



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #608

Special Education Aids (DPI -- Categorical Aids)

[LFB 2005-07 Budget Summary: Page 402, #6 & 7]

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 \$320,771,600 GPR 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 \$12,000,000 in 2006-07 for special education aids. Authorize licensed school counselors as a class of personnel eligible for cost reimbursement under the state special education categorical aid, beginning for aid distributed in the 2006-07 school year.

In addition, provide \$3,500,000 in 2006-07 and create a separate appropriation for a new categorical aid program for school districts, cooperative educational service agencies, county children with disabilities education boards, and operators of independent charter schools. Applicants would be eligible for additional aid if the applicant incurred, in the previous school year, more than \$30,000 of non-administrative costs for providing special education and related services to a child, and those costs were not eligible for reimbursement under the state special education and school age parents categorical aid, the federal Individuals with Disabilities Education Act, or the federal Medicaid program. For each child whose costs exceeded \$30,000, DPI would be required to pay an eligible applicant in the current school year an amount equal to 90% of the eligible costs above \$30,000. If appropriated funds were insufficient to pay the full amounts, DPI would be required to prorate the payments among eligible applicants. Specify that these provisions would take effect on July 1, 2006.

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 indicated 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 stated 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 Governor's Task Force on Educational Excellence recommended a substantial increase in the state's special education categorical aid in June, 2004. The Task Force report noted that the percentage of special education costs reimbursed by the state has declined from 60% in 1989-90 to 30.45% in 2003-04. The Task Force did not endorse a specific aid increase, but suggested that an increase of 15% in categorical funding would be the most desirable. Using the 2004-05 appropriation of \$320.8 million as the base level of funding, an increase of 15% would equal \$48.1 million GPR, for a total of \$368.9 million in 2005-06.

5. Based on information from DPI, the following table provides funding amounts in the special education aids appropriation, state-aidable special education costs, and state reimbursement rates under the program since 1995-96.

**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</u> <u>Reimbursement</u>
	<u>Amount</u>	<u>Change</u>	<u>Amount</u>	<u>Change</u>	<u>Rate</u>
1995-96	\$661.0		\$275.5		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	880.9	4.9	315.7	9.6	35.8
2001-02	936.8	6.3	315.7	0.0	33.7
2002-03	994.5	6.2	315.7	0.0	31.7
2003-04	1037.6	4.3	316.5	0.3	30.1
2004-05*	1083.7	4.4	320.8	1.4	29.6

*Estimated.

6. Between 1999-00 and 2003-04, aidable special education costs increased by an average of 5.3% annually. Assuming that rate of growth continues from the 2004-05 cost estimate, projected aidable costs would be approximately \$1,141.1 million in 2005-06 and \$1,201.6 million in 2006-07. Based on projected aidable costs, the Governor's recommendation for the current law special education aid appropriation would provide estimated reimbursement rates of 28.1% in 2005-06 and 27.7% in 2006-07.

7. It could be argued that general school aids, funded at \$4.3 billion in 2004-05, are a more significant resource than the special education categorical aid appropriation in the overall context of the state's efforts to equalize the tax base among school districts and provide an equal opportunity for a sound basic education under the state school finance system. AB 100 would provide an additional \$700 million for general school aids over the 2005-07 biennium. Also, the state reimbursement rate of special education costs 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.

8. The Committee might also consider that special education costs are reimbursed under the federal Individuals with Disabilities Education Act (IDEA). For 2004-05, the state received aid entitlements under IDEA total \$173 million.

9. Further, any special education costs not reimbursed by state or federal aids are included in shared costs under general equalization aids; on average, general school aids in 2004-05 equaled 57.1% of shared costs. 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.

Any remaining costs would be paid with local funding sources, primarily from property taxes. Given these available revenues, the Committee could choose to maintain special education aid at base funding. Under this alternative, the estimated state categorical reimbursement rate would decrease from 29.6% in 2004-05 to 28.1% in 2005-06, and to 26.7% in 2006-07.

10. However, because 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 to school districts for special education or related services. Although school districts currently receive substantial state aids, general school aids and the school property tax levy are subject to revenue limits. In the absence of increased categorical aids, as special education costs rise, a greater portion of funding must come from general aids and levy, meaning that less funding would be available for regular instruction. Additional special education categorical aid would be outside of revenue limits, providing more resources overall to districts.

11. Another alternative would be to maintain the current reimbursement rate from the special education aids appropriation. To maintain the 2004-05 rate of 29.6% rate in the 2005-07 biennium, the special education aids appropriation would need to be funded at an estimated \$337,765,600 in 2005-06 and \$355,673,600 in 2006-07. The increases would total \$16,994,000 in 2005-06 and \$34,902,000 in 2006-07 over base level funding. These funding levels would reflect the rise in costs to districts, while maintaining the state's current level of support for special education.

High Cost Special Education Aid

12. In June, 2004, DPI distributed \$2 million in discretionary IDEA funding to school districts that reported high cost/low incidence students, the first time this discretionary aid was used for this purpose. Under DPI's administration of these funds, any costs related to a student with special education needs were eligible except administration, including costs not aidable under other reimbursement programs, such as assistive technology and equipment, health and nursing services, and rental costs for special facilities. Other sources of funding were deducted before aid was calculated. Reimbursement was then calculated at 90% of the amount by which the total cost of providing special education and related services to an individual child exceeded \$30,000 in the prior year.

13. Districts submitted eligible claims totaling \$3,399,000, and aid was prorated at 58.84%. DPI expects to distribute another \$2 million for this purpose in 2004-05. The Department indicates that this funding has been drawn from a carryover balance in discretionary IDEA aids. In future, this source of funds would not be available without decreases in funding for other ongoing discretionary IDEA programs, such as statewide training on treatment of autism, and grants to schools to implement scientifically-based reading instruction methods.

14. In the past, districts have reported information on their total special education costs eligible for state aid, but not according to individual pupil or type of disability. A major difficulty in

the analysis of special education funding has been the lack of comprehensive and current data on per pupil special education costs. However, DPI collected per pupil cost data for the high cost program. This data is somewhat limited, because the information was originally collected 2002-03, prior to the start of the program, and not all districts had adequate information on file to apply for the aid. DPI indicates that more detailed information will be collected in 2004-05.

15. Under DPI's high cost program, in 2003-04, a total of 109 districts, three CCDEBs, and three CESAs received reimbursement for a combined 393 pupils. Staff from DPI anticipate that claims would increase in subsequent years if the program would continue, since several larger districts claimed few or no high cost pupils in the first year of aid availability. According to data reported to the Department, districts' gross costs prior to aid deductions ranged from \$31,431 up to \$137,151 for an individual pupil. The total gross costs for these 393 pupils combined was \$21.4 million, or an average gross cost of \$54,500 per pupil. Total eligible payment claims totaled \$3,399,000, after deducting other state and federal aid reimbursements and the first \$30,000 in costs for an individual pupil.

16. Based on this data, 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 could be exacerbated by the fact that the costs of certain potentially expensive services are not aidable under the state categorical aid appropriation. For example, costs for guidance counselors and school nurses may be claimed for federal IDEA aid for time spent with disabled pupils, but these costs are not eligible for state aid. 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, might be done at the expense of the district's regular education programs.

17. The Governor's Task Force on Educational Excellence recommended that a new special education categorical aid program be created, and that state aid be distributed in a manner similar to DPI's use of discretionary IDEA funding. The Task Force's final report estimated the cost of such a program at \$4 million to \$10 million annually, depending on the definition of "high cost" that would be established.

18. However, one could argue that the current law special education aid program takes into account districts with disproportionate numbers of disabled students, as required by the Court in the Vincent decision, in that it reimburses all districts for a set percentage of costs attributable to such students. Disproportionate numbers of special education pupils would presumably be reflected as disproportionate costs. Because the Court upheld the current system as constitutional, one could infer that the current special education program provides sufficient resources so that school districts offer students an equal opportunity for a sound basic education. Therefore, one could argue that the addition of a new categorical aid program would be unnecessary.

Reimbursement for School Counselors

19. Under federal law, costs for guidance counselors may be included on a school

district or other local educational agency claim for IDEA funds, for time spent working with students with disabilities pursuant to an individualized educational plan. The DPI 2005-07 agency budget request proposed adding school guidance counselors as an eligible class of personnel under the state special education categorical aid program. Under current state law, similar specialists, such as school social workers, physical and occupational therapists, and school psychologists, are eligible for reimbursement under the state special education program.

20. However, the addition of school counselors as an eligible class of personnel for reimbursement under the state special education aid program would further increase state aidable costs. Without additional state funding, the prorate of state aids would increase, and a smaller percentage of all costs would be reimbursed. DPI estimates that this provision would increase aidable costs by approximately \$11.8 million in 2006-07.

ALTERNATIVES

A. Special Education Funding Level

1. Approve the Governor's recommendation to increase funding for special education by \$12,000,000 in 2006-07. This alternative would result in estimated reimbursement rates of 28.1% in 2005-06 and 27.7% in 2006-07.

2. Provide \$16,994,000 in 2005-06 and \$22,902,000 in 2006-07 to maintain the 2004-05 cost reimbursement rate of 29.6%.

<u>Alternative A2</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	\$39,896,000

3. Delete the provision. Under this alternative, the estimated state categorical reimbursement rate would decrease from 29.6% in 2004-05 to 28.1% in 2005-06, and to 26.7% in 2006-07.

<u>Alternative A3</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	- \$12,000,000

B. High Cost Special Education Aid

1. Approve the Governor's recommendation to provide \$3,500,000 in 2006-07 and create a separate appropriation for a new categorical aid program to reimburse 90% of costs above \$30,000 for an individual child that were not eligible for reimbursement under state or federal special education programs or Medicaid.

2. Delete the provision.

<u>Alternative B2</u>	<u>GPR</u>
2005-07 FUNDING (Change to Bill)	- \$3,500,000

C. School Counselors as Eligible Personnel

1. Approve the Governor's recommendation to authorize licensed school counselors as a class of personnel eligible for cost reimbursement under the state special education categorical aid.

2. Delete the provision.

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