



**Report to the Legislature: *The Implementation of the
Special Education Reimbursement (“Circuit Breaker”)
Program***

7061-0012
April 2009



This document was prepared by the
Massachusetts Department of Elementary and Secondary Education
Mitchell D. Chester, Ed.D.
Commissioner of Elementary and Secondary Education

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Massachusetts Department of Elementary and Secondary Education
75 Pleasant Street, Malden, MA 02148-4906
Phone 781-338-3000 TTY: N.E.T. Relay 800-439-2370
www.doe.mass.edu





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75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000

TTY: N.E.T. Relay 1-800-439-2370

Mitchell D. Chester, Ed.D.
Commissioner

April 2009

Dear Members of the General Court:

I am pleased to submit this *Report to the Legislature: The Implementation of the Special Education Reimbursement (Circuit Breaker) Program* pursuant to Chapter 182 of the Acts of 2008, line item 7061-0012 that reads in part:

“...provided further, that the department shall conduct audits of fiscal year 2008 claims; provided further, that if the claims are found to be inaccurate, the department shall recalculate the fiscal year 2009 reimbursement amount and adjust the third and fourth quarter payments to the districts to reflect the new reimbursement amount;...”

School districts are eligible for reimbursements for students whose special education programs cost greater than four times the statewide foundation budget which in FY08 was \$35,408. By law, districts are reimbursed for 75% of the costs above four-times statewide foundation, subject to appropriation. In FY08, 293 school districts submitted claims for over 11,000 students resulting in reimbursements in FY09 totaling nearly \$280 million. The appropriation sustained a “9C” cut of \$14.56 million; \$7 million of this cut impacted reimbursements and resulted in a 72% reimbursement rate.

School districts were able to submit claims for extraordinary relief if special education costs in FY08 exceeded FY07 costs by at least 25 percent. Twenty-nine districts were eligible for \$4 million in extraordinary relief. Fifty-five districts applied for extraordinary relief in FY09 and twenty-seven were deemed eligible. Eligible districts received relief totaling \$3.83 million.

The Department continues to audit the claims submitted by districts. To date, the audit process resulted in a reduction of reimbursement from \$26,492,636 to \$25,464,993, or 3.8 percent. The audit process will continue on an on-going basis. In addition, the analysis of common mistakes will be used to improve program documentation and training for local officials. Our goal is to significantly reduce the number of audit findings in subsequent years.

If you have questions, please feel free to contact Associate Commissioner Jeff Wulfson at (781) 338-6500.

Sincerely,

Mitchell D. Chester, Ed.D.
Commissioner of Elementary and Secondary Education

Introduction

The Department of Elementary and Secondary Education respectfully submits this *Report to the Legislature: The Implementation of the Special Education Reimbursement (Circuit Breaker) Program* pursuant to Chapter 182 of the Acts of 2008, the fiscal year 2009 budget. It reports on the progress made on certain aspects of the Special Education Reimbursement (“Circuit Breaker”) Program (line item 7061-0012). This language states, in part, that:

“...the department shall conduct audits of fiscal year 2008 claims; provided further, that if the claims are found to be inaccurate, the department shall recalculate the fiscal year 2009 reimbursement amount and adjust the third and fourth quarter payments to the districts to reflect the new reimbursement amount; and provided further, that the department shall file a report with the house and senate committees on ways and means not later than February 13, 2009 on the results of the audits...”

FY08 claims received

School districts are eligible for reimbursements for students whose special education programs cost greater than four times the statewide foundation budget (\$35,408 in FY08). By law, districts are reimbursed for 75 percent of the costs above four-times statewide foundation, subject to appropriation.¹ FY08 claims result in FY09 reimbursements. The appropriation sustained a “9C” cut of \$14.56 million; \$7 million of this cut impacted reimbursements and resulted in a 72% reimbursement rate.

Districts	Students	Claim	Less foundation	Net claim
293	11,860	\$651,470,781	(\$372,067,267)	\$279,403,514

In addition, during FY08, districts were allowed to claim for extraordinary relief if their FY08 eligible costs exceeded their FY07 eligible costs by 25 percent. Fifty-eight districts claimed for relief and 29 were determined eligible. Eligible districts received relief in FY08 totaling \$4 million. Fifty-five districts applied for extraordinary relief in FY09 and twenty-seven were deemed eligible. Eligible districts received relief totaling \$3.83 million.

Audits

Chapter 182 of the Acts of 2008 also required the Department to conduct audits of FY08 claims. Department staff developed an audit protocol to verify individual student claims submitted by the districts and to ensure that the amount of each claim was in accordance with the program’s regulations. Verification consisted of examining the students’ individualized education programs (IEP’s) as well as tuition bills paid by the districts for students placed out-of-district. Overpayments and underpayments identified during the audit process will result in adjustments to reimbursements paid in the third and fourth quarters of this fiscal year. This cycle, audit candidates were chosen if they had not been audited in previous years. Consequently, many of the districts audited were small districts.

¹ For certain students who are wards of the state, the statutory reimbursement rate is 100% rather than 75%.

To date, 74 district audits have been completed with a total of 1,358 individual student claims. In addition, the Department has audited another thirteen districts, but the results of these audits are not yet final. Completed audit results indicate that costs were overclaimed for 429 students and underclaimed for 186 students. The following chart shows the reasons for the variances.

Reason for variance	Number
Incorrect classification/claiming of services	665
Incorrect dates of service	142
Claimed incorrect tuition	186
Did not claim all services rendered	53
Student's cost less than the threshold	92
Did not include cost share or claimed incorrect cost share	12
Did not claim an eligible student	14
Total	1,164*

*Some claims had more than one error

As stated above, 615 students' (429 + 186) claims required adjustment. Of those adjusted, 221 were for \$1,000 or less. These small differences occurred for a number of reasons, including: the district did not reconcile the actual tuition paid with the amount claimed; the district overpaid private schools by one day's tuition; the district paid a different tuition rate than the one established by Operational Services Division (OSD); or the district entered incorrect dates on the claim form.

The audit process resulted in a reduction of reimbursement for these students from \$26,492,636 to \$25,464,993, or 3.8 percent. The audit process will continue on an on-going basis. In addition, the analysis of common mistakes will be used to improve program documentation and training for local officials. Our goal is to significantly reduce the number of audit findings in subsequent years.

The Department will continue to provide a significant amount of training and technical assistance throughout the year to district business and special education staffs to help them understand the program's requirements and to improve the accuracy of their filings. The following chart summarizes the program's costs in its first six years of operation.

Actual and estimated program costs, FY04 through FY09

(\$ millions)	FY04	FY05	FY06	FY07	FY08	FY09
	Actual	Actual	Actual	Actual	Actual	Estimated
Appropriation	\$121.6	\$201.6	\$201.6	\$207.7	\$220.0	\$215.5 *
Net Claims	\$258.0	\$248.5	\$241.4	\$250.6	\$261.6	\$279.4
Payments to districts	\$105.8	\$187.4	\$182.0	\$189.3	\$197.9	\$203.2
Reimbursement rate	40.5%	75%	75%	75%	75%	72% *
Other earmarked costs	\$9.7	\$13.8	\$14.7	\$14.8	\$17.1	\$14.2 *

*After 9C cuts

Appendix A: Chapter 182 of the Acts of 2008

Line item 7061-0012

For the reimbursement of extraordinary special education costs under section 5A of chapter 71B of the General Laws; provided, that reimbursements shall be prorated so that expenses of this item do not exceed the amount appropriated in this item; provided further, that upon receipt by the department of elementary and secondary education of required special education cost reports from school districts, the department shall reimburse districts based on fiscal year 2008 claims; provided further, that not more than \$11,250,000 shall be used to continue and expand voluntary residential placement prevention programs between the department of elementary and secondary education and other departments within the executive office of health and human services that develop community-based support services for children and their families; provided further, that of this \$11,250,000, not less than \$10,000,000 shall be made available to the department of mental retardation for the voluntary residential placement prevention program administered by that department; provided further, that \$800,000 shall be expended for Recording for the Blind & Dyslexic to provide books in accessible synthetic audio format made available through the federal NIMAS-NIMAC book repository, to do outreach and training of teachers and students for the use of NIMAS-NIMAC and human speech audio digital textbooks, and for human voice recording of MCAS exams; provided further, that, of this \$800,000 \$285,000 shall be expended for the costs of borrowing audio textbooks by special education students; provided further, that \$200,000 of said \$800,000 shall be targeted toward underserved communities in Barnstable, Bristol and Plymouth counties; provided further, that of this \$800,000, not less than \$25,000 shall be expended for the continuation of a pilot program for Recording for the Blind and Dyslexic to provide the tenth grade math and English learning arts MCAS tests in audio digital format; provided further, that no funds shall be expended for the MCAS pilot program until the department of elementary and secondary education examines all security issues related to the pilot program and certifies to the legislature that the pilot program may be carried out without jeopardizing the security of the MCAS exams; provided further, that the report shall be completed not later than November 17, 2008 and shall be forwarded to the house and senate chairpersons of the joint committee on education and the chairpersons of the house and senate committees on ways and means; provided further, that \$450,000 shall be expended for the funding of the costs of 10 intercollaborate networks throughout the Commonwealth to provide partial funding for transportation coordination, administrative support, software updates, maintenance and training; provided further, that the funding shall be expended for the purpose of expanding the pilot program to demonstrate that transportation of students to out-of-district special education placements can be accomplished at a lower cost and with improved quality of service by delegating the planning and contracting for such transportation to education collaborative networks; provided further, that \$100,000 shall be expended for the administrative costs for statewide transportation network coordination that will provide funding to the Massachusetts Organization of Education Collaborative for staff, supplies and materials; provided further that the funding shall be expended for providing coordination and support services to the ten collaborative transportation networks; provided further that the special education transportation task force shall submit a report, detailing the reduction in routes, vendors, and savings for participating districts and also a cost model for regions served by the collaborative network by June 30, 2009 to the joint committee on education, and the house and senate committees on ways and means; provided further, that not more than \$1,000,000 shall be expended for the monitoring and follow-up activities of the department's complaint management

system, review and approval of local educational agency applications, and local school districts' compliance with the part B requirements of the federal Special Education Law, known as the Individuals with Disabilities Education Act, in the provision of special education and related services to children with disabilities; provided further, that these monitoring activities shall occur in each school district in cycles of not less than 3 years; provided further, that not more than \$500,000 shall be expended to administer the reimbursements funded herein; provided further, that notwithstanding said section 5A of said chapter 71B, the department, at the discretion of the commissioner, may expend up to \$5,000,000 to reimburse districts for extraordinary increases in costs incurred during fiscal year 2009 which would be reimbursable under said section 5A of said chapter 71B; provided further, that reimbursements for current year costs shall be limited to school districts which experience increases of greater than 25 per cent from costs reimbursable under said section 5A of said chapter 71B and incurred during fiscal year 2008 to costs reimbursable under said section 5A of said chapter 71B and incurred during fiscal year 2009 or other cases of extraordinary hardship where special education costs increase in relationship to total district costs as the department may define through regulation or guidelines; provided further, that reimbursements for current year costs shall be allocated as one-time grants and shall not decrease reimbursements in the following fiscal year; provided further, that the department shall conduct audits of fiscal year 2008 claims; provided further, that if the claims are found to be inaccurate, the department shall recalculate the fiscal year 2009 reimbursement amount and adjust the third and fourth quarter payments to the districts to reflect the new reimbursement amount; and provided further, that the department shall file a report with the house and senate committees on ways and means not later than February 13, 2009 on the results of the audits; provided further, that not less than \$2,000,000 shall be expended for partial reimbursement of transportation costs associated with out-of-district placements; provided further, that no district shall be eligible for said reimbursement unless it is participating in the special education transportation pilot program funded through this item, and demonstrates that they have used and applied special education transportation software to share routes; provided further, that all eligible districts shall receive an equal pro-rated share of their total eligible costs upon submission of claims to the department of elementary and secondary education; provided further, that the department of elementary and secondary education, based on the availability of funding, may expend up to \$500,000 to identify, analyze and certify promising and best practices in public and approved special educational programs that can prevent or ameliorate either neurodevelopmental problems or other deficits leading to learning deficiencies or behavior problems that result in high cost Individual Education Plans; provided further, that a portion of these available funds shall be expended to provide grants for training, dissemination and applications of research identified as promising and best practices; and provided further, that a report shall be provided to the chairs of the house and senate committees on ways and means and the house and senate chairs of the joint committee on education not later than March 31, 2009

\$230,043,700