



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #505

### Special Education Aids (DPI -- Categorical Aids)

[LFB 2021-23 Budget Summary: Page 464, #1, 2, & 3]

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#### CURRENT LAW

Under current law, two programs reimburse school districts for a portion of the cost of providing special education services. The primary special education appropriation reimburses a portion of the costs of educating and transporting pupils enrolled in special education. Base level funding is equal to \$450,276,200 GPR annually. The high cost special education program provides additional aid to reimburse 90% of the cost of educating individual pupils whose special education costs exceed \$30,000 in a single year. In 2020-21, \$9,353,800 GPR is appropriated for high cost special education.

Two additional grant programs provide funding to school districts for special education pupils' transitions to further schooling or work. Under the special education transition incentive grant program (\$3,600,000 GPR in 2020-21), school districts or independent charter schools are eligible for up to \$1,000 for each pupil who has an individualized education program (IEP) at the time of graduation and enrolls in a higher education program or another postsecondary education or training program or is competitively employed for at least 90 days following high school graduation. The transition readiness grant program (\$1,500,000 GPR in 2020-21) provides grant funding for special education workforce transition support services, including pupil transportation, professional development for school personnel, and employing adequate school personnel.

#### DISCUSSION POINTS

1. Both state and federal law require that local school districts provide special education and related services for children with disabilities ages 3 through 21 who reside in the district. Under state law, a child with a disability is defined as a child who, by reason of any of the following, needs special education and related services: cognitive disabilities, hearing impairments, speech or language

impairments, visual impairments, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or learning disabilities.

2. Federal funding for special education is provided under the Individuals with Disabilities Education Act (IDEA) and Medicaid. Flow-through grants under IDEA are distributed to school districts and independent charter schools based on the amount of funding received by the school or district in previous years, the number of pupils enrolled, and the number of pupils living in poverty. Flow-through grants to Wisconsin school districts, independent charter schools, and other educational entities totaled \$199.0 million in 2020-21. Additional funding is provided through an allocation for preschool services provided to pupils between the ages of three and five, as well as funding for discretionary grants.

3. Medicaid funds reimburse a portion of certain services provided in schools to Medicaid-eligible pupils in special education programs. School-based services eligible for reimbursement include speech and language therapy, occupational therapy, and nursing services that are included in a child's IEP. In 2019-20, schools and CESAs received \$64.7 million in federal funds associated with those school-based services. Additionally, school districts and CESAs can also claim a portion of the federal matching funds for administrative costs associated with the provision of school-based services. In 2019-20, schools and CESAs received \$17.2 million in federal funds for administration.

4. The majority of special education funding is provided by the state, with two programs reimbursing a portion of the cost of providing special education services to pupils: the primary special education aid appropriation (\$450.3 million GPR in 2020-21) and the high cost special education program (\$9.4 million GPR in 2020-21).

### **Special Education Aid**

5. Under the primary special education aid program, reimbursements are calculated based on eligible costs incurred in the prior year. By statute, the cost of special education for children in hospitals and convalescent homes for orthopedically disabled children is fully funded as a first draw from the appropriation. Other eligible costs, which are subject to proration if total eligible costs exceed the remaining funding available, include the salary and fringe benefit costs for special education teachers, special education coordinators, school social workers, school psychologists, school counselors, school nurses, paraprofessionals and consulting teachers; and the excess cost of specialized transportation required under a pupil's IEP, such as supplemental aides or a specialized transportation route.

6. Table 1 shows funding in the appropriation in each of the last ten years, as well as the number of pupils with special needs identified in the October 1 child count required under federal law, total aidable costs under the program, and the proration rate.

**TABLE 1****Special Education Aid, 2011-12 to 2020-21  
(\$ in Millions)**

|          | Child<br>Count | Special Education Aid       |               |           |
|----------|----------------|-----------------------------|---------------|-----------|
|          |                | Prior Year<br>Aidable Costs | Appropriation | Proration |
| 2011-12  | 123,825        | \$1,386.0                   | \$368.9       | 26.6%     |
| 2012-13  | 123,287        | 1,343.1                     | 368.9         | 27.5      |
| 2013-14  | 122,654        | 1,359.6                     | 368.9         | 27.1      |
| 2014-15  | 120,434        | 1,375.6                     | 368.9         | 26.8      |
| 2015-16  | 120,864        | 1,391.2                     | 368.9         | 26.5      |
| 2016-17  | 116,753        | 1,408.2                     | 368.9         | 26.2      |
| 2017-18  | 118,546        | 1,435.4                     | 368.9         | 25.7      |
| 2018-19  | 120,602        | 1,482.1                     | 368.9         | 24.9      |
| 2019-20  | 120,010        | 1,534.3                     | 384.5         | 25.0      |
| 2020-21* | 120,000        | 1,596.1                     | 450.3         | 28.2      |

\*Estimated

7. As shown in Table 1, increased funding for special education aid was provided under 2019 Act 9 (the 2019-21 biennial budget act). At the time of budget deliberations, it was estimated that the additional funding would increase the proration rate under the program from 25.3% in 2018-19 to an estimated 26% in 2019-20 and 30% in 2020-21. However, because actual eligible costs exceeded estimated eligible costs, the preliminary estimate of the proration rate in 2020-21 is equal to 28.2%. The final proration rate will be determined at the end of the current school year.

8. Between 2011-12 and 2020-21, special education costs aidable under the primary special education appropriation increased by an average of 1.4% annually. The rate of increase has increased in recent years; between 2016-17 and 2020-21, aidable costs increased by an average of 2.5% annually, and the increase was equal to 4.0% in 2020-21. In its agency budget request, DPI estimated that costs would increase by 4% annually in 2021-22 and 2022-23. Using that estimate, projected aidable costs would total \$1,659.9 million in 2021-22 and \$1,726.3 million in 2022-23, and the proration with no additional funding would be an estimated 27.1% in 2021-22 and 26.1% in 2022-23.

9. The most recent decision by the State Supreme Court on the constitutionality of the school aid formula was issued in July, 2000, in the case of Vincent v. Voight. In that decision, the Court concluded that the state school finance system did not violate either the uniformity clause or the equal protection clause of the Wisconsin Constitution. In the Vincent decision, the Court also held that Wisconsin students have the right to an equal opportunity for a sound basic education. The decision noted that this standard must take into account districts with disproportionate numbers of pupils with disabilities, in addition to economically-disadvantaged pupils and pupils with limited English proficiency.

10. Although a large increase in the special education appropriation was provided in the 2019-21 budget, the rate at which aidable costs have increased over the last decade exceeds the rate

at which the appropriation has increased. Between 2000-01 and 2020-21, the total amount of special education funding increased by approximately 43%, while aidable costs increased by 81%.

11. Some have expressed concern that school districts are funding a significant portion of special education costs from their general fund budgets using state equalization aid and local property tax revenues. The portion of special education costs for which school districts do not receive reimbursement through state or federal special education aid programs is generally funded through school districts' general funds using revenue from state equalization aids, per pupil aid, property taxes, and other sources. As a result, school districts have less revenue available to spend on general educational programming than they otherwise would have.

12. It could be argued that providing additional resources in the form of a per pupil revenue limit adjustment or in per pupil aid would provide funding that could be used for special education, while also providing greater flexibility for school districts wishing to use the funds for another purpose. On the other hand, these revenue sources are distributed to districts regardless of the amount they spend on special education, and therefore would disadvantage those districts with disproportionately large special education costs. Any special education costs not reimbursed by state or federal aids are included in shared costs under general equalization aids; however, an individual district's equalization aid depends upon the district's relative property wealth and costs, and how the district competes under the equalization aid formula. Similarly, per pupil aid is distributed equally to every district, so districts with high special education costs would receive the same amount per pupil as those with low special education costs.

13. Additionally, it could be the case that the additional federal aid provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and American Rescue Plan Act (ARPA) provides sufficient additional resources for school districts in the 2021-23 biennium, and therefore increased state funding for special education is not needed. Under the three acts, \$2,401.7 million in federal aid was provided under the elementary and secondary school emergency relief (ESSER) fund, with an additional \$46.6 million allocated to K-12 schools under the Governor's emergency education relief (GEER) fund. Although the use of these funds is limited to the purposes enumerated under the acts, allowable uses include any activity authorized by the IDEA and other activities intended to address the needs of pupils with disabilities. On the other hand, this funding is one-time and it could be argued that it would therefore be preferable to use the funds for one-time or short-term costs, such as purchasing educational technology for remote instruction for pupils with disabilities, continuing to provide specialized therapies required under pupils' IEPs during periods of remote instruction, and offering additional summer or afterschool instruction time to address learning loss among pupils with disabilities. Additionally, the federal funding is distributed to districts primarily based on their number and percentage of children in poverty, rather than based on special education costs or number of pupils with disabilities. The per pupil distribution among school districts varies significantly, and it could be the case that some districts with large special education costs receive relatively little in federal aid under the three acts.

14. Some have expressed concern that a significant increase in state special education funding could limit flexibility in future state budgets. In the event of a future economic downturn,

special education funding could represent a significant commitment of GPR that could not be reduced without incurring a penalty. Under IDEA, each state must meet maintenance of effort requirements to ensure that federal funds are used to supplement state funds, rather than replace state spending. Under maintenance of effort requirements, the state cannot reduce its appropriated amount for special education below the amount appropriated in the previous fiscal year. This constraint can be met using the total amount the state makes available for special education, or using a per pupil amount calculated using the annual October 1 count of children with disabilities required under IDEA. If the state fails to meet this requirement, a penalty would be imposed under which the state's federal IDEA funds would be reduced by a percentage equal to the percentage decrease in state appropriations in each year until the state contribution returns to its previous level. In rare circumstances, such as a natural disaster or an unforeseen decline in a state's financial resources, the Secretary of Education can authorize a waiver to the maintenance of effort requirement for one fiscal year. For example, one-year waivers or partial waivers were authorized for 2009-10 for Alabama, Iowa, Kansas, New Jersey, New Mexico, South Carolina, and West Virginia.

15. Maintenance of effort requirements also apply to school districts and other local education agencies, but it is not likely that an increase in state funding would negatively impact these entities. Under IDEA, each district is required to expend, on a total or per pupil basis, the same amount of either of the following as it did in the previous fiscal year: (a) local funds; or (b) a combination of state and local funds. The district is in compliance with maintenance of effort requirements if it meets either (a) or (b). As an example, under a scenario in which a district's special education expenditures do not change but the district reduces local expenditures as a result of receiving additional state special education funding, the district would not satisfy the requirement under (a), but would meet the requirement under (b), and would thus be in compliance with maintenance of effort requirements. Therefore, an increase in state special education funding is not likely to have a negative impact on local education agency maintenance of effort compliance.

16. Assembly Bill 68/Senate Bill 111 would modify the special education appropriation from sum certain to be a sum sufficient appropriation paying 45% of eligible costs in 2021-22 and 50% in 2022-23 and annually thereafter. The bill would provide \$296,694,600 GPR in 2021-22 and \$412,890,100 GPR in 2022-23, which is estimated to fully fund the reimbursement rates proposed under the bill.

17. The Committee may wish to consider providing additional funding for the special education appropriation in a lesser amount using the current sum certain appropriation. An additional \$17,815,600 GPR in 2021-22 and \$36,540,400 GPR in 2022-23 would maintain the current estimated proration rate of 28.2% in each year of the biennium. [Alternative A1] Alternatively, the Committee could provide an additional \$47,693,800 GPR in 2021-22 and \$67,613,800 GPR in 2022-23, which would increase the proration rate to an estimated 30% in each year. [Alternative A2]

### **High Cost Special Education Aid**

18. The high cost special education program provides additional aid to reimburse 90% of the cost of educating pupils whose special education costs exceed \$30,000 in a single year. A district's eligibility for reimbursement under the high cost special education program is calculated based on non-administrative costs attributable to a single pupil in one year, after deducting payments made

under the state special education categorical aid program and the federal IDEA and Medicaid programs. To be eligible for reimbursement, the costs must be incurred for services or accommodations required by the pupil's IEP.

19. The program was started using federal funds, with IDEA Part B grants first used to reimburse expenditures for high-cost pupils beginning in 2003-04. State funding was provided for the program beginning in 2005-06 under 2005 Act 25. DPI continued to allocate a portion of its IDEA Part B grant funding to increase the reimbursement rate under the program in each year from 2003-04 through 2018-19 under an IDEA provision allowing states to use a portion of Part B funding that would otherwise be included in the formula distribution to school districts for high cost pupils. Beginning in 2019-20, DPI reallocated these federal funds to school districts through IDEA Part B formula grants.

20. Table 2 provides funding amounts in the high cost special education aids appropriation, as well as the number of districts with claims in each year, total prior year eligible costs, and the percentage of aidable costs reimbursed by the state appropriation. Under 2015 Act 55, the program was modified so that 70% of costs above \$30,000 were eligible for reimbursement, rather than 90% as under prior law; as result, aidable costs and the reimbursement rate in those years should not be directly compared to other years. The 90% reimbursement threshold was restored under 2017 Act 59, beginning in 2017-18.

**TABLE 2**

**High Cost Special Education Aid, 2011-12 to 2020-21**

|         | <u>Appropriation</u> | <u>Districts Receiving Aid</u> | <u>Aidable Costs*</u> | <u>State Reimbursement Rate</u> |
|---------|----------------------|--------------------------------|-----------------------|---------------------------------|
| 2011-12 | \$3,500,000          | 146                            | \$11,361,200          | 30.8%                           |
| 2012-13 | 3,500,000            | 156                            | 10,158,900            | 34.5                            |
| 2013-14 | 3,500,000            | 154                            | 11,113,400            | 31.5                            |
| 2014-15 | 3,500,000            | 173                            | 12,402,900            | 28.2                            |
| 2015-16 | 3,500,000            | 168                            | 8,850,600             | 39.5                            |
| 2016-17 | 8,500,000            | 141                            | 8,419,600             | 100.0                           |
| 2017-18 | 9,239,000            | 164                            | 11,997,000            | 77.1                            |
| 2018-19 | 9,353,800            | 173                            | 14,541,000            | 64.3                            |
| 2019-20 | 9,353,800            | 163                            | 26,171,100            | 35.7                            |
| 2020-21 | 9,353,800            | N.A.                           | 26,956,300**          | 34.7**                          |

\* Equal to 70% of eligible costs in 2015-16 and 2016-17, and 90% in all other years.

\*\* Estimated

21. Beginning in 2019-20, administrative code governing special education was modified to standardize the determination of aidable costs under the high cost special education program. Under the new administrative code, school districts report eligible special education costs in three tiers: (1) costs particular to one pupil with a disability; (2) costs of a program that serves the pupil, such as one

for disability-specific needs; and (3) costs of non-administrative support services. The rule defines the process for determining nonadministrative costs for a pupil, under which costs are included as follows: (a) the amount identified as attributable to the particular pupil; (b) for specified services (including nursing, social work, psychology, guidance counseling, speech-language pathology, and audiology), a rate defined in administrative code multiplied by the number of days that the pupil was enrolled; and (c) for each program that services the child, a rate determined by dividing the cost of a program by the product of the total number of days it was offered and the full-time equivalency (FTE) of all pupils using the program, multiplied by the number of days and FTE that the specified pupil was served using the program. The new administrative code also establishes a method for including equipment and other capital costs with an expected service life of more than one year, clarifies how federal Medicaid funding is treated under the program, and determines how the \$30,000 threshold for special education costs is calculated against other funding sources that must be deducted from the total costs under state law.

22. DPI indicates that as a result of the changes to the administrative code, districts qualified for aid for a greater number of pupils for whom special education services cost between \$30,000 to \$40,000 annually. This change caused aidable costs to increase significantly in 2019-20, and the proration rate decreased from 64.3% in 2018-19 to 35.7% in 2019-20. Based on costs eligible for reimbursement under the program, and assuming a growth rate of 3% annually, it is estimated that total aidable costs under the program could be equal to \$27,764,900 in 2021-22 and \$28,597,900 in 2022-23, and the current funding level would be sufficient to provide a reimbursement rate of 33.7% in 2021-22 and 32.7% in 2022-23.

23. Assembly Bill 68/Senate Bill 111 would provide additional funding equal to \$1,752,200 GPR in 2021-22 and \$7,804,900 GPR in 2022-23. It is estimated that this funding would increase the proration rate to 40% in 2021-22 and 60% in 2022-23. [Alternative B1]

24. The Committee may wish to consider providing additional funding for the high cost special education aid program in a lesser amount. For example, an increase of \$363,900 GPR in 2021-22 and \$2,085,400 GPR in 2022-23 would increase the estimated proration rate to 35% in 2021-22 and 40% in 2022-23. [Alternative B2]

### **Transition Readiness Grants**

25. Under the transition readiness grant program, school districts and independent charter schools are eligible for grants of \$25,000 to \$100,000 for special education workforce transition support services, including pupil transportation, professional development for school personnel, and employing adequate school personnel. The program was created under 2017 Act 59, and grants were first awarded in the 2018-19 school year.

26. The goal of special education transition services is to help pupils and their families prepare for the pupil's life after completing high school, after which the pupil will no longer receive special education services. IDEA requires transition services to be included in IEPs for pupils who are age 16 or older, as well as for younger pupils in some cases. The IEP must address the pupil's transition from school to post-school activities, including post-secondary or vocational education, employment, adult services, or independent living, based on the pupil's individual needs.

27. The federal Workforce Innovation and Opportunity Act of 2014 (WIOA) created additional responsibilities for school districts to support pupils with disabilities in their transition from school to the workforce or post-secondary education. WIOA requires school districts to collaborate with their state's division of vocational rehabilitation agency to offer services to pupils with disabilities, including work-based learning experiences, instruction in self-advocacy, and counseling related to job exploration, job training programs, and post-secondary education. WIOA also limited placement at sheltered workshops, which are workplaces that employ individuals with disabilities at less than minimum wage. Pupils under age 24 can no longer be placed in sheltered workshops unless the pupil has first been provided with transition services, vocational rehabilitation, and career counseling. Additionally, WIOA restricts school districts from operating sheltered workshops or entering into contracts with sheltered workshops to employ pupils. At the time this provision went into effect in 2016, approximately 330 pupils in Wisconsin were employed in sheltered workshops. The transition readiness grant program provides support to school districts replacing their sheltered workshop programs with other transition support services, as well as other districts expanding their transition services.

28. DPI indicates that more than 130 applications were received in 2018-19, requesting approximately \$9 million in grant funding, and awards were given to 37 districts. Grants were awarded to 39 districts in 2019-20, and 41 districts in 2020-21. Funding has been used for pupil transportation, tuition to colleges and technical schools, activities to develop connections between school districts and local employers, and transition services certification for educators.

29. Assembly Bill 68/Senate Bill 111 would provide \$1,500,000 GPR annually above base level funding of \$1,500,000 for competitive grants for special education workforce transition support services. [Alternative C2] The Committee could also consider an increase of \$3,500,000 GPR annually. [Alternative C1]

## ALTERNATIVES

### A. Special Education

1. Provide \$17,815,600 in 2021-22 and \$36,540,400 in 2022-23 as increases to base level funding of \$450,276,200, which would maintain the current proration rate of 28.2% in each year of the biennium.

| ALT A1 | Change to Base |
|--------|----------------|
| GPR    | \$54,356,000   |

2. Provide \$47,693,800 in 2021-22 and \$67,613,800 in 2022-23, which would result in an estimated proration rate of 30% in each year.

| ALT A2 | Change to Base |
|--------|----------------|
| GPR    | \$115,307,600  |

3. Take no action.

**B. High Cost Special Education**

1. Provide \$1,752,200 in 2021-22 and \$7,804,900 in 2022-23 for high cost special education aid above base level funding of \$9,353,800, which would result in an estimated proration rate of 40% in 2021-22 and 60% in 2022-23.

| <b>ALT B1</b> | <b>Change to Base</b> |
|---------------|-----------------------|
| GPR           | \$9,557,100           |

2. Provide an increase of \$363,900 in 2021-22 and \$2,085,400 in 2022-23 which would increase the estimated proration rate to 35% in 2021-22 and 40% in 2022-23.

| <b>ALT B2</b> | <b>Change to Base</b> |
|---------------|-----------------------|
| GPR           | \$2,449,300           |

3. Take no action.

**C. Transition Readiness Grants**

1. Provide \$3,500,000 annually above base level funding of \$1,500,000 for transition readiness grants.

| <b>ALT C1</b> | <b>Change to Base</b> |
|---------------|-----------------------|
| GPR           | \$7,000,000           |

2. Provide an increase of \$1,500,000 each year, which would double base level funding.

| <b>ALT C2</b> | <b>Change to Base</b> |
|---------------|-----------------------|
| GPR           | \$3,000,000           |

3. Take no action.

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