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June 8, 2023

Joint Committee on Finance

Paper #635

Special Education Aids (DPI -- Categorical Aids)

[LFB 2023-25 Budget Summary: Pages 486-487, #1 and #2]

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 \$517,890,000 GPR annually. The high cost special education program provides additional aid to reimburse 90% of the costs of educating individual pupils whose special education costs exceed \$30,000 in a single year. In 2022-23, \$11,439,200 GPR is appropriated for high cost special education.

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 \$206.0 million in 2022-23. 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 individualized education program (IEP). 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 2021-22, schools and CESAs received \$106.0 million in federal funds associated with those school-based services and related 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 (\$517.9 million GPR in 2022-23) and the high cost special education program (\$11.4 million GPR in 2022-23).

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 10 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, 2013-14 to 2022-23
(\$ in Millions)**

	<u>Child Count</u>	<u>Prior Year Aidable Costs</u>	<u>Special Education Aid Appropriations</u>	<u>Proration</u>
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	25.1
2020-21	117,969	1,596.1	450.3	28.2
2021-22	119,942	1,579.6	468.1	29.6
2022-23*	122,187	1,633.1	517.9	31.7

*Estimated

7. As shown in Table 1, increased funding for special education aid was provided under 2021 Act 58 (the 2021-23 biennial budget act). At the time of budget deliberations, it was estimated that the additional funding would maintain the proration rate under the program at 28.2% in 2021-22 and increase the proration rate to an estimated 30% in 2022-23. However, because actual eligible costs were lower than estimated eligible costs, the proration rate in 2021-22 equaled 29.6% and the preliminary estimate of the proration rate in 2022-23 is equal to 31.7%. The final proration rate will be determined at the end of the current school year.

8. Between 2013-14 and 2022-23, special education costs aidable under the primary special education appropriation increased by an average of 2.1% annually. The rate of increase has generally increased in recent years; between 2016-17 and 2020-21, aidable costs increased by an average of 2.8% annually, and the increase was equal to 4.0% in 2020-21. In 2021-22, costs decreased by 1.0% but increased again in 2022-23 by 3.4%. In its agency budget request, DPI estimated that costs would total \$1,675.8 million in 2023-24 and \$1,726.1 million in 2024-25, and the proration with no additional funding would be an estimated 30.9% in 2023-24 and 30.0% in 2024-25.

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 large increases in the special education appropriation were provided in the 2019-21 and 2021-23 budgets, the rate at which aidable costs have increased over the last two decades exceeds the rate at which the appropriation has increased. Between 2000-01 and 2022-23, the total amount of special education funding increased by approximately 64%, while aidable costs increased by 87%.

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. 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.

14. 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.

15. Assembly Bill 43/Senate Bill 70 would modify the special education appropriation from sum certain to be a sum sufficient appropriation paying 60% of eligible costs in 2023-24 and annually thereafter. The bill would provide \$491,388,600 GPR in 2023-24 and \$521,666,900 GPR in 2024-25, which is estimated to fully fund the reimbursement rates proposed under the bill. [Alternative A1]

16. 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 \$9,982,500 GPR in 2023-24 and \$25,818,700 GPR in 2024-25 would maintain the current estimated proration rate of 31.5% in each year of the biennium. [Alternative A2] Alternatively, the Committee could provide an additional \$68,635,000 GPR in 2023-24 and \$86,230,800 GPR in 2024-25, which would increase the proration rate to an estimated 35% in each year of the biennium. [Alternative A3]

High Cost Special Education

17. 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.

18. 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.

19. 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 a 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, 2013-14 to 2022-23

	<u>Appropriation</u>	<u>District Receiving Aid</u>	<u>Aidable Costs*</u>	<u>State Reimbursement Rate</u>
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	185	26,725,100**	35.0
2021-22	11,106,000	178	28,045,500**	39.6
2022-23	11,439,200	N.A.	28,960,000**	39.5**

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

**Estimated.

20. 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 non-administrative 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.

21. 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 and \$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, which DPI indicates are assumed to remain relatively constant in 2023-24 and 2024-25, it is estimated that under current law, total aidable costs under the program could be equal to \$28,960,000, and the current funding level would be sufficient to provide a reimbursement rate of 39.5% in each year of the biennium.

22. In its agency budget request, DPI requested an increase of \$3,040,800 GPR in 2023-24 and \$7,867,500 GPR in 2024-25 for high cost special education aid. DPI also requested to modify the program to allow for reimbursement of 100% of eligible prior year costs above the \$30,000 per pupil threshold, rather than 90% as under current law. In addition, DPI requested to establish reimbursement rates in statute equal to 45% in 2023-24 and 60% in 2024-25 and each school year thereafter, and to modify the appropriation to be sum sufficient. Based on costs eligible for reimbursement under the program, it is estimated that the amounts included in the agency request would fully fund the proposed changes to the program. [Alternative B1]

23. AB 43/SB 70 would provide additional funding for high cost special education aid equal to \$1,592,800 GPR in 2023-24 and \$5,936,800 GPR in 2024-25. The bill would modify the appropriation to be sum sufficient, and establish reimbursement rates in statute equal to 45% in 2023-24 and 60% in 2024-25 and each school year thereafter. In addition, the bill initially would have modified the program to reimburse 100% of prior year aidable costs. The Department of Administration (DOA) issued an errata that would maintain the provision defining costs eligible for reimbursement as 90% of those costs above the \$30,000 per pupil threshold. As a result, it is estimated that the amounts included in the bill would fully fund the proposed changes to the program based on costs eligible for reimbursement under the program. [Alternative B2]

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 \$1,592,800 GPR in 2023-24 and \$3,040,800 GPR in 2024-25 would increase the estimated proration rate to 45% in 2023-24 and 50% in 2024-25, under current law and the assumption that costs eligible for reimbursement remain constant. [Alternative B3].

ALTERNATIVES

A. Special Education Aid

1. Modify the special education appropriation to be sum sufficient. Establish reimbursement rates in the statute equal to 60% in 2023-24 and annually thereafter. Provide \$491,388,600 in 2023-24 and \$521,666,900 in 2024-25 as increases to base level funding of \$517,890,000, which is estimated to fully fund the 60% reimbursement rate.

ALT A1	Change to Base
GPR	\$1,013,055,500

2. Provide \$9,982,500 in 2023-24 and \$25,818,700 in 2024-25 as increases to base level funding of \$517,890,000, which would maintain the current proration rate of 31.5% in each year of the biennium.

ALT A2	Change to Base
GPR	\$35,801,200

3. Provide \$68,635,000 in 2023-24 and \$86,230,800 in 2024-25, which would result in an estimated proration rate of 35% in each year of the biennium.

ALT A3	Change to Base
GPR	\$154,865,800

4. Take no action.

B. High Cost Special Education

1. Modify the appropriation for the high cost special education aid program to be sum sufficient, and to allow for reimbursement of 100% of eligible prior year costs above the \$30,000 per pupil threshold. Establish reimbursement rates in statute equal to 45% in 2023-24 and 60% in 2024-25 and each school year thereafter. Reestimate funding in the appropriation to provide an additional

\$3,040,800 in 2023-24 and \$7,867,500 in 2024-25.

ALT B1	Change to Base
GPR	\$10,908,300

2. Modify the appropriation to be sum sufficient. Establish reimbursement rates in statute equal to 45% in 2023-24 and 60% in 2024-25 and each school year thereafter. Reestimate funding in the appropriation to provide an additional \$1,592,800 in 2023-24 and \$5,936,800 in 2024-25.

ALT B2	Change to Base
GPR	\$7,529,600

3. Provide an increase of \$1,592,800 in 2023-24 and \$3,040,800 in 2024-25, which would result in an estimated proration rate of 45% in 2023-24 and 50% in 2024-25 under current law. Maintain the appropriation as sum certain.

ALT B3	Change to Base
GPR	\$4,633,600

4. Take no action.

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