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SPECIAL EDUCATION PROGRAM REVIEW

Report to the Legislative Commission

on Planning and Fiscal Policy

December 18, 1990

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SPECIAL NOTE

This report is the product of the work group consisting of legislative and executive agency staff listed on the cover. However, because the report contains recommendations to the legislative and executive branches of government, House Research policy prevents Lisa Larson from signing on as an author. Ms. Larson did participate in the work group.

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PURPOSE

Minnesota state and federal law require that free and appropriate special education programs and services be provided to all handicapped persons under age 21. The comprehensiveness of federal special education laws leaves the state with only limited ability to develop special education programs or services. The purpose of this report is to point out the relationship between the state's special education funding formula and the issues of:

- (1) the mislabelling and overrepresentation of certain student groups
- (2) the lack of flexibility in providing special education programs and services
- (3) the underfunding of some special education programs and services.

THE PROBLEM

The work group assigned the task of reviewing Minnesota's special education program has identified the method of funding as being the most significant problem. While a change in structure of the state's special education program may address certain aspects of the three issues outlined above, a change in the funding formula is likely a more comprehensive way to resolve the issues. Following is a description of the three major negative impacts and their corresponding programmatic symptoms.

NEGATIVE IMPACTS

- 1) The desire to reduce overcrowding in regular classrooms and the uncertain eligibility requirements entitling districts to receive additional funds for the costs of special education programs and services may provide incentives for districts to mislabel or overrepresent certain student groups.

PROGRAMMATIC ISSUE

There are groups of special education students who are not adequately served in either regular or special education.

* One such group of students is made up of those labeled and treated as "Learning Disabled". A learning disabled student is unable to learn and progress at normal rates through the instruction provided in regular class curriculum - the individual has a disorder affecting learning relative to potential. In Minnesota, students labeled learning disabled comprise approximately 40% of all students with handicaps receiving services in the public schools. **The problem is that there are significant numbers of students who exhibit a lack of progress but are not technically learning disabled, who may be unnecessarily placed in special education.** Although placing them in handicapped programs can help reduce student overcrowding in regular classrooms, mislabelling puts unnecessary demands on the state special education funding appropriations. Moreover, students' development may be harmed as they struggle to overcome the social implications of incorrectly being labelled "Learning Disabled". Mislabelling occurs due to the difficulty of accurately identifying a true learning disability; due to the inability of some teachers to handle "problem" children, and possibly due to incentives for program placement hidden within the special education funding formula. The amount of special education funds a district receives is in part determined by the number of special education students enrolled in the district: districts can receive more state funds as the need for special education staff increases. Districts may not "make money" on these students as full costs are not recovered in the formula, but even a partial reimbursement reduces the net cost of the service. The state imposes no financial penalty on districts for

incorrectly placing nonhandicapped students in special education programs.

* A second group of students not adequately served in either system is made up of those referred to special education due to an "Emotional and/or Behavioral Disorder". The term emotional/behavioral disorder refers to a condition characterized by severely deviant, disruptive, aggressive, withdrawn or anxious behaviors. The condition adversely affects educational performance due to atypical communication styles and an inability to build or maintain satisfactory interpersonal relations. The problem is that while this is the fastest growing category of handicapped students, there are no effective or comprehensive state services for them. Although these students are less often technically mislabelled, they are placed in special education because there is no other available option or because a lack of early identification and prevention programs ultimately makes special education the only option. A further complicating factor is the lack of coordination among health, education and human service programs. This lack of coordination results in ineffective service delivery for children and an inefficient drain on state appropriations.

2) The structure of the funding formulas leads to inefficiencies and unnecessary costs.

PROGRAMMATIC ISSUE

A lack of flexibility in the way special education programs and services are funded encourages inefficient use of teachers and fails to recognize different levels of program and service costs.

* To be eligible to receive aid for the cost of a special education teacher, a district must show that the special education teacher's time is devoted to instructing handicapped students in the regular classroom, or to instructing a handicapped student individually or to instructing a small group of handicapped students outside the regular classroom. A district is ineligible to receive aid for any time that the special education teacher devotes to instructing nonhandicapped students, even in those instances when handicapped and nonhandicapped students alike would benefit from the instruction. Because the aid will cover only very specific services, districts, attempting to maximize special education revenue, have segmented the duties of regular teachers from those of special education teachers. This separation of duties results in unnecessary costs and precludes the development of innovative and cost effective classroom programs that may improve student achievement. In addition, it allows handicapped students to be singled out by staff and other students as requiring special instruction.

* Minnesota's special education funding formula is based on the notion of paying for the excess costs of providing special education services. However, it fails to reflect the incremental differences in costs districts incur in providing special education programs and services to handicapped students with various kinds and degrees of disabilities. The formula treats all costs of special instruction equally, regardless of whether the handicapped student requires highly individualized tutoring in a number of academic areas or requires only a limited amount of small group instruction in a single academic area. The result is that the amount of additional funding districts receive does not reflect the true costs of the special education programs and services being provided.

3) The basis for funding is no longer directly related to service provision, which has led to the underfunding of some costly services.

PROGRAMMATIC ISSUE

The amount of revenue generated by the formula is insufficient to cover the costs districts incur in providing services to the severely handicapped. The number of students requiring intensive, individualized attention is increasing due to the advances of medical science. Infants who would have died at or near birth ten years ago and those born with drug addictions are now kept alive, but often suffer from

severe mental and physical handicaps. A separate categorical aid, (special education - residential), was created to provide districts with additional funds for children who reside in and receive services from approved private or public residential facilities. Increasingly, however, districts are not eligible for the residential aid originally intended to meet the needs of this category of students because families are not placing severely handicapped children in residential facilities. The problem is that no new aid policies have been developed to recognize the non-residential, but costly, service options for these students. Programmatic needs requiring the provision of instruction and services within the home school, have outgrown the funding method. One severely handicapped child can have a major, damaging impact on the budget of a school district, and there is currently no state aid designed to reflect the additional costs associated with that child - costs which greatly exceed any general education or special education aid the child may generate.

RECOMMENDATIONS

Given the limited time period allowed for this review of Minnesota's special education program, an in depth analysis of one particular issue was not undertaken. Instead, emphasis was placed on identifying the most important problem and its implications and symptoms. Additional study of these and related issues may help to:

- 1) understand the operation and impact of the current special education funding formulas.
- 2) understand the operation and impact of intermediate district revenue, education district revenue, federal funding, and any other revenue source that affects special education.
- 3) develop a funding mechanism based on services delivered, that does not result in the mislabelling or overrepresenting of students, unnecessary costs , or underfunding of some programs and services.

When studying state special education policy, it may be helpful to consider the work being done by the Organization Task Force of the Legislative Commission on Public Education. That group is proceeding with the notion that structural changes are needed in the "regular" education system, and any recommendations for change will impact the provision of special education services. It is presumably inadequacies in "regular" education that necessitated the formation of special education, so perhaps the entire system can be designed to best meet the needs of all students.

BACKGROUND

THE FEDERAL CONNECTION

There are many stringent federal rules and regulations in the area of special education services. Advocacy groups maintain that such rules are necessary to ensure the continuation of services, and the federal government has adopted a system which frequently monitors state activities to ensure conformance with set regulations. Noncompliance by the state results in a loss of federal special education dollars. Most state legislation regarding special education is in direct response to federal requirements, which allow only limited flexibility for state level innovation. State policy makers have some discretion in the specifics of program delivery and funding, but must always consider the federal implications before instituting new policies or modifying existing practices. (See Appendix A for a history of federal allocations to Minnesota.)

PROGRAM DESCRIPTION/CHARACTERISTICS

Responsibility - State and federal legislation specifically require that every school district provide special instruction and services as needed by students with handicaps. Minnesota state law consistently assigns the district of residence responsibility for providing (or arranging for the provision of) special education instruction and services, and for paying the costs of such services.

Age of Students Served - The age of children to which districts must first make instruction and services available is birth for all disability categories, and the support must continue until the age of 21 or completion of a secondary program.

Disabilities Served - In addition to early childhood services, Minnesota recognizes eleven disability categories as eligible to receive services. These categories are: speech handicapped, mildly mentally handicapped, moderate/severe mentally handicapped, physically handicapped, hearing impaired, deaf-blindness, learning disabled, autistic, emotionally disturbed, severely multiply handicapped, and other health impaired. (See Appendix B for definitions of disability categories.)

Referral into Special Education - Referral of a student to special education classes is done by the student's teacher. Any action based on that referral is then taken with the understanding and consent of the parent. State law requires that such referrals be made only after documentation of two alternative instructional efforts to ensure that the reason for the student's difficulty is not use of an inappropriate teaching style.

Individualized Education Plan - In all cases, the model of instruction and level of service selected for each student with a handicap is decided using a process that involves team development of an Individualized Education Plan (IEP) for each student. Through these plans, the team of parents, teachers, support personnel and school administrators specify:

- the pupil's current level of performance,
- an identification of appropriate goals and objectives,
- a description of the necessary services, including the environment in which those services will be provided,
- a schedule for periodic review, and
- criteria for evaluating the pupil's performance.

Methods of Service - M.S.120.17, subd. 2 provides nine methods by which school districts may elect to provide special education instruction and services for students between the ages of 5 and 21, and three methods for providing the instruction and services for students under the age of five. The term "methods" refers to service characteristics relating to place of instruction (in other states, in a residential school, in the home, and so on); to delivery of services (special education cooperatives, contracted public or private agencies, etc.), and to the structure of the services (in connection with regular elementary and secondary classes, programs in which handicapped children are served with nonhandicapped children, etc.).

Levels of Service - In an effort to ensure the availability of services to meet student needs at all levels of severity, a model that specifies six levels of service (based on the allowable methods specified in statute) was adopted into State Board of Education rule. The levels range from full-time in regular education (Level One) to full-time in a residential setting (Level Six). (See Appendix C for definitions of the levels of service.) The emergence of the concept of Least Restrictive Environment (LRE) has caused problems in defining when a student should receive services and at which level. The basic intent of the LRE theory is to keep students in the most "normal" setting in which it is possible to meet the student's educational needs. Controversy and disagreement over placement arise due to the perceived hierarchical arrangement of the levels, and the different understandings regarding the definitions of those levels.

PROGRAM FUNDING

Formula Description

Minnesota maintains special education funding for eleven disability categories primarily through one major aid program. Within the large program entitled Special Education - Regular, there are three types of special education aid paid to school districts.

1. **Aid For Salaries of Essential Personnel:** School districts receive revenue for the salaries of essential special education personnel. Essential personnel are defined as special education teachers, supervisors, directors, related services and support services personnel such as social workers, psychologists, management aides, interpreters and braillists. Minnesota Department of Education (MDE) approval of programs, personnel, and budgets is required. The formula for payment of aid for essential personnel for each year is the lesser of 60% of salary or \$16,727 per full time staff. Districts may levy an amount equal to the difference between 66% of salary and the state aid paid for those salaries.
2. **Aid For Supplies and Equipment:** State aid is paid to districts for the costs of special instructional supplies and equipment necessary to provide special education services to handicapped children. The supplies and equipment are limited to those items which are in addition, or supplementary to those items normally provided to pupils in the regular education program. The formula for determining the amount of aid per district is 47% of the eligible costs of the supplies and equipment, not to exceed an average of \$47 per handicapped pupil served.
3. **Aid For Contracted Services:** School districts are authorized to purchase services for pupils with handicaps from public and private agencies. When districts choose this option, state aid is paid on the basis of 52% of the difference between the contracted cost and the general education formula allowance for the pupil (\$2,953 for FY 1991).

Total state aid appropriations for Special Education for the 1990/1991 biennium were \$382,291,900. (See Appendix D for a history of special education appropriations, expenditures and levies).

Services Funded

Through its funding formulas, Minnesota has set in place a policy of funding the supplemental costs of providing special education services. The formulas are based on the notion that there are easily identifiable excess costs associated with these services, and the state should recognize and pay for those excess costs. The components for salary, equipment and supplies, and contracted services were included for funding because they are costs the district would not face if it did not provide special education services.

(In addition to the basic formula described above, the state also partially funds a group of excess costs related to residential placement, summer school, and english language training.)

None of the funding formulas are based on the actual type of service received. For example, they do not directly recognize the cost differential between staff time spent in highly individualized instruction and time spent in classroom instruction.

District Requirements for Payment of Aids

M.S. 124.32, subd. 7 requires each district providing special education instruction and services to handicapped children to submit an application for approval of these programs and their budgets for the next school year to the Commissioner of Education by June 1 of each year. The application must include an explanation of the costs proposed as eligible for state aid and of the estimated number and grade level of handicapped children in the district who will receive special instruction and services during the next school year. The Commissioner must review each application to determine whether the program and the personnel to be employed in the program are actually necessary and essential to meet the district's obligations to provide special instruction and services. The Commissioner must not approve aid for any program or for the salary of any personnel determined to be unnecessary or unessential on the basis of this review. The Commissioner may also withhold all or any portion of the aid for programs which receive grants from federal funds, or special grants from other state sources. By August 31, the Commissioner must approve, disapprove or modify each application, and notify each applying district of the action and of the estimated amount of aid for the programs.

In developing plans for special education programs, school districts which intend to provide services for handicapped students within the regular classroom are encouraged to consider the size of the regular class and to provide support services necessary to insure successful mainstreaming.

Districts will receive increases in their state special education funding in one of two ways: 1) if the approved salaries and equipment/program costs are higher than in prior years, and 2) if the legislature changes the funding formulas in such a way as to recognize more of the excess costs. The first increase would result from information provided in the annual applications to the Commissioner, while the second type of increase would result from initiatives and testimony leading to legislative action.

APPENDIX A

FEDERAL SPECIAL EDUCATION ALLOCATIONS TO MINNESOTA

AID FOR HANDICAPPED (Dollars in Thousands)	<u>Allocation</u>	<u>Percent Change</u>
1983-1984 School Year	\$ 20,939.3	
1984-1985 School Year	23,000.0	9.8%
1985-1986 School Year	24,292.2	5.6%
1986-1987 School Year	24,087.1	-.9%
1987-1988 School Year	31,769.7	31.9%
1988-1989 School Year	32,819.9	3.3%
1989-1990 School Year	32,897.0	.2%
1990-1991 School Year	33,607.0	2.2%

APPENDIX B**DISABILITY DEFINITIONS**

Autism - Autism is a life-long developmental disability which occurs in the first three years of life. It is a behaviorally defined syndrome characterized by an uneven developmental profile and disturbances in interaction, communication, and perceptual organization. Autism occurs on a continuum from mild to severe. It occurs by itself or in association with other disorders such as Mental Retardation or Fragile X Syndrome. It may include the diagnosis of Pervasive Developmental Disorder. Because of the low incidence and complexity of this disability, professionals with experience and expertise in the area of autism need to be included on the team determining the disability and educational program.

Deaf-Blindness - Deaf-blindness means medically verified visual impairment coupled with medically verified hearing impairment which, together, interfere with acquiring information or interacting in the environment. Both conditions need to be present simultaneously and meet the criteria for both vision and hearing impairments.

Developmental/Adapted Physical Education - Specially designed physical education instruction and services are available for pupils with handicaps who have a substantial delay or disorder in physical development. Developmental/Adapted Physical Education:Special Education instruction for pupils aged 3-21 may include development of physical fitness, motor fitness fundamental motor skills and patterns, skills in aquatics, dance, individual and group games, and sports.

Emotional/Behavioral Disorders - Emotional/behavioral disorder means an established pattern characterized by one or more of the following behavior clusters: 1) severely aggressive or impulsive behaviors, 2) severely withdrawn or anxious behaviors, general pervasive unhappiness, depression or wide mood swings, 3) severely disordered thought processes manifested by unusual behavior patterns, atypical communication styles and distorted interpersonal relationships. The condition may include but is not necessarily limited to disorders such as schizophrenia, depression, anxiety disorders, attention deficit disorders, or other sustained disturbances of conduct and or adjustment. The established pattern adversely affects educational performance and results in either an inability to build or maintain satisfactory interpersonal relations necessary to the learning process with peers, teachers, and others, or failure to attain or maintain a satisfactory rate of educational or developmental progress which cannot be improved or explained by addressing intellectual, sensory, health, cultural, or linguistic factors.

Hearing Impaired - Hearing impairment means a diminished sensitivity to sound which is expressed in terms of standard audiological measures. Hearing impairment has the potential to affect educational, communicative or social functioning which may result in the need for special education instruction and related services.

Mentally Handicapped: Mild-Moderate/Moderate-Severe - Mentally handicapped refers to pupils with significantly subaverage general intellectual functioning resulting in or associated with concurrent deficits in adaptive behavior that may require special education instruction and related services.

Other Health Impaired - Other health impaired means a medically diagnosed chronic or acute health condition which may adversely affect academic functioning and result in the need for special education instruction and related services. Examples of health impairment include but are not limited to epilepsy, cancer, traumatic brain injury, Tourette syndrome, juvenile rheumatoid arthritis, and cystic fibrosis.

Physically Impaired - Physically impaired means a medically diagnosed chronic physical impairment, either congenital or acquired, which may adversely affect physical and/or academic functioning and result in the need for special education and related services.

Severely Multiply Handicapped/or Impaired - Severely multiply handicapped means a pupil who has severe learning and developmental problems resulting from two or more disability conditions determined by assessment pursuant to 3525.2500 which are not addressed by criteria in this rule.

Specific Learning Disability - A specific learning disability means a condition within the individual affecting learning, relative to potential. It is manifested by interference with the acquisition, organization, storage, retrieval, manipulation, and/or expression of information so that the individual does not learn at an adequate rate when provided with the usual developmental opportunities and instruction from a regular school environment. A specific learning disability is demonstrated primarily in academic functioning, but may also affect self-esteem, career development and life adjustment skills.

Speech/Language Impairments

A. Fluency Disorder - Fluency disorder means the intrusion/repetition of sounds, syllables and words, prolongations of sounds, avoidance of words, silent blocks, or inappropriate inhalation, exhalation, or phonation patterns. These patterns may also be accompanied by facial and body movements associated with the effort to speak. Fluency patterns that can be attributed only to dialectical/cultural/ethnic differences or to the influence of a foreign language should not be identified as a disorder.

B. Voice Disorder - A voice disorder means the absence of voice or presence of abnormal quality, pitch, resonance, loudness, or duration. Voice patterns that can be attributed only to dialectical/cultural/ethnic differences or to the influence of a foreign language should not be identified as a disorder.

C. Articulation Disorder - Articulation disorder means the absence of or incorrect production of speech sounds that are developmentally appropriate. Articulation patterns that can be attributed only to dialectical/cultural/ethnic differences or to the influence of a foreign language should not be identified as a disorder.

D. Language Disorders - Language disorder means a breakdown in communication as characterized by problems in expressing needs, ideas, or information which may be accompanied by problems in understanding. Language patterns that can be attributed only to dialectical/cultural/ethnic differences or to the influence of a foreign language should not be identified as a disorder.

APPENDIX C**SCHOOL AGE LEVELS OF SERVICE**

Level One - In level one, a nonhandicapped pupil is placed in a regular classroom and does not receive special education, or is not enrolled in school. This level includes assessment services, monitoring, observation and follow-up.

Level Two - In level two a pupil is placed in a regular classroom. Instruction and related services are provided indirectly through the regular teacher, teachers, parents, or other persons who have direct contact with the pupil. The consultation and indirect services include ongoing progress review; cooperative planning; demonstration teaching; modification and adaptation of the curriculum, supportive materials, and equipment; and direct contact with the pupil for monitoring, observation, and follow-up.

Level Three - In level three a pupil receives direct instruction from a teacher, or related services from a related services staff member for less than one-half of the day. Consultation and indirect services are included.

Level Four - In level four a pupil receives direct instruction from a teacher for one-half day to less than full time. Consultation and indirect services are included.

Level Five - In level five a pupil receives full-time direct instruction from a teacher within a district building, day school, or special station or facility. Integrated activities solely for socialization or enrichment, and related services are excluded when determining full time. Consultation and indirect services are included.

Level Six - In level six a pupil is placed in a residential facility and receives direct instruction from a teacher. Consultation and indirect services are included.

APPENDIX D

SPECIAL EDUCATION EXPENDITURE AND REVENUE TRENDS
(Including Summer Programs, Excluding Federally Funded Programs)

<u>Fiscal Year</u>	<u>Expenditure</u>	<u>State Aid *</u>	<u>Levy Authority</u>	<u>Aid + Levy Revenue</u>
1983-84	188,352,000	125,868,400	0	125,868,400
1984-85	209,639,000	143,291,600	0	143,291,600
1985-86	232,169,000	145,938,400	14,223,500	160,161,900
1986-87	261,729,000	156,724,800	22,781,500	179,506,300
1987-88	287,738,000	158,303,100	25,864,800	184,167,900
1988-89	308,951,500	163,612,400	36,382,600	199,995,000
1989-90e	330,598,000	166,872,800	47,937,500	214,810,300
1990-91e	352,380,100	171,419,100	57,136,900	228,556,000

* Prorated categorical aid; excludes general education aid attributable to special education students

- Information provided by the Minnesota Department of Education, Education Finance and Analysis