retention.

(i) The policy adopted pursuant to this section shall be adopted at a public meeting of the governing board of the school district.

(j) Nothing in this section shall be construed to prohibit the retention of a pupil not included in grade levels identified pursuant to subdivision (a), or for reasons other than those specified in subdivision (b), if such retention is determined to be appropriate for that pupil. Nothing in this section shall be construed to prohibit a governing board from adopting promotion and retention policies that exceed the criteria established in this section.