



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #740

Special Education Aids (DPI -- Categorical Aids)

[LFB 2001-03 Budget Summary: Page 535, #1]

CURRENT LAW

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. In addition, a school district may include a child with significant developmental delay who needs special education services, if consistent with DPI rules.

Special education is provided by school districts, either on their own or through cooperative arrangements with other districts, cooperative educational service agencies (CESAs) and county children with disabilities education boards (CCDEBs). The state reimburses a portion of the costs for educating and transporting pupils enrolled in special education, including school age parent programs, through a categorical aid appropriation. Eligibility for categorical special education aid was extended to Milwaukee charter schools in 1999 Act 9.

Base funding of \$315,681,400 is currently appropriated for categorical special education aid. 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 special education aids appropriation. The following costs are also eligible for reimbursement from the appropriation but are subject to proration if total eligible costs exceed the remaining funding available:

- salary and fringe benefit costs for special education teachers, special education coordinators, school social workers, school psychologists, paraprofessionals and consulting teachers;

- the salary portion of any authorized contract for physical and occupational therapy services;
- the cost of transportation for pupils enrolled in special education programs;
- the cost of board, lodging and transportation of nonresident children enrolled in a district's special education program;
- salary and travel expenses for special education outside the school district of employment;
- expenditures for the salaries of teachers and instructional aides, special transportation and other expenses approved by the State Superintendent for a school age parents program; and
- any other expenditures approved by the State Superintendent as eligible for reimbursement.

GOVERNOR

Provide \$10,000,000 in 2001-02 and \$15,000,000 in 2002-03 for special education aids. In addition, make the following changes related to special education aids:

Supplemental aid for high-costs pupils. Specify that local educational agencies (LEAs) would be eligible for supplemental special education aid beginning in the 2002-03 school year. This supplemental aid would be equal to 50% of prior year aidable special education costs in excess of \$50,000 for an individual pupil, after deduction of those costs otherwise aided from the categorical special education aids appropriation. Provide that the LEA must submit a claim to DPI for supplemental special education aid no later than September 1 of the school year following the school year in which the costs were incurred. Specify that supplemental aid would be a first draw to be fully-funded from the special education aids appropriation, similar to costs for special education for children in hospitals and convalescent homes for orthopedically disabled students under current law.

Census-based aid distribution. Require DPI to distribute a portion of funding from the special education aids appropriation on a "census basis." Require the following amounts of funding to be distributed according to this method: (a) \$10 million in the 2001-02 school year; (b) 5% of the special education appropriation in the 2002-03 school year (\$16,534,100 under the bill); and (c) 10% of the special education appropriation in the 2003-04 school year and in each school year thereafter. Specify that those amounts be distributed according to the following formula: (a) 85% (\$8,500,000 in 2001-02 and \$14,054,000 in 2002-03 under the bill) by the proportion the eligible school district's membership or Milwaukee charter school's pupils is of the statewide total membership of eligible school districts and pupils attending charter schools, and (b) 15% (\$1,500,000 in 2001-02 and \$2,480,100 in 2002-03 under the bill) by the proportion

the eligible school district's membership or charter school's pupils that are eligible for a free or reduced-price lunch is of the statewide total membership of eligible school districts and charter schools' pupils who are eligible for a free or reduced-price lunch. A school district or charter school would be eligible for this "census based" aid if it would receive special education aid under current law.

The remainder of the funding not distributed under either the supplemental aid provisions or the census-based distribution provisions would continue to be distributed based on eligible special education costs incurred by an LEA in the prior year.

Eligible uses of funding. Expand the allowable uses of state special education aid to include those purposes for which federal special education aid may be used, including the development and implementation of a coordinated services system and the design, implementation and evaluation of a school-based improvement plan.

DISCUSSION POINTS

Special Education Aids Funding Level

1. 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 current state school finance system did not violate either the uniformity clause or the equal protection clause of the Wisconsin Constitution. The Court also held that the current school aid system more effectively equalizes the tax base among districts than the system upheld as constitutional in the last school finance decision of the Court in 1989 (Kukor v. Grover).

2. In the Vincent decision, the Court also held that Wisconsin students have the right to an equal opportunity for a sound basic education that "will equip them for their roles as citizens and enable them to succeed economically and personally." The decision also noted that this standard must take into account districts with disproportionate numbers of disabled students, economically-disadvantaged students and students with limited-English proficiency.

3. In the three most recent school funding decisions, the Court recognized that the Legislature is entitled to deference in fiscal and educational policy decisions. While the Court did not specify a particular funding level that would provide an equal opportunity for a sound basic education for disabled students, the Court did hold in Vincent that "so long as the Legislature is providing sufficient resources so that school districts offer students the equal opportunity for the sound basic education as required by the Constitution, the state school finance system will pass constitutional muster."

4. The following table provides information on appropriated funding in the special education aids appropriation, the level of aidable special education costs and state reimbursement under the categorical appropriation since 1991-92.

**Special Education Aidable Costs, Aid Appropriations and State Reimbursement
(\$ in Millions)**

<u>Fiscal Year</u>	<u>Aidable Costs</u>		<u>Aid Appropriation</u>		<u>State Reimbursement Rate</u>
	<u>Amount</u>	<u>Change</u>	<u>Amount</u>	<u>Change</u>	
1991-92	\$479.6		\$254.0		53.0%
1992-93	528.8	10.3%	254.0	0.0%	48.0
1993-94	585.9	10.8	261.3	2.9	44.6
1994-95	625.1	6.7	275.5	5.4	44.1
1995-96	661.3	5.8	275.5	0.0	41.7
1996-97	698.2	5.6	275.5	0.0	39.5
1997-98	747.3	7.0	275.5	0.0	36.9
1998-99	799.6	7.0	275.5	0.0	34.5
1999-00	839.9	5.0	288.0	4.5	34.3
2000-01	884.6	5.3	315.7	9.6	35.7

5. Between 1994-95 and 1999-00, aidable special education costs increased by an average of 6.2% annually. Assuming that rate of growth continues from the 2000-01 cost estimate, projected aidable costs would be approximately \$939.5 million in 2001-02 and \$997.7 million in 2002-03.

6. It could be argued that general school aids, funded at \$3.9 billion in 2000-01, are more important than the special education categorical aid appropriation in the overall context of the state's efforts to equalize the tax base between school districts and provide an equal opportunity for a sound basic education under the state school finance system. In addition, the state reimbursement rate of special education aid declined in every year except one between the Kukor decision in 1989 and the Vincent decision in 2000, yet the Court still found the overall system constitutional in Vincent.

7. Further, any unreimbursed special education costs are included in shared costs under general school aids; on average general school aids in 2000-01 equaled 60% of shared costs, so that school districts received state aid for almost 80% of their special education costs. Accordingly, the Committee could choose to maintain special education aid at base funding. Under this alternative, the estimated state categorical reimbursement rate would decrease from 35.7% in 2000-01 to 33.6% in 2001-02 to 31.6% in 2002-03.

8. Given that the Court has specifically highlighted the needs of school districts with relatively high numbers of students receiving special education or related services, it could be argued that the state should provide additional resources for special education aid and thus provide more resources to school districts with relatively high numbers of students receiving special education or related services. While school districts did receive substantial state categorical and general aids relating to their special education costs, general school aids are subject to revenue

limits. The Governor's recommendation would provide additional special education funding for these districts, which would be outside of revenue limits. Based on projected aidable costs, the Governor's recommendation would provide an estimated reimbursement rate of 34.7% in 2001-02 and 33.1% in 2002-03.

9. Another alternative would be to maintain the current reimbursement rate from the special education aids appropriation. To maintain the estimated 35.7% rate in the 2001-03 biennium, the special education aids appropriation would need to be funded at \$335,253,600 in 2001-02 and \$356,039,400 in 2002-03. This would represent an increase in categorical aid funding of \$19,572,200 in 2001-02 and \$40,358,000 in 2002-03 over base funding.

10. Under the two-thirds funding calculation, if funding for categorical aids such as special education aids are increased, there is a reduction in general school aids equal to one-third of the increase. This reduction is made so that total state aid does not exceed the two-thirds funding goal. Similarly, if categorical aids are decreased, there is an increase in general school aids equal to one-third of the decrease in categorical aid in order to maintain two-thirds funding of partial school revenues.

State Categorical Aid Distribution

Supplemental Aid for High-Cost Pupils

11. DOA staff indicate that the supplemental aid provisions were designed to recognize the financial impact on school districts of providing special education and related services to relatively high numbers of pupils with high-cost, low-incidence disabilities, such as traumatic brain injury or autism, within the framework of minimal comprehensive data on per pupil special education costs. The proposed supplemental aid would provide additional categorical aid to these districts which provide services to more severely disabled children.

12. It is generally estimated that the cost of special education and related services for pupils with high-cost, low-incidence disabilities can total several times the cost of services for regular education pupils or for pupils with low-cost, high-incidence disabilities. The cost to a district can be exacerbated by the fact that the cost of certain potentially expensive services, such as nursing services and assistive technology, are not aidable under the state categorical aid appropriation. As a result, it is often contended that providing services for these students in a particular school district, as required under federal and state law, may be done at the expense of the district's regular education programs.

13. A major difficulty in the analysis of special education funding is the lack of comprehensive and current data on special education costs. The federal government, for example, stopped collecting routine data on special education expenditures after the 1987-88 school year because such data was generally seen as not reliable or useful. State categorical aid is based on prior year aidable costs, not on per pupil cost. DPI indicates that the Madison Metropolitan School District calculated costs for its high-cost special education students, with costs ranging from

\$35,800 to \$92,500 per pupil and costs for a "mid-range" pupil of about \$60,800.

14. Determining the potential impact of the Governor's supplemental aid proposal also depends on the assumption made as to what proportion of the cost for special education services for a pupil is aidable under the current categorical appropriation. Using the highest per pupil cost of \$92,500 identified in the Madison Metropolitan data and assuming that 50% of those costs, or \$46,250, are aidable, a district with such a pupil would have had approximately \$29,700 of unaided costs using the estimated 2000-01 reimbursement rate. The district would thus not have been eligible for supplemental aid for such a pupil. If 90% of the costs for such a pupil, or \$83,250, are aidable, a district would have had \$53,500 of unaided costs. Under the Governor's proposal, this district would have been eligible for supplemental aid for 50% of the costs in excess of \$50,000, which would have resulted in a supplemental aid payment of \$1,750 for this pupil.

15. This example suggests that the \$50,000 supplemental aid threshold proposed by the Governor may be too high for a relatively significant amount of supplemental aid to be distributed. As such, the Committee may wish to set a lower threshold. If, for example, the threshold were set at \$30,000, a district providing services to a pupil costing \$92,500, of which 50% are aidable, would still not be eligible for supplemental aid. If 90% of that pupil's costs are aidable, the district would be eligible for \$11,750 in supplemental aid. Using the mid-range per pupil cost of \$60,800 and assuming 50% of costs are aidable, the district would not be eligible for supplemental aid. If 90% of costs are aidable, the district would be eligible for approximately \$2,600 of supplemental aid.

16. If the Committee establishes a supplemental aid program, it may also wish to annually adjust any threshold set under the program to reflect inflation. The Committee could choose, for example, to adjust the supplemental aid threshold in the same way the per pupil revenue increase is calculated under revenue limits. That increase is determined by multiplying the prior year per pupil dollar amount by the percentage change in the consumer price index between the preceding March and the second preceding March. If the threshold is not indexed, over time more supplemental special education aid would be distributed as the cost of special education and related services for a larger number of pupils would exceed the threshold.

17. It could be argued, however, that providing any supplemental aid for high-cost pupils might reduce the incentives for districts to exercise cost restraint regarding decisions made with respect to the provision of special education or related services. Hypothetically, if a district had a choice between providing higher-cost or lower-cost services which are thought to be equally effective to meet the needs of a pupil, some would contend that the provision of supplemental aid would increase the likelihood of a school district choosing the higher-cost services.

Census-Based Aid Distribution

18. Under the reauthorized federal Individuals with Disabilities Education Act (IDEA) of 1997, a state received funds based on its special education population, until the federal allotment for special education aid reached \$4.9 billion. Any appropriation above that amount is allocated on a census-based distribution, under which 85% is distributed based on the state's proportion of total

school-age population and 15% is distributed based on the state's proportion of total school-age population in poverty. The federal appropriation first exceeded \$4.9 billion in federal fiscal year 2000. States now receive a base allocation equal to the amount of funding received in federal fiscal year 1999, with the remainder distributed on the indicated census basis.

19. The rationale for census-based funding is an assumption that some percentage of the school-aged population has high-incidence, low-cost disabilities, such as specific learning disabilities or speech or language impairment, and that these pupils are distributed relatively evenly across all school districts. Accordingly, the provision of services for these pupils and the related proportion of special education costs would also be distributed relatively evenly across all school districts. Arguably, then, some proportion of special education funding could be distributed based on the total membership of some school districts with minimal impact on the level of service provided to such students.

20. The reason a poverty factor is often included under a census-based funding distribution is that some research has suggested that certain disabilities that might require special education or related services are more prevalent in lower-income groups. Examples of such disabilities include visual or hearing impairments, emotional disturbance, attention deficit disorder, or other learning disabilities. By distributing some portion of funding based on the number of children in poverty, the distribution would arguably account for the distribution of these conditions that might not be taken into account if a census-based distribution depended solely on total membership.

21. Among the arguments generally advanced for census-based funding are that pupil-based or cost-based special education funding systems may provide incentives for over-identifying students as eligible for special education services and for assigning them to higher cost and more restrictive placements, that a census-based funding system provides greater flexibility in use of funds and that a census-based funding system is relatively easy to administer.

22. For example, federal aid distribution prior to the reauthorized IDEA was based on the number of students receiving special education services in a state. Thus, states may have had an incentive for greater number of special education placements. While state categorical aid in Wisconsin is based on the cost of services and not the number of pupils receiving services, some would contend that districts may still have some incentive to provide more special education services, given that categorical aid does not count against a district's revenue limit.

23. Opponents of census-based funding generally raise concerns that this distribution method would provide districts with an incentive to under-identify students in need of special education or related services and that it would distribute funding in a manner that has no relation to actual costs incurred by a district for providing required services.

24. It could be argued that pupil-based and cost-based aid distribution systems do not create incentives for over-identification. For example, special education identification creates certain legal obligations for the provision of services that may discourage states from identifying

more students than actually need services under any aid distribution system. Further, under the state categorical aid distribution, districts do not receive aid for nearly two-thirds of special education costs, meaning most special education services need to be funded from within revenue limits.

25. It should be noted that CESAs and CCDEBs would not be eligible for census-based aid under the provisions of the bill, given that these entities do not claim students for membership purposes. When fully-implemented, under the bill these entities would not be eligible for any portion of the 10% of funding distributed on a census-basis. CESAs and CCDEBs, however, would remain eligible for that portion of the appropriation distributed on a cost basis, and would be eligible for the proposed supplemental aid program. While this provision could negatively impact the provision of special education services by these entities, CESAs would still be eligible to receive payments from school districts on a chargeback basis for these services and CCDEBs would still be eligible for aid from a separate categorical appropriation, funded at \$4 million annually under the bill, for services provided.

Cumulative Effect of Provisions

26. Administration staff argue that the provisions for supplemental aid for high-cost pupils and for census-based aid distribution should be viewed together rather than separately, in that the provisions together address reforms that some would argue are necessary in special education finance. Specifically, the supplemental aid provisions are designed to address high-cost, low-incidence disabilities, while the census-based provisions are designed to address low-cost, high-incidence disabilities.

27. Taken in isolation, both provisions would tend to have opposite distributional effects. The supplemental aid provision would tend to redistribute aid to those districts that have relatively high concentrations of more severely disabled children, while the census-based distribution provision would tend to redistribute aid to those districts that have a relatively higher proportion of membership than they do of special education costs. Taken together, the distributional effects of the provisions would depend in some part on the level of supplemental aid distributed and how that compares to a district's proportion of membership. In general, however, all school districts would tend to gain aid as a result of the ineligibility of CESAs and CCDEBs for the proposed census-based aid. Further, districts with a relatively high number of high-cost students and a relatively high proportion of membership would also tend to benefit.

Eligible Uses of Funding

28. Under the reauthorized IDEA, the use of federal special education funding was expanded to include the development and implementation of coordinated services systems and school-based improvement plans. Activities allowable under federal law for the implementation of a coordinated services system include: (a) improving the effectiveness and efficiency of service delivery, including the development of accountability strategies; (b) coordination of special education services and case management with services provided under other federal or state programs; (c) developing and implementing interagency financing strategies for the provision of

education, health, mental health and social services; and (d) interagency personnel development. School-based improvement plans under federal law are designed to assist educational agencies in improving educational and transitional results for children with disabilities by reforming and improving their systems for providing educational, early intervention and transitional services, including systems for professional development, technical assistance and dissemination of knowledge about best practices.

29. The Governor’s proposal would allow for consistency in the use of special education funding provided by federal and state government. However, given that the reimbursement rate of state special education funding has been declining, it could be argued that it would be better to limit state funding to the currently-authorized activities under statute, which generally allow for the provision of direct educational or related services, such as special education instruction and transportation, rather than expand the uses of such funding for activities which do not necessarily involve direct provision of services to students.

ALTERNATIVES TO BASE

A. Special Education Aids Funding Level

1. Approve the Governor’s recommendation to provide \$10,000,000 in 2001-02 and \$15,000,000 in 2002-03 for special education aids. Delete \$3,333,300 in 2001-02 and \$5,000,000 in 2002-03 for general school aids to adjust two-thirds funding.

Alternative A1	GPR
2001-03 FUNDING (Change to Base) <i>[Change to Bill]</i>	\$16,666,700 \$0]

2. Provide \$19,572,200 in 2001-02 and \$40,358,000 in 2002-03 for special education aids in order to maintain the current 35.7% reimbursement rate for aidable special education costs. Delete \$6,524,100 in 2001-02 and \$13,452,700 in 2002-03 for general school aids to adjust two-thirds funding.

Alternative A2	GPR
2001-03 FUNDING (Change to Base) <i>[Change to Bill]</i>	\$39,953,400 \$23,286,800]

3. Take no action. To maintain two-thirds funding, general school aids would increase by \$3,333,300 in 2001-02 and \$5,000,000 in 2002-03 compared to the bill.

Alternative A3	GPR
2001-03 FUNDING (Change to Base) <i>[Change to Bill]</i>	\$0 - \$16,666,700]

B. Supplemental Aid for High-Cost Pupils

1. Approve the Governor's recommendation to specify that local educational agencies would be eligible for supplemental special education aid, beginning in the 2002-03 school year, equal to 50% of prior year aidable special education costs in excess of \$50,000 for an individual pupil, after deduction of those costs otherwise aided from the categorical special education aids appropriation.

2. Modify the Governor's recommendation to specify that supplemental aid apply to costs in excess of \$40,000.

3. Modify the Governor's recommendation to specify that supplemental aid apply to costs in excess of \$30,000.

4. In addition to any of the alternatives in this section, specify that the supplemental aid threshold be adjusted annually by the percentage change in the consumer price index between the preceding March and the second preceding March.

5. Take no action.

C. Census-Based Aid Distribution

1. Approve the Governor's recommendation to require DPI to distribute the following portion of funding from the special education aids appropriation on a census basis: (a) \$10 million in the 2001-02 school year; (b) 5% of the appropriation in the 2002-03 school year; and (c) 10% of the appropriation in the 2003-04 school year and in each school year thereafter. Provide that 85% of the specified funding be distributed based on the school district's or charter school's proportion of total membership and 15% be distributed based on the school district's or charter school's proportion of total membership eligible for a free or reduced-price lunch.

2. Take no action.

D. Eligible Uses of Funding

1. Approve the Governor's recommendation to expand the allowable uses of state special education aid to include those purposes for which federal special education may be used, including the development and implementation of a coordinated services system and the design, implementation and evaluation of a school-based improvement plan.

2. Take no action.

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