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Joint Committee on Finance

Paper #570

Special Education Aids (DPI -- Categorical Aids)

[LFB 2019-21 Budget Summary: Page 323, #1, #2, #3, and #4]

CURRENT LAW

Under current law, three 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 for educating and transporting pupils enrolled in special education. Base level funding is equal to \$368,939,100 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 2018-19, \$9,353,800 GPR is appropriated for high cost special education.

The supplemental special education aid program provides aid to school districts meeting the following criteria in the prior year: (a) per pupil revenue limit authority below the statewide average; (b) special education expenditures as a percentage of total district expenditures above 16%; and (c) membership of less than 2,000 pupils. Base level funding for supplemental special education is equal to \$1,750,000 GPR.

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 2018-19), school districts or independent charter schools are eligible for up to \$1,000 for each pupil who has an individualized education plan (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 2018-19) provides grant funding for special education workforce transition support services, including pupil transportation, professional development for school personnel, and employing adequate school personnel.

GOVERNOR

Provide \$75,060,900 GPR in 2019-20 and \$531,060,900 GPR in 2020-21 for special education categorical aid above base level funding of \$368,939,100 GPR. It is estimated that the additional aid would allow for reimbursement of 30% of special education costs in 2019-20 and 60% of costs in 2020-21.

Modify the appropriation for the high cost special education aid program to be sum sufficient, and modify the program to allow for reimbursement of 100% of eligible prior year costs above the \$30,000 per pupil threshold. No reestimate of the cost of this provision is made in the bill.

Eliminate the supplemental special education program with \$1,750,000 GPR beginning in 2020-21.

Provide an additional \$3,500,000 GPR annually for transition readiness grants.

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 and independent charter schools totaled \$192.1 million in 2018-19. 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 2017-18, schools and CESAs received \$60.6 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 2017-18, schools and CESAs received \$13.8 million in federal funds for administration.

4. The majority of special education funding is provided by the state, with three programs reimbursing a portion of the cost of providing special education services to pupils: the primary special education aid appropriation (\$368.9 million GPR in 2018-10), the high cost special education program

(\$9.4 million GPR in 2018-19) and the supplemental special education program (\$1.8 million GPR in 2018-19).

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, 2009-10 to 2018-19
(\$ in Millions)**

	Child Count	Special Education Aid		
		Prior Year Aidable Costs	Appropriation	Proration
2009-10	125,301	\$1,323.0	\$368.9	27.9%
2010-11	124,722	1,312.3	368.9	28.1
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	N.A.	1,435.4	368.9	25.7
2018-19	N.A.	1,456.9	368.9	25.3*

*Estimated

7. Between 2009-10 and 2018-19, special education costs aidable under the primary special education appropriation increased by an average of 1.1% annually. In its agency budget request, DPI estimated that costs would increase by 1.5% annually in 2018-19, 2019-20, and 2020-21. Using that estimate, projected aidable costs would total \$1,478.7 million in 2019-20 and \$1,500.9 million in 2020-21. Based on this estimate of aidable costs, the Governor's recommendation for the special

education aid appropriation would provide reimbursement rates of 30.0% in 2019-20 and 60.0% in 2020-21. Each 1% increase in the proration rate costs approximately \$15 million GPR annually.

8. 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 that "will equip them for their roles as citizens and enable them to succeed economically and personally." 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. Between 2000-01 and 2018-19, the total amount of special education funding increased by approximately 20%, while aidable costs increased by 65%.

9. 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.

10. 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 or no special education costs.

11. It could be the case that a significant increase in state special education funding could limit flexibility in future state budgets. Some have expressed concern that 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 2017-18, Wisconsin received approximately \$235 million in federal IDEA basic state grant, preschool grant, and infant and toddler funds.) 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.

12. 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.

13. The Blue Ribbon Commission on School Funding recommended a substantial increase in the state's special education categorical aid in its January, 2019, final report. The bipartisan Commission, which consisted of sixteen members, including legislators, school administrators, and other stakeholders, held public hearings and informational hearings throughout 2018 in locations throughout the state. During public hearings, the Commission heard testimony regarding increasing special education costs and the decreasing proration rate, which results in school districts using their general funds to cover a portion of special education costs.

The Commission recommended a range of options that would increase the proration rate in the special education aid appropriation in the existing sum certain appropriation. The recommendations ranged from \$45.1 million GPR to \$119.0 million GPR in 2019-20, or a proration rate of 28% to 33%, and from \$81.3 million GPR to \$531.1 million GPR in 2020-21, or a proration rate of 30% to 60%. Alternatively, the Commission recommended an approach under which the appropriation would be modified to be sum sufficient, and prior year aidable costs would be reimbursed each year at a rate set in statute. Under this approach, the appropriation would reimburse 26% of eligible costs in 2019-20, and that percentage would increase by one percentage point in each of the next ten years, until it reaches 36% in 2029-30. Based on DPI's cost projections, an additional \$15,533,100 GPR in 2019-20 and \$36,309,500 GPR in 2020-21 would be required compared to base level funding under this proposal. [Alternative 1b]

14. Other states fund special education in a number of ways. According to the Education Commission of the States (ECS), the most common funding model uses multiple pupil weights based on factors such as the severity or type of a pupil's disability, or the type of classroom or other resources provided to the pupil. Other states use a flat weight system, under which districts receive additional funding for every pupil with disabilities, regardless of the type or severity of the disability. These

weights can be applied as a dollar amount for each special needs pupil, or as a multiplier in pupil counts used to calculate other forms of state aid.

15. It could be argued that a weighting system would be a simplified method of distributing special education aid, because it does not require districts to document eligible special education expenditures in the same way that a reimbursement model does. On the other hand, districts still would be subject to federal reporting requirements under IDEA and other applicable federal law. Additionally, it could be argued that a weighting model, particularly a flat weight system, is a less equitable method of distributing special education funding because a number of factors may affect a district's total special education expenditures other than its count of special needs pupils. In particular, the level of special education services required for each pupil varies significantly depending on the type and severity of that pupil's disability. Additionally, cost to provide the same service may vary across districts; for example, a district located in an urban area may be able to hire full-time staff to provide specialized services to pupils at a lower cost than rural areas that must hire part-time contractors for the same services. It might also be the case that a weighting system could encourage over-identification of pupils with disabilities, particularly if districts can receive the full weighted payment amount for pupils whose needs are eligible for special education services, but to whom services could be provided at a low cost.

16. Other funding models used by states include a census-based system, in which a statewide percentage of special needs pupils is determined, and districts receive additional funding based on that percentage of their total enrollment; a resource-allocation model, under which states distribute funding for specific resources (such as special education teachers or aides) required based on the number of special education pupils in each district; and block grants, which provide districts with funding to use for special education based on, for example, average special education expenditures in previous years. ECS indicates that seven states use a cost reimbursement model for special education funding, including Wisconsin, and 13 states have a program that provides additional funding for high cost pupils, often in addition to another funding mechanism.

17. During public testimony on the bill, the Committee heard testimony supporting additional funding for special education. Several members of the public identified a 30% proration rate as a realistic but still significant increase. To reach this target, the Committee could consider providing \$75,060,900 in 2019-20 and \$81,060,900 in 2020-21. [Alternative 1c]

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 has continued to allocate a portion of its IDEA Part B grant funding to increase the reimbursement rate under the program in each year since 2003-04 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. In 2017-18, an additional \$2.3 million in federal funds raised the reimbursement rate from 77.1% with state funding only to 96.3% with state and federal funding combined. DPI has indicated that federal requirements and the administrative difficulty of using both state and federal funds for the program are burdensome. As a result, it intends to reallocate these federal funds to school districts through IDEA Part B formula grants beginning in 2019-20.

20. Table 2 provides funding amounts in the high cost special education aids appropriation, as well as the number of pupil 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, 2009-10 to 2018-19

	<u>Appropriation</u>	<u>Districts Receiving Aid</u>	<u>Aidable Costs*</u>	<u>State Reimbursement Rate</u>
2009-10	\$3,500,000	168	\$11,110,900	31.5%
2010-11	3,500,000	159	10,526,400	33.2
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	N.A.	N.A.	N.A.

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

21. Under the bill, the appropriation for the high cost special education aid program would be modified to be sum sufficient, and the program would be modified 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. Based on costs eligible for reimbursement under the program, and assuming a growth rate of 1.5% annually, it is estimated that total costs under the program could be equal to \$13,710,000 in 2019-20 and \$13,915,700 in 2020-21. As a result, if the Committee chooses to approve the proposal in the bill, it would need to provide \$4,356,200 GPR in 2019-20 and \$4,561,900 GPR in 2020-21 to

fund the estimated costs. [Alternative 2a]

22. It could be argued that a reimbursement rate of 100% would not provide sufficient incentive for school districts to constrain costs related to high needs pupils. Although only services or accommodations required by a pupil's IEP are eligible for reimbursement under the program, school districts may still have some flexibility in setting salaries, selecting equipment and materials, and other decisions that could affect costs. The Committee may wish to consider maintaining the 90% reimbursement rate, which would require school districts to fund the remaining 10% of costs from other state aid or local levy. [Alternative 2b]

Supplemental Special Education Aid

23. The supplemental special education aid program provides aid to school districts meeting the following criteria in the prior year: (a) per pupil revenue limit authority below the statewide average; (b) special education expenditures as a percentage of total district expenditures above 16%; and (c) membership of less than 2,000 pupils. Under the program, aid is calculated proportionately based on each district's expenditures for special education in the prior school year, except that each district cannot receive less than \$50,000 or more than \$150,000 in any year. A district may receive either supplemental special education aid or high cost special education aid in a given year, but not both. The program was created under 2007 Act 20, and aid was first provided in the 2008-09 school year.

24. Table 3 shows the amount appropriated for supplemental special education in each year between 2009-10 and 2018-19, as well as the number of districts receiving aid in each year. Funding has been fully allocated in every year, except in 2013-14, when \$100,000 lapsed to the general fund.

TABLE 3

Supplemental Special Education Aid, 2009-10 to 2018-19

	<u>Appropriation</u>	<u>Districts Receiving Aid</u>
2009-10	\$1,750,000	20
2010-11	1,750,000	26
2011-12	1,750,000	14
2012-13	1,750,000	13
2013-14	1,750,000	11
2014-15	1,750,000	12
2015-16	1,750,000	7
2016-17	1,750,000	12
2017-18	1,750,000	12
2018-19	1,750,000	N.A.

25. Under the bill, the supplemental special education program would be eliminated beginning in 2020-21. In the Executive Budget Book, the Governor indicated that the intent behind

eliminating the program is to repurpose the funds to the primary special education aid appropriation.

26. On the other hand, it could be argued that the amount of funding in the appropriation for supplemental special education represents a small amount of the increase in the special education appropriation. Although aid under the program is distributed to a relatively small number of districts, the funding could be significant particularly to the small, low-revenue districts targeted by the program. As a result, the Committee may wish to consider maintaining the program. [Alternative 3b]

27. In its agency budget request, DPI expressed a number of additional concerns about the program, including the following: (a) aid under the program is unpredictable from year to year, given the complex cost calculations used for eligibility and that aid can be affected by increases in non-instructional costs, such as equipment or construction, and eligibility calculations for other districts; (b) the timing of the aid payment can impact districts' ability to meet their federal maintenance of effort requirements, because audited prior year comparative cost data is not available until April and eligibility for the program is not determined until early May; and (c) because the amount of aid received by each district under the program cannot be less than \$50,000 or more than \$150,000, the percentage of expenditures reimbursed varies by district, which disproportionately benefits some districts and disadvantages others.

Transition Readiness Grants

28. 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.

29. 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.

30. 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.

31. DPI indicates that more than 130 applications were received in the first year of the program requesting approximately \$9 million in grant funding, and awards were given to 37 districts. Funding was requested 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.

32. The bill would provide \$3,500,000 GPR annually above base level funding of \$1,500,000 for competitive grants for special education workforce transition support services. This level of funding would have funded approximately 56% of requests for funding received in 2018-19.

ALTERNATIVES

1. Special Education

a. Approve the Governor's recommendation to provide \$75,060,900 in 2019-20 and \$531,060,900 in 2020-21 for special education categorical aid.

ALT 1a	Change to	
	Base	Bill
GPR	\$606,121,800	\$0

b. Implement an option recommended by the Blue Ribbon Commission on School Funding under which the special education appropriation would be modified to be sum sufficient and would reimburse specified percentages of prior year aidable costs each year. Specify that the appropriation would reimburse 26% of eligible costs in 2019-20, and that percentage would increase by one percentage point in each of the next 10 years, until it reaches 36% in 2029-30. Based on DPI's cost projections, provide an additional \$15,533,100 in 2019-20 and \$36,309,500 in 2020-21.

ALT 1b	Change to	
	Base	Bill
GPR	\$51,842,600	- \$554,279,200

c. Provide \$75,060,900 in 2019-20 and \$81,060,900 in 2020-21, which would result in an estimated proration rate of 30% in each year.

ALT 1c	Change to	
	Base	Bill
GPR	\$156,121,800	- \$450,000,000

- d. Take no action.

ALT 1d	Change to	
	Base	Bill
GPR	\$0	-\$606,121,800

2. High Cost Special Education

- a. Approve the Governor's recommendation to 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. Reestimate funding in the appropriation to provide an additional \$4,356,200 in 2019-20 and \$4,561,900 in 2020-21.

ALT 2a	Change to	
	Base	Bill
GPR	\$8,918,100	\$8,918,100

- b. Modify the appropriation to be sum sufficient with the current reimbursement of 90% of eligible prior year costs above the \$30,000 per pupil threshold. Reestimate funding in the appropriation to provide an additional \$2,985,200 in 2019-20 and \$3,170,300 in 2020-21.

ALT 2b	Change to	
	Base	Bill
GPR	\$6,155,500	\$6,155,500

- c. Take no action.

3. Supplemental Special Education

- a. Approve the Governor's recommendation to eliminate the supplemental special education program beginning in 2020-21.

ALT 3a	Change to	
	Base	Bill
GPR	-\$1,750,000	\$0

- b. Take no action.

ALT 3b	Change to	
	Base	Bill
GPR	\$0	\$1,750,000

4. Transition Readiness Grants

a. Approve the Governor's recommendation to provide an additional \$3,500,000 above base level funding of \$1,500,000 for transition readiness grants.

ALT 4a	Change to Base	Bill
GPR	\$7,000,000	\$0

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

ALT 4b	Change to Base	Bill
GPR	\$3,000,000	-\$4,000,000

c. Take no action.

ALT 4c	Change to Base	Bill
GPR	\$0	-\$7,000,000

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