



North Dakota Legislative Council

Prepared for the Special Education Funding Committee
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SPECIAL EDUCATION FUNDING STUDY - BACKGROUND MEMORANDUM

Section 1 of House Bill No. 1547 (2025) ([Appendix A](#)) requires Legislative Management to establish and provide staffing and administrative services to a committee to study special education funding. The committee may include eight members of the Legislative Assembly, four members from the House of Representatives and four members from the Senate, appointed by the Legislative Management; two multiunit special education directors; one large school special education director; one special education coordinator; one superintendent of a large school; one superintendent of a small or midsize school; one business manager of a large school; and one multiunit special education business manager. The Chairman of Legislative Management may add temporary, nonvoting members to the committee, as deemed necessary by the committee, to serve without compensation. The study must include a comprehensive review of special education funding models, including student contracts, high-cost students, residential placement, and reimbursement under the Medicaid program. The Chairman of the Legislative Management approved the addition of one nonvoting member to the committee to provide a total of nine nonvoting members.

BACKGROUND INFORMATION

In 1951, the Legislative Assembly created an Advisory Council on Special Education consisting of the Superintendent of Public Instruction, the State Health Officer, the Director of the Division of Child Welfare of the Public Welfare Board, the Director of the Division of Vocational Rehabilitation of the Board of Higher Education, the Superintendent of the State School for the Deaf, the Superintendent of the State School for the Blind, and the Superintendent of the Grafton State School. The advisory council was given specific duties such as establishing a general state policy regarding special education and endeavoring to ensure a cooperative special education program characterized by the coordination of all available services with which to assist exceptional children. The Director of Special Education, who was employed by the Superintendent of Public Instruction, was directed to "assist the school districts of the state in the inauguration, administration, and development of special education programs, establish standards and provide for the approval of certification of schools, teachers, facilities, and equipment." Larger than ordinary per student payments were required to be made to school districts offering special education programs.

A 1959-60 interim study cited three main problems associated with the delivery of special education--lack of space for instruction, shortage of trained personnel, and inadequacy of available funds. It was the opinion of the interim committee that if a substantially increased special education program were to be provided, it would have to be financed primarily from funds by local governments and not the state. The committee also found that county-level special education programs would be the most desirable from a financial perspective and would best utilize the available personnel and facilities. Since many school districts did not have a sufficient number of children in need of special education services to warrant programs within their districts, the committee suggested that a county board of special education should be given the authority to contract with school districts both within and outside the county for special education facilities.

In response to the recommendations made by the interim committee, the 1961 Legislative Assembly enacted legislation that authorized the establishment of county boards of special education, funded by the boards of county commissioners out of county general funds, or if approved by a majority of the county electorate, by a county special education levy of not more than three mills.

For the next 12 years, the delivery of special education services in North Dakota remained structurally unchanged. However, in House Bill No. 1090 (1973), the Legislative Assembly required all school districts to submit a plan for implementing special education services to the Superintendent of Public Instruction by July 1, 1975, and to implement special education programs by July 1, 1980.

This mandate spurred considerable growth in the provision of special education services. Some school districts extended their special education programs while many others, not having made prior arrangements for special education services, took the first steps toward implementing special education programs. The amount of state funding assistance for special education was also increased in 1973, with the legislative objective being the expansion of special education programs in terms of both scope and availability.

The evolvement of special education in North Dakota did not cease in the mid-1970s. However, it did come under the umbrella of federal legislation.

Federal Law

Section 504 of the federal Rehabilitation Act of 1973 is a civil rights law that prohibits discrimination in public schools, institutions of higher education, and other state and local education agencies that receive federal funding. Section 504 requires schools to provide accommodations and modifications for students and educators with disabilities to ensure equitable access. Students who do not qualify for special education services may qualify for accommodations and modifications under Section 504 that may be implemented under a 504 plan. For example, a student with a hearing issue may need preferential seating and speech-to-text accommodations to access the curriculum.

In 1975, Congress enacted Public Law No. 94-142, the "Education for All Handicapped Children Act of 1975" that has been the foundation for the provision of special education to children with disabilities. The Act provided a program of assistance to states for the education of handicapped children. The terms of the Act applied to each of the states and trust territories of the United States. To qualify for grants under the Act, each state had to meet certain eligibility requirements outlined in the Act. The purpose of the Act was to ensure that all handicapped children receive a free appropriate public education that emphasizes special education and related services designed to meet their unique needs; to assure that the rights of handicapped children, parents, and guardians are protected; to assist states to provide education; and to assess and assure effectiveness of educational efforts. The Act required participating states to identify and provide educational services to children who may be handicapped, to diagnose their special education needs, and to establish and review individual educational plans for those children in an attempt to educate those children in regular classrooms to the greatest extent possible. In the Education for all Handicapped Children Act of 1975, Congress enumerated nine specific findings, which were reaffirmed in 1990 and renamed the Individuals with Disabilities Education Act (IDEA). The Individuals with Disabilities Education Act has two components, one for children from birth to 3 years of age and one for students from 3 years until high school graduation, or the age of 21, whichever comes first. Schools are responsible for identifying and evaluating children who may need special education services. For children under the age of 3 years with disabilities or developmental delays, IDEA requires early intervention services, if needed, to enhance their development and minimize the need for special education services once they reach school age. For school-aged children, IDEA ensures that children with disabilities who are found eligible for special education services are provided a free and appropriate public education utilizing an individualized education program (IEP) that is developed based on a special education evaluation and the unique strengths and needs of the student. An important aspect of IDEA is that students with disabilities are educated in the least restrictive environment alongside their non-disabled peers to the greatest extent appropriate.

The Americans with Disabilities Act of 1990 (ADA) is a civil rights law that prohibits discrimination based on disability status. The ADA applies to any entity offering goods and services to the public, including public elementary, secondary, and postsecondary schools. The ADA defines an individual with a disability as a person who has "a physical or mental impairment that substantially limits one or more major life activities." Major life activities include walking, eating, and sleeping as well as activities in which

the manifestation of the disability may be non-apparent, such as learning, concentrating, and thinking, among other activities. The ADA also requires reasonable accommodations to provide access for persons with either physical or cognitive disabilities.

STATE SPECIAL EDUCATION PROVISIONS AND FUNDING

State provisions related to special education may be found in North Dakota Century Code Chapter 15.1-32 ([Appendix B](#)) related to special education, Chapter 15.1-33 ([Appendix C](#)) related to multidistrict special education, and Chapter 15.1-34 ([Appendix D](#)) related to students with disabilities boarding home care.

Pursuant to Section 15.1-29-14, if a student's custodial parent or legal guardian establishes residency outside this state; a court orders a termination of parental rights with respect to the student's parents; the student no longer has a custodial parent; or the Superintendent of Public Instruction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful, the state is required to pay tuition and tutoring charges from funds appropriated by the Legislative Assembly for state aid to schools.

Section 15.1-32-18 delineates school district liability for special education and other high-cost services. Each year the Superintendent of Public Instruction must identify the approximately 1 percent of students with a disability and students with a significant medical condition statewide who are not eligible for cost reimbursement under Section 15.1-29-14, related to students placed for noneducational purposes, and who require the greatest school district expenditures to provide them with education and services, including special education and related services. This percentage represents the number of students that would qualify for excess cost reimbursement.

A student contract system is used to reimburse school districts for high-cost students and students that are in placement for reasons other than education. Payments are made by school districts to providers and to other school districts for students in foster care or for students living in residential facilities that do not have an education system, but rely on the local school district. In addition, school-placed students can include high-cost students who remain in their school district and the school district is reimbursed for the excess cost. School districts receive the state school aid per student payment (\$11,349 during the 1st year of the 2025-27 biennium and \$11,633 during the 2nd year of the 2025-27 biennium) for students placed in residential facilities and are responsible for either the state average cost per student or four times the state average cost per student, depending on placing agency.

The state, through an appropriation in the special education contracts line item of the Department of Public Instruction (DPI) budget, reimburses school districts for high-cost students. A school district's maximum responsibility depends on the student's placement. When the placement is voluntary by a legal guardian; made by a state or county social service agency; ordered by state court, tribal court, or juvenile services; or in a state-operated institution, the district is responsible for the state average cost per student. Charges over the state average cost per student are reimbursed by the state. The resident school district is responsible for four times the state average cost per student when the school district places the student out of district for education purposes. If the high-cost student remains in their resident school district, the district will be reimbursed for costs exceeding four times the state average cost per student, which was \$56,080 for elementary students and \$60,213 for secondary students during the 2023-24 school year. In addition to any other reimbursements, if a school district expends more than 2 percent of its annual budget for the provision of education and services to one student with a disability or significant medical condition, the school district is reimbursed for the difference between 2 percent of the district's annual budget and the lesser of the amount actually expended by the district for the provision of special education and related services to that student or the amount representing four times the state average cost of education per student.

Before 2023, there was no reimbursement for high-cost students with medical needs who were not on an IEP. In 2023, the Legislative Assembly amended Section 15.1-32-18 related to the liability of school districts for special education to include students with a disability and students with a significant medical

condition. The Legislative Assembly provided \$24 million from the general fund for special education contracts during the 2023-25 biennium. This level of funding was \$3 million less than 2021-23 biennium funding of \$27 million from the general fund. In 2023, the Legislative Assembly also exempted tuition for high-cost students from deduction in the state aid formula and increased the special education weighting factor in the state school aid formula from .082 to .088. The special education weighting factor, applied to prekindergarten special education and average daily membership, was estimated to generate approximately \$256 million for school districts through the integrated formula payments line item for special education and prekindergarten special education during the 2023-25 biennium.

In 2025, the Legislative Assembly provided \$22 million from the general fund for special education contracts during the 2025-27 biennium, \$2 million less than the 2023-25 biennium. The Legislative Assembly, in Section 8 of House Bill No. 1013 (2025), provided the Superintendent of Public Instruction may expend funds provided for integrated formula payments and grants - special education contracts during the 2025-27 biennium for paying grants for educational services that were due in the 2023-25 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2025. To be reimbursed under this section, claims must be properly supported and filed with the Superintendent of Public Instruction by June 30, 2026. In addition to special education contracts, the state school aid formula is estimated to provide approximately \$278 million to school districts through the integrated formula payments line item for special education and prekindergarten special education during the 2025-27 biennium.

Pursuant to IDEA, the Department of Health and Human Services (DHHS) is responsible for the payment of services for Medicaid-eligible children who receive Medicaid-covered services described in the child's IEP. Each biennium, the Legislative Assembly, in the DPI appropriation bill, provides state school aid payments for special education must be reduced by the amount of matching funds required to be paid by school districts or special education units for students participating in the Medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by DPI to DHHS on behalf of the school district or unit. The Department of Public Instruction receives a monthly Medicaid payment report from DHHS for Medicaid-covered services included in a student's IEP and provided by the school district. The Department of Public Instruction withholds a percentage for the state share of the Medicaid payment from the school district's state aid payment. The federal medical assistance percentage withheld for federal fiscal year 2025 was 50.97 percent. The amount withheld is certified and paid to DHHS. If the district's state aid payment is not sufficient to cover the Medicaid withholding, the school district must pay the difference to DPI. Approximately \$1.7 million is withheld and remitted to DHHS each biennium. Covered services include physical, occupational, and speech-language pathology therapies; audiology; behavioral health; skilled nursing services provided to children with complex medical needs; transportation to and from IEP services from school; and applied behavior analysis.

The following is a summary of special education contract funding and special education funding provided through state school aid from the 2019-21 biennium through the 2025-27 biennium:

Biennium	Special Education Contract Funding	Estimated Special Education Funding to be Provided Through State School Aid	Total
2019-21	\$24 million	\$215 million	\$239 million
2021-23	\$27 million	\$224 million	\$251 million
2023-25	\$24 million	\$256 million	\$280 million
2025-27	\$22 million	\$278 million	\$300 million

PRIOR LEGISLATIVE STUDIES **1973-74 Education "A" Committee**

The 1973-74 interim Education "A" Committee was directed to study the funding of special education and the possibility of providing new methods of financing special education. During the course of the study, the committee followed the progress of the implementation of 1973 legislation requiring all school

districts to submit a plan for implementing special education by July 1, 1975. The committee members were aware of the continuing need for attention to be given to special education. On April 30, 1974, in the case of *In the Interest of G.H., A Child*, the North Dakota Supreme Court held that the right to a public school education is a right guaranteed by the North Dakota Constitution, and that this right applies to all children with physical or mental handicaps except those, if any, who can derive no benefit from education. The committee considered two funding alternatives. The first was the method followed by the state at the time, whereby the state provided grants for specific programs. The second would provide a weighted unit system tied to foundation aid and reimburse school districts based on the number of students in a given classification. The committee determined the latter method may encourage school districts to classify students as requiring special education and to retain students in special education programs beyond the needs of the students to increase state aid.

The members of the committee concluded that, although the present state grant program is preferable to the alternative, the Legislative Assembly should follow the progress of the school districts in complying with the mandates of the 1973 law and the courts and that after school districts have had more experience in this field it may be determined that new legislation is desirable.

1975-76 Education Committee

The 1975-76 interim Education Committee, as part of a study of the effectiveness of the foundation aid program, reviewed the court placement of a child with a disability. Because the child required special education, the cost of educating the child was greater than the average cost of educating other children in the school district. A dispute between the residence district and the district receiving the child arose over the excess costs of education. To clarify the legislature's intent regarding payment of special education costs by the residence district in child placement cases, the committee recommended a bill holding the residence district liable for both the cost of tuition and for the excess educational cost related to special education. Holding the receiving district liable for the excess costs of special education discourages communities from providing services to attract the handicapped because of the fear of being held liable for the expensive costs of special education. It also places an unfair burden upon communities which do provide special services for children with disabilities because courts tend to place children requiring special education in communities providing appropriate services. Holding the residence district liable for the excess cost of special education in these instances spreads the risk and the tax burden more equitably throughout the state.

1977-78 Education Committee

The 1977-78 interim Education Committee was directed to study the organization and financing of special education and related services, and age limitations for special education. On November 29, 1975, the 94th Congress enacted Public Law No. 94-142, the "Education for All Handicapped Children Act of 1975." Committee discussion with regard to special education centered primarily around methods of complying with Public Law 94-142 and how to pay for the necessary changes. The "Education for All Handicapped Children Act of 1975" affected state special education programs in a number of ways. The Act provided a program to assist states in the education of handicapped children. To qualify for grants under the Act, each state had to meet certain eligibility requirements outlined in the Act. Failure to comply would result in not only the loss of funds provided under the Act, but may result in action brought under Section 504 of the Rehabilitation Act of 1973, which if successful, could result in the loss of all federal funding to the state. The committee was charged with the task of resolving any conflicts which might exist between state law and Public Law 94-142.

The committee reviewed the delivery of special education services, age limits, special education transportation, and the necessity of continuing the Advisory Council on Special Education. The committee recommended five bills related to special education. The first bill allowed the creation of multidistrict special education programs. Two bills provided for round trips home for each of the patients under the age of 21 at the San Haven State Hospital, Grafton State School, School for the Blind, and School for the Deaf. Conflicts between state law and Public Law 94-142 were resolved with the fourth bill. The final bill recommended by the committee repealed the Advisory Council on Special Education.

1979-80 Education Committee

The 1979-80 interim Education Committee was directed, with the assistance of the Superintendent of Public Instruction, to study the organization and financing of special education in North Dakota, including the requirements of Public Law No. 94-142, the long-range impacts of special education legislation on general fund appropriations as well as on the school districts and institutions in this state, and the relationships for delivery of special education services between various state and local government entities. The committee once again reviewed Public Law 94-142 and concerns with compliance to the Act and judicial action around the nation expanding the requirements for services to handicapped individuals. The 1979 Legislative Assembly passed several bills in an effort to bring North Dakota into compliance with Public Law 94-142. Legislation repealed provisions that dealt with county special education programs and replaced it with legislation allowing multidistrict special education programs. Along with this, the maximum school district levy for special education was increased from three mills to five mills and made discretionary with the school board. State support for education and transportation of special education students was also increased. Funds for reimbursement to schools up to 1.5 times the state average per student cost of education for instruction, and up to two times the state average per student cost for transportation, equipment, and residential care were raised to two and four times the relevant state average per student costs, respectively. Legislation also provided for state reimbursement for at least 80 percent of the cost of not more than six round trips home per year for handicapped patients at state institutions at a rate not to exceed that paid to state officials. Handicapped students are included in the regular foundation aid payments. However, the cost of educating the handicapped has always been greater than the cost of educating nonhandicapped students. This extra cost was paid by local levies and by state and federal reimbursement programs.

The committee recommended one bill related to special education. The bill provided for contracts between school districts and North Dakota-operated schools for services to students enrolled in the state-operated school after June 30, 1981, which are not provided for by the state school under its normal budgetary provisions. The contract was to specify the type and extent of services required by the student and was to be approved by the school district of residence, the superintendent of the state-operated school, and DPI. The fiscal obligation for services provided in the contract was required to be paid from funds appropriated by the Legislative Assembly to the Emergency Commission for special education. The bill contained no specific appropriation.

1983-84 Education "A" Committee

The 1983-84 interim Education "A" Committee was assigned two subjects for study--elementary and secondary school finance and the future provision of special education programs. The interim study of these areas represented an effort to continue legislative monitoring of school funding formulas in general and the efficient delivery of special education services. The committee focused its attention in the area of special education on the percentage of local costs being reimbursed by the state, boarding care costs of students placed outside of their school districts of residence, special education personnel costs, and the method of delivering special education services especially to the low-incidence type of handicapped students.

The committee recommended:

- The Department of Human Services (DHS) reimburse school districts for 70 percent of the costs of room and board paid on behalf of handicapped children placed in facilities outside their school districts of residence for special education services not available within their school districts of residence. The reimbursements would be made regardless of whether a child has been placed in a facility within the state or outside the state.
- Making the state financially responsible for the costs of a child who has been ordered by a court or social service agency to stay for any prescribed period of time at a state special education facility, foster home, or a home maintained by any nonprofit corporation.
- Amending the special education reimbursement formula to provide reimbursements to school districts in an amount equal to 60 percent of the salary and fringe benefit costs paid the previous year by the school for personnel employed to deliver special education instructional services and

an amount not to exceed four times the state average per student cost of education for the cost of related special education services.

- Establishing a special education area coordinator pilot program responsible for facilitating the provision of special education services through existing cooperative special education units to all school-age children residing in the program area who have severe and profound handicaps.
- Urging the United States Department of Education to approve the joint application submitted by North Dakota State University Bottineau and the Bottineau Peace Garden Special Education Cooperative for federal funds to implement a program designed to train educable handicapped persons with marketable job skills in postsecondary educational institutions.

1985-86 Education Finance Committee

The 1985-86 interim Education Finance Committee was assigned a study of all facets of the state's finance formulas used in making payments to public elementary and secondary schools for instructional and transportation services and whether those formulas should be changed. The committee gathered information regarding state payments to school districts providing programs for exceptional children, including gifted or handicapped children; transportation of exceptional students; enrollments at Grafton State School and the cost of educating students deinstitutionalized from Grafton State School; and child placement, including school district of residence and responsible parties. The committee also reviewed legislation recommended by a prior interim committee that was not approved by the Legislative Assembly in 1985.

The committee recommended legislation to make the state financially responsible to pay the entire tuition and excess costs for handicapped children placed outside their school districts of residence if the placement was made by a county or state social service agency, if the placement was made from a state-operated institution, or if the placement was made by a court or juvenile supervisor. The bill would make the state responsible for the costs of deinstitutionalizing students from Grafton State School.

1987-88 Education Finance Committee

The 1987-88 interim Education Finance Committee was assigned a study of education finance issues. As part of the study, the committee gathered information regarding special education reimbursements. School districts are statutorily required to provide special education programs for handicapped children, but are not required to provide special education programs for gifted children. School districts that make expenditures for the special education of exceptional (handicapped or gifted) children were entitled to receive state reimbursements for their cost of education and related services. The state reimbursement for each exceptional child per year could not exceed three times the state average per student cost of education for instruction and four times the state average per student cost of education for related services. The method used to reimburse school districts was based on the number and qualifications of full-time special education instructors employed by a school district. School districts were reimbursed on an annual flat grant basis for the cost of specific education personnel employed to deliver education services to exceptional children.

The committee reviewed information regarding child placement and school districts of residence. Social service agencies and courts have the authority to place children outside their school districts of residence if they are in need of either special education services or services supplementary to those generally provided to other public school students. Until June 30, 1989, the school district of residence was financially responsible for paying the bill for these children up to 2.5 times the statewide average per student, either elementary or secondary costs. The 2.5 times cost amounted to \$7,403 for preschool through grade 8 and \$9,680 for grades 9 through 12 for the 1986-87 school year. Legislation enacted in 1987 provided that after June 30, 1989, the district of residence is liable to pay the admitting district the state average per student cost of education. The remainder of the actual cost of educating these pupils was to be made by the district of residence and the state as follows: the state's share will be 40 percent in the 1989-91 biennium, 60 percent in the 1991-93 biennium, and 80 percent in the 1993-95 biennium. After June 30, 1995, the state is liable for 100 percent of the remainder of the costs of educating these handicapped children.

The committee learned if a handicapped student is unable to attend school in the student's school district of residence due to a handicapping condition, the school district may contract with another school district or with a private in-state or public out-of-state school to provide education to the handicapped student. The financial responsibility of school districts that send their students to other school districts for special education was limited to 2.5 times the statewide average per student cost of education per year. The remainder of the actual cost of educating the student was paid by the state. During the interim, it was reported that because state laws limit the financial responsibility of school districts that send their children to other school districts for special education and because there was no upper financial limit for the liability of a school district that develops its own programs to educate handicapped children within the district, the incentive was for a school district to send children to another school district for special education.

The committee also gathered information regarding transportation reimbursed by the state for the transportation of exceptional students, preschool programs for handicapped students, and multidistrict special education unit budgetary concerns.

The committee recommended special education legislation to:

- Make the state financially responsible to pay the entire tuition and excess costs for handicapped children placed outside their school districts of residence if the placement is made by a county or state social service agency, if the placement is made by a state-operated institution, or if the placement is made by a court or juvenile supervisor. The bill would remove references to state reimbursements being three times the state average per student cost of education and four times the state average per student cost of related services.
- Require multidistrict special education boards to plan and coordinate the transportation of special education students within the multidistrict special education unit.
- Create a limit of 2.5 times the cost of education for school districts that educate their special education students within the student's district of residence.
- Increase the weighting factor for preschool handicapped students from .49 to a factor that would range from .95 to 1.30, depending on the size of the elementary school of which the preschool program is a part.
- Require the Superintendent of Public Instruction to withhold foundation aid payments from any school district that does not pay the tuition for special education students.
- Require each school district participating in a multidistrict special education program to share the cost of providing all special education programs and related services.
- Appropriate \$13 million to the Superintendent of Public Instruction to cover the cost of the new programs in the bill and to increase the level of reimbursements for special education programs.

1989-90 Education Finance Committee

Certain Century Code provisions directed DPI to report to an interim committee on the status of interagency agreements for the provision of education and related services to handicapped students. The 1989-90 interim Education Finance Committee was assigned to receive reports on pilot projects that integrate handicapped children into regular education classrooms.

The Century Code required the Superintendent of Public Instruction to develop and implement interagency agreements with public and private agencies for purposes of maximizing available state resources in fulfilling the education-related service requirements of Public Law 94-142. Public Law 94-142 also required the department to develop interagency agreements. Other federal laws dealt specifically with interagency agreements relating to the provision of services to handicapped children through age 5. The federal laws required the Superintendent of Public Instruction to develop interagency agreements to receive federal funding. The Superintendent of Public Instruction reported that in light of the administrative changes made at the Developmental Center at Grafton, revisions were being made to an agreement with the Director of Institutions regarding each agency's responsibility for providing services to handicapped students from age 3 through 21. The original agreement involved the Grafton State

School, School for the Blind, and School for the Deaf. The Grafton State School, known as the Developmental Center at Grafton, was under the jurisdiction of DHS. As of January 1991, the School for the Blind and the School for the Deaf will be under the jurisdiction of the Superintendent of Public Instruction. As a result of these changes, the focus and nature of the agreement will change significantly. The educational services for residents of the Developmental Center will be provided by the public school district in which the center is located and no longer by the Developmental Center. Another agreement by the Superintendent of Public Instruction, State Board of Vocational Education, DHS, and Job Service North Dakota covered each agency's responsibility in planning for the transition of handicapped students, age 18 through 21, from school services into other agency programs. The Superintendent of Public Instruction had an agreement with the Region 8 Administration for Children, Youth, and Families located in Denver, Colorado. That agency represented the North Dakota Head Start program. The agreement specified responsibilities of the Superintendent of Public Instruction and the Region 8 Head Start program for the provision of services to handicapped children age 3 through 5. The Department of Human Services, Department of Health and Consolidated Laboratories, and Superintendent of Public Instruction were developing an agreement pursuant to Public Law 99-457. This agreement would define the financial responsibility of each agency for providing handicapped children with a free and appropriate public education, establish procedures for resolving disputes among agencies that are parties to the agreement, and establish procedures under which local educational agencies may initiate proceedings to secure reimbursement from agencies that are parties to the agreements. The purpose of the agreement was to eliminate duplication and achieve efficiency in providing services to handicapped children through age 5. The committee accepted the status reports regarding interagency agreements for the provision of education and related services to handicapped students.

Public Law 94-142 required that a continuum of service options be available to children with disabilities and that the type of services offered must be in the least restrictive educational environment. The Superintendent of Public Instruction reported that several pilot projects focusing on integration of students with disabilities into regular education classrooms in neighborhood schools were underway, and that every special education unit in North Dakota was involved in integrated education on at least a limited basis. Fifteen special education units received funding to implement activities which promote integrated education. Grants were used to focus on a variety of activities, including planning, in-service training, developing pilot sites, and establishing integrated preschools for children who are 3 to 5 years old. The placement of a student was based upon the student's skills and needs. The committee accepted the report on pilot projects integrating handicapped children into regular education classrooms.

1991-92 Special Education Committee

The 1991-92 interim Special Education Committee was assigned several studies, including a study of the entire area of special education, including the legal requirements for the provision of special education services, the delivery of medical services to students with disabilities in a school environment, alternatives for the provision of various services, cost factors, and directions for the future, and a study of the state's financial support for mandated special education programs and the method by which DPI distributes funds under the state grant program. The committee reviewed information regarding medically fragile children, gifted and talented students, the cost of providing special education services, and alternatives for the future. The committee made several recommendations related to special education.

The committee recommended resolutions to provide for studies of the delivery of services to special needs children from a multiagency perspective, including whether services might be enhanced and inefficiencies might be improved through better cooperation or consolidation of administrative functions, and the implementation of an IEP process, not otherwise mandated by law, for any child currently enrolled in school, at the request of a parent or upon the recommendation of a teacher.

The committee recommended a resolution to urge the State Board of Higher Education to include in the teacher preparation curriculum academic and pedagogical training designed to prepare new teachers for the daily challenges of educating the next generation and to encourage the State Board of Higher Education to work with the North Dakota Education Association and the Superintendent of Public

Instruction to ensure that certificated teachers, through continuing education, enhance their academic and pedagogical skills for the same purpose.

The committee recommended legislation to provide that both a child's school district of residence and the admitting district must be notified by a placement agency of the need for an out-of-district placement or admission, and that the school district of residence must be afforded an opportunity to participate in any process involving decisions about the child's placement.

1993-94 Education Services Committee

The 1993-94 interim Education Services Committee was directed to study the placement of students with developmental disabilities in regular classroom settings and the teacher training curricula or specific study courses designed to assist teachers in accepting and teaching students with mental retardation and other developmental disabilities and the provision of services to blind and visually impaired children and adults. The committee reviewed the provisions of IDEA, including requirements for the state to qualify for federal assistance for special education programs. Although the Act did not in an absolute sense provide a substantive right for handicapped children to receive public education, by participating in the plan provided for under the Act and acquiring federal funds under the Act, a state became bound by the mandatory requirements of the Act. A state is not obligated to implement educational goals set forth in the Act if it chooses not to participate in the plan and the federal funding provided under it. Once having complied with the Act; however, a state is bound to ensure that all handicapped children within their boundaries are afforded a free appropriate public education concentrating on the unique needs of individual students, and the state must adhere to handicapped students' rights to a "free appropriate public education."

The committee received information regarding inclusion, or the opportunity for all students to participate in the totality of the school experience, educational environments within which a student can be placed, students receiving special education services, and teacher preparation.

The committee recommended legislation related to special education to:

- Add additional statements of legislative intent to the statutory language regarding special education. The bill set forth the legislative belief that children are entitled to be educated in the least restrictive environment and incorporates the federal definition of a least restrictive environment reaffirmed the state's acceptance of federal legislation regarding the education of students with disabilities.
- Direct the Superintendent of Public Instruction to distribute to school districts all money appropriated for special education, less \$12 million, according to the number of students each district has in average daily membership. The \$12 million was to be set aside by the Superintendent of Public Instruction for the payment of statutory placement contract obligations. This method of distributing money would enable school districts to know in advance the amount they would receive.

1995-96 Education Finance Committee

The 1995-96 interim Education Finance Committee was directed to review formulas used to equalize state aid in the areas of transportation and special education and to monitor implementation of special education block grants as provided for by Senate Bill No. 2063 (1995). The 1995-97 appropriation for special education was \$36.8 million, an increase of \$3.35 million over the previous biennium. With that increase, the Legislative Assembly also revised the parameters within which the Superintendent of Public Instruction could distribute the funds.

In the past, if allowable costs for special education and related services for a child with disabilities in a special education program, as determined by the Superintendent of Public Instruction, exceeded the reimbursement provided by the state, the school district was liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of 2.5 times the state average per student elementary or high school cost, depending on whether the enrollment would be in a grade or high school department. The 2.5 times amount included the amount the school district was required to

pay for special education placement contracts. The state was liable for 100 percent of the remainder of the cost of education and related services for each such student with disabilities. Under that method of distribution, the amount appropriated for special education was first devoted to the excess costs and any remaining dollars were devoted to noncontract costs such as teacher-student units and new program initiatives. The reimbursement of costs in excess of the 2.5 times amount were guaranteed. Other reimbursements were not.

The guaranteed amount was generally associated with costs for student contracts, i.e., the costs for students placed in a school district for reasons other than education. This tended to occur as a result of placements by other state agencies such as the Division of Juvenile Services or foster care entities. It also applied to costs incurred by students placed in private care facilities inside or outside the state for purposes of education. The problem was that the cost of student contracts continued to rise at an exponential rate. During the 1990-91 school year, 14.4 percent of a \$12 million annual allotment for special education was used for student contract reimbursements. During the 1995-96 school year, the cost of student contracts was \$5.7 million. The committee learned that without changes there was no reason to expect the growth rate to slow.

In an attempt to curb this growing cost, and perhaps force districts to consider alternative placements for the contract students, the 1995 Legislative Assembly reverted from guaranteeing the excess amount of student contracts to capping the amount allocated for student contracts at \$10 million, and, in effect, guaranteeing the personnel side of special education reimbursement. Personnel reimbursement had been tied to a complex formula involving student-teacher units, but the new reimbursement system was based on average daily membership. In addition, the Superintendent of Public Instruction clearly defined the components of a student contract, including how costs were calculated and what qualified as an excess cost. Before this effort, each school district and special education unit engaged in different forms of calculations, resulting in inequitable reimbursements. As a result of these changes, some school districts, which had been advantaged by the former reimbursement system, received fewer dollars. However, the majority of the school districts received two-thirds of their special education dollars through a mechanism that equalized the special education dollars in the same fashion as foundation aid dollars.

School districts received \$109 for each student in average daily membership and had available to them certain safety features that were built into the revised distribution method, including a set-aside of \$500,000 for above-average incidences of moderately or severely disabled students. During the 1995-96 school year, districts and special education units were guaranteed a special education funding level of no less than 95 percent of the amount they received for the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. For the 1996-97 school year, the guarantee was lowered to 90 percent of the amount received for the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs.

Because Section 1 of Senate Bill No. 2063 (1995) provided that \$10 million must be used to reimburse school districts for excess costs incurred on student contracts, the committee questioned what would happen if school districts and special education units, working under the new reimbursement system, claimed or were allowed to claim an amount less than the \$10 million. Testimony offered to the committee indicated that if any portion of the \$10 million set aside for student contracts was not distributed, it would be prorated on a per student basis. The committee determined that this new reimbursement mechanism, also referred to as a block grant distribution, had been thoroughly studied during the 1993-94 interim and implemented on that committee's recommendation by the 1995 Legislative Assembly. Even though there was continuing controversy about the distribution of special education appropriations, the committee determined that the controversy stems less from the actual method of distribution than from the fact that the special education needs of North Dakota students exceed the funds available to accommodate those needs.

The committee made no recommendation relating to special education funding and the monitoring of special education block grants.

1997-98 Education Finance Committee

The 1997-98 interim Education Finance Committee was assigned a study of the short-term and long-term impact of federal education legislation and other direct and indirect mandates from whatever sources on the educational goals and fiscal well-being of school districts. The committee reviewed various federal judicial mandates, including those related to special education.

The committee concluded that federal education legislation and other direct and indirect mandates do impact school districts, both in terms of their educational goals and their fiscal well-being. However, the committee also recognized that it was incumbent upon the state to uphold federal laws. The committee determined that while the state may choose to strengthen requirements set forth in federal laws, it cannot, through legislative, regulatory, or judicial procedures, weaken or otherwise circumvent such laws. The committee therefore made no recommendation regarding the study.

1999-2000 Education Finance Committee

The 1999-2000 interim Education Finance Committee was assigned a study of the method by which the state funds special education services. The committee reviewed special education funding; students receiving special education services, including the nature and degree of impairment; and federal law related to the provision of special education to children with disabilities. For the 1999-2001 biennium, the Legislative Assembly appropriated \$46.6 million for special education. Of that amount, \$11.5 million was to be used to reimburse school districts or special education units for excess costs they incurred on student contracts, and \$400,000 was to be set aside for gifted and talented programs. Funds were to be distributed on a per student basis. The Legislative Assembly also changed the reimbursement for excess costs to provide that a school district was responsible for 2.5 times the state average per student cost plus 20 percent of all remaining costs and that the state was liable for 80 percent of the remainder of the cost of education and related services for each such student with disabilities within the limits of legislative appropriations for that purpose. The committee made no recommendation regarding special education.

2001-02 Budget Committee on Health Care

The 2001-02 interim Budget Committee on Health Care was assigned a study of the coordination of benefits for children with special needs under age 21 among DPI, DHS, and private insurance companies with the purpose of optimizing and coordinating resources and expanding services, including augmentative communication devices and therapy services. The committee reviewed statutes related to the coordination of services, state programs, cooperative agreements, and the results of a January 2001 Blue Cross Blue Shield of North Dakota task force formed to evaluate benefits for children with special needs and to improve collaboration among parents, providers, and insurers regarding the care of children with special needs.

The committee made no recommendation regarding its study of the coordination of benefits for children with special needs.

2003-04 Education Committee

The 2003-04 interim Education Committee was assigned a study of the criteria by which a student's school district of residence is established, and whether that criteria correctly assigns benefits and responsibilities to the appropriate school districts. The committee reviewed provisions related to the determination of residency and the role residency plays in delineating responsibility for the provision of elementary and secondary education, including when a student placement is made.

The committee concluded that determinations regarding a student's residency are complex and often result in unintended outcomes which led to unsuccessful efforts by individuals or groups acting alone. Representatives of several school districts, special education directors, DPI, and the Developmental Disabilities Division and the Children and Family Services Division of DHS came together to craft a solution that the committee found to be both workable and acceptable. The committee recommended legislation to establish a student's school district of residence at the time of placement and require the placing agency to review that determination each September 1 thereafter. The bill also clarified that the state is responsible for the financial obligations of a student if the student's custodial parent or legal

guardian is no longer a resident of this state, if parental rights have been terminated, if the student no longer has a custodial parent, or if the Superintendent of Public Instruction determines that all reasonable efforts to locate the student's parent or legal guardian have been unsuccessful.

2017-18 Education Funding Committee

The 2017-18 interim Education Funding Committee was formed pursuant to House Bill No. 1318 (2017) and assigned a study to examine how state aid for elementary and secondary education is determined and distributed under the state aid funding formula, analyze the impact of the state aid provided through the funding formula, and consider potential necessary changes to the funding formula to ensure equity, adequacy, and sustainability. As part of the study, the committee received information regarding the status of 2017-19 biennium special education contract costs and DPI reimbursement for Medicaid services.

The committee learned the number of qualifying special education contracts increased from 400 in the 2013-14 school year to 620 in the 2016-17 school year. Reasons for the increase include increasing enrollments, transient population changes, increasing need for behavioral health services, lack of home- and community-based mental health services, medical advances that allow medically fragile children to live longer, increasing autism spectrum disorder diagnoses, and increasing special education child counts. The number of students on an IEP increased from 13,403 in 2013, to 14,429 in 2016, and the number of students with an autism spectrum diagnosis increased from 837 in 2013, to 1,174 in 2016. The average contract cost of \$19,500 did not vary much; however, the average cost at residential facilities serving the most complex cases increased significantly. The state had approximately 60 high-cost contracts. The number of small contracts also increased as schools become more aware of the program.

The committee received a report from DHS regarding policy changes allowing expanded reimbursement for Medicaid-covered services provided by school districts. The committee also received a report regarding regional education association collaboration with special education units to develop a Medicaid billing consortium. Verifying Medicaid eligibility for students is difficult and a number of special education units either were not maximizing Medicaid reimbursements or not submitting for Medicaid reimbursement. A regional education association recruited partners, invested in software, and provided training and support to establish and expand the consortium. The consortium included 12 special education units, including 67 school districts. The regional education association assisted and supported special education units accessing Medicaid reimbursement for services the units were required to provide. The committee learned most of the state Medicaid match is made by the offset to state school aid. However, some districts were providing services in schools, but claims for reimbursement were not made through the school. The match for services billed in this manner are not included in the match certified by DPI, resulting in the use of general fund dollars for the state match.

The committee made no recommendation related to its study of the state school aid funding formula, review of special education contract costs, or DPI reimbursement for Medicaid services.

2017-18 Education Policy Committee

The 2017-18 interim Education Policy Committee was assigned, pursuant to Section 23 of House Bill No. 1013 (2017), a study of the feasibility and desirability of combining services for any and all English language learner programs, distance learning programs, regional education associations, teacher center networks, adult learning centers, career and technical education programs, education technology services, continuing education for counselors, educational leadership, and the teacher mentor program. As part of the study, the committee received information from a representative of DPI regarding special education units, funding sources, data, and collaboration efforts between special education units and K-12 education entities. The role of the state special education office is to assure children and families of children with disabilities are receiving a free appropriate public education. The department reported it accomplishes this goal through general supervision, monitoring, and providing technical assistance. As of December 1, 2017, 15,175 children with disabilities were being served on an IEP, approximately 14 percent of the total public school enrollment. Students with specific learning disabilities are the largest disability category being served with the categories of students with speech impairment and

non-categorical delay as the second and third largest. The department reported the trend data over the last 8 years indicates a steady increase in the number of students being served on IEPs, with the largest increase attributable to the increase in the number of students diagnosed as being on the autism spectrum.

The federal government provides funding through two types of grants to states and territories under IDEA Part B, which then flow funds to local education agencies as subgrants. Every eligible state or territory receives an annual federal grant under IDEA, called a Section 611 grant, to support special education and related services for children ages 3 through 21. All 50 states also receive Section 619 grants, which are IDEA funds to support the education of children ages 3 through 5.

The Century Code requires each special education unit to maintain an organizational plan on file with the Superintendent of Public Instruction. The organizational plan identifies the representation on the Special Education Unit Board and the general functioning rules of the board. The Special Education Unit Board also is required to prepare an annual plan on behalf of its participating school districts, regarding the provision of special education and related services. Many of the multidistrict special education units include rural school districts. According to the testimony, each board is required to determine how it will distribute state and federal funds to each of the participating school districts within its unit. The Special Education Unit Board and its Director are required to assure all children with disabilities residing in their unit are receiving a free appropriate public education.

State funding is distributed to the school districts, while federal funding is distributed to the special education units. If the school district hires and pays the staff, the special education units contribute to help alleviate the costs. It was noted state law does not prevent an arrangement from occurring in which school districts and special education units contribute funding to each other to help pay for the cost of special education services and staff. It was reported staffing special education units can be challenging, especially in rural areas and many districts and units are exploring telecommunication as a means of overcoming those challenges. It was noted there are not enough special education teaching students coming out of colleges to meet the demand.

The committee received information from a representative of special education units regarding outcomes, challenges, and emerging themes of special education units. Outcomes for special education units often are measured by DPI through federally guided indicators as well as performance indicators established through leadership within individual special education units. Performance outcomes may be created by the grant funding received through local, state, or federal grant opportunities. Each special education unit works with its local school districts to analyze student data to organize instructional supports that will create positive outcomes for students.

According to the testimony, the greatest challenge special education units and school districts face on an annual basis is finding high-quality, certified and noncertified staff to fill the vacant special education positions. A rapidly growing challenge facing school districts and special education units is the students with disabilities which require very intense and unique services, especially in the area of behavioral or mental health supports. The specialization necessary to meet the needs of the students places a high demand on staff. Medicaid and state reimbursement for high-cost students create financial challenges for schools. It was noted districts and special education units also are faced with state-imposed limitations on the Medicaid services that can be claimed for reimbursement.

The committee made no recommendation related to special education.

2019-20 Education Funding Formula Review Committee

The 2019-20 interim Education Funding Formula Review Committee was formed pursuant to Senate Bill No. 2065 (2019) and was assigned studies of the K-12 education formula and school transportation. In addition to these studies, the committee gathered information regarding special education contract reimbursements, including the two types of student placement contracts, agency placed and school district placed, and school district liability related to placement. The student contract system has

experienced a significant increase in the number and cost of special education contracts. During the 2017-18 school year, 1,120 students were involved in 1,744 student contracts and during the 2018-19 school year, 1,128 students were involved in 1,672 student contracts. One student may be involved in more than one contract if the student transfers during the year. Because the department did not have sufficient funding at the end of both the 2015-17 biennium and the 2017-19 biennium, but had authority to use current funding to reimburse contract costs from the prior biennium, contract data by year represents actual contracts reimbursed, not contracts entered. For the 2017-19 biennium, the average reimbursement was \$9,406 per student. During the 2017-19 biennium, 916 contract reimbursements were under \$500 and 127 contract reimbursements exceeded \$50,000, with 27 contract reimbursements exceeding \$90,000. The most expensive placement reimbursements could be in many different facilities, but most are at the Anne Carlsen Center. Education may include related services, such as mental health services, but room and board is reported separately and is not part of the cost of education. The department reported that challenges administering the special education contract grant system have been evolving and contract situations relating to resident and financially responsible school districts are becoming more complex. State law does not address many of the contract situations that develop, and it has become more difficult to determine which school district is responsible for some of the contracts. When there is a placement, the financially responsible school district is the district where the custodial parent or the legal guardian resides. Challenges include:

- Residency determination, including the definition of custodial parent and legal guardian, and challenges related to unaccompanied refugee minors.
- Calculating the actual cost of education per student.
- The impact of the school calendar change from days to hours.
- Education provided during incarceration.
- Responsibility for students who drop out of school but are later incarcerated or placed in a residential facility.
- Questions regarding whether there should be a reimbursement through the state school aid formula or the special education contract system for students placed into a residential facility where they enter a GED program.
- New programs, created for individuals who turn 18 in a facility and age out of the foster care system, result in confusion regarding whether the program qualifies as a student contract, eligible for reimbursement, and which school district may be responsible for the student.
- Timely notification of placements and contracts by agencies still using paper forms, which may include police departments and other placing agencies where, in many cases, a different person is completing the form each time.

The committee made no recommendation related to special education.

2021-22 Education Funding Committee

The 2021-22 interim Education Funding Committee was assigned a study of K-12 school funding, including an analysis of high-cost students and students who are high cost due to special education needs, medical reasons, agency placements, or any other reasons that increase the cost to educate the students beyond the state threshold.

The committee was informed DPI reimburses school districts for high-cost students and a school district's maximum responsibility depends on the student's placement; however, there was no reimbursement for high-cost students with medical needs who are not on an IEP.

The committee reviewed a summary of special education contract reimbursements, by provider, made to school districts during the 2019-21 biennium and the 2021-23 biennium through May 2022, including total cost and amounts reimbursed. Reimbursement only covered the cost of education. Room and board was paid by insurance or the parent. During the 2019-21 biennium, the state reimbursed school districts

\$19.9 million of the \$25 million cost of agency-placed students and \$6.7 million of the \$32.8 million cost of school-placed students. Of the \$25 million cost to school districts for agency-placed students during the 2019-21 biennium, \$10.3 million was paid to the Anne Carlsen Center, of which \$9.1 million was reimbursed by the state. For the 2021-23 biennium, through May 2022, the state reimbursed school districts \$8.7 million of the \$11.1 million cost of agency-placed students and \$2.3 million of the \$12.8 million cost of school-placed students. Of the \$11.1 million cost to school districts for agency-placed students, \$4.4 million was paid to the Anne Carlsen Center, of which \$3.8 million was reimbursed by the state. The department does not have a system to audit the costs billed to school districts by residential facilities.

The committee received a report regarding services provided by the Anne Carlsen Center and reimbursements received from DHS and school districts. All students served at the center have been diagnosed with intellectual disabilities and nearly one-half of the center's licensed beds are occupied by students with complex medical needs. The center also serves students with autism requiring significant supports. The center partners with Jamestown Public Schools to provide education in the least restrictive environment and provides 175 days of instruction to 58 students, including day students, which represent approximately 18 percent of the student population. In addition to educators, the center employs support staff necessary to provide individualized special education for students with complex needs, including licensed clinical social workers, case management, board-certified behavior analysts, registered behavior technicians, nurses, speech pathologists, and occupational and physical therapists. Tuition includes special education, behavioral support services, nursing, vocational and community training, adaptive physical education, learning and media center assistive technology, transportation, adaptive technology, educational administration, and overhead (maintenance, building, and administration). Extracurricular activities, afterschool clubs, athletic activities, and spiritual care are not included in tuition. Speech, occupational, and physical therapy are provided as determined in the student's IEP but are not included in tuition costs. Therapy units are itemized per student and billed separately. Boarding or residential costs are not billed to school districts.

The committee received a report regarding the types of developmental disabilities services that qualify for reimbursement under the Medicaid program. The Medicaid state plan provides for intermediate care facilities for individuals with intellectual disabilities, personal care services, and targeted case management with personal care services. Intermediate care facilities for individuals with intellectual disabilities is the highest level of service authorized. The all-inclusive rate paid to providers is based on the level of need and includes room and board but does not include education services. The Medicaid home- and community-based services waiver program provides services that allow individuals with developmental or intellectual disabilities to live in their own home and receive services in the community. Waiver funding may not be used to pay for special education and related services that are included in a child's IEP. However, some services in the IEP may qualify as basic Medicaid benefits.

The committee was informed because most of the students at the Anne Carlsen Center are Medicaid eligible, services indicated in their IEP for speech, occupational, and physical therapies are all Medicaid services that could be billed through education services; however, the Anne Carlsen Center was not allowed to bill Medicaid for education-based services. Approximately 20 percent of the amount paid to the Anne Carlsen Center by two special education units was for services that could be billed through Medicaid, such as speech, occupational, and physical therapies. If these therapies could be billed to Medicaid, rather than to the local education agency and the state contract system, where it is reimbursed by DPI, there would be savings to the state. The committee was informed that to leverage the federal funds, the Legislative Assembly may wish to review the possibility of the Anne Carlsen Center directly billing Medicaid for certain services. Because therapists at the Anne Carlsen Center hold the appropriate licenses and IEPs document the need for services, the center should meet the requirements to bill for these services, directly. If there was medical need for the therapy and the cost was billed through DHS as a medical service, instead of as educational services through the school district, the federal match would be paid by DHS instead of the school district, reducing costs to school districts.

The committee was informed local education agencies are required to pay for services at facilities such as the Anne Carlsen Center throughout the school year. The upfront cost is significant and most of the cost is reimbursed through the special education contract system at the end of the school year. It may be more efficient to have DPI pay facilities directly, rather than reimburse local education agencies.

The committee made no recommendation related to its study of the elementary and secondary education state school aid funding formula.

2023-24 School Funding Task Force

The 2023-24 interim School Funding Task Force was established pursuant to subsection 1 of Section 1 of Senate Bill No. 2328 (2023) and required to study high-cost student and special education student costs as those costs relate to the formula weighting factors.

The committee received information from a representative of the Education Commission of the States regarding state funding models, student and district characteristics, special education, and revenue sources. The committee learned some states use a single special education weighting factor, which does not distinguish between disability categories, and others use multiple weighting factors, which differ based on disability category, placement, concentration, or cost estimate. States also may use reimbursement or staffing-based allocations for special education funding. Twelve states, including North Dakota, apply the special education weighting factor to the overall student enrollment in a school district. Most states allocate funds based on the number of students identified as having a disability. While applying the special education weighting factor to all students can relieve administrative burden and improve planning and budgeting, it may be an inequitable distribution of resources if the proportion of students with disabilities and the cost of special education services is not equal among all districts. North Dakota was one of only 17 states that provides additional special education funding for high-cost services.

The task force reviewed DPI reimbursements for high-cost students and learned the Legislative Assembly addressed concerns regarding high-cost students with medical needs who are not on an IEP and the clawback of special education tuition funding in the state school aid formula. In 2023, the Legislative Assembly exempted special education tuition from deduction as local revenue in the state school aid formula and provided special education contracts may reimburse school districts for students with a disability and students with a significant medical condition.

The task force reviewed special education contract reimbursements and school district accountability related to special education funding. The task force was informed:

- While the number of special education students is increasing, funding from the state special education contract system and out-of-district billing has been decreasing. The decrease in funding was due to changes to the DPI student contract reference guide. Changes were made to the definitions of 1-to-1 paraprofessionals, group paraprofessionals, and teacher aides and the calculation of hours of service per year. The student contract reference guide was revised in January 2022 to establish a more uniform system of billing for special education across the state and to ensure districts were not billing more than actual expenditures.
- In addition to state reimbursement for excess cost students, school districts may bill resident school districts for out-of-district placements resulting from foster care, group home, or family member placements.
- School districts are reimbursed for excess costs. Excess costs, as defined in Section 15.1-32-18, are those costs that exceed 4 times the state average cost of education per student. For the 2023-24 school year, those limits were \$56,080 for elementary students and \$60,213 for secondary students. The excess cost threshold of 4 times the state average cost of education per student may need to be adjusted to capture the 1 percent of students with a disability referenced in Section 15.1-32-18.

- Because the educating school district receives the benefit of the per student payment, reimbursement of the special education costs of an open enrolled student by the resident school district may need review.

The committee made no recommendation related to high-cost student and special education student costs.

ATTACH:4