

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 2 ON EDUCATION FINANCE Assembly Member Mervyn Dymally, Chair

TUESDAY, APRIL 5, 2005
STATE CAPITOL, ROOM 444
10:00 AM-12 NOON

ITEMS TO BE HEARD

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ITEMS TO BE HEARD

6110 DEPARTMENT OF EDUCATION

ISSUE 1: SPECIAL EDUCATION – OVERALL FUNDING ISSUES AND COMPLIANCE WITH NEW FEDERAL REQUIREMENTS

The issues for the subcommittee to consider are:

- How to best spend federal funds to comply with the new re-authorized federal special education law, which prohibits a previous practice in which California used federal funds to offset state costs related to special education growth and COLA.
- An alternative proposal by LAO to comply with the new law. That proposal results in significant Proposition 98 and federal special education savings.
- The availability of additional savings identified by the LAO and whether and how to spend these and the above identified savings.

BACKGROUND:

Approximately 11% of students enrolled in the K-12 system are enrolled in special education programs. The state funds those programs with a combination of Proposition 98 funds and federal special education funds.

Governor's proposal. The Governor's budget proposes to fully fund growth and COLA for special education programs. In addition, the Governor's proposed budget includes a \$62 million increase in federal special education funds. The Governor proposes to pass on \$24.8 million of this increase in the form of additional funds to support special education programs. He also proposes to use \$20.2 million of the increase for a new formula approved last year to provide funding to special education students residing in licensed children's institutions. The remaining \$17 million is for baseline adjustments.

The administration's proposal to pass on federal funds as an increase above growth and COLA is a departure from previous years, in which the state used federal funds to offset the *state* costs of providing growth and COLA to special education programs. That practice is now prohibited under the reauthorized IDEA, the federal law that establishes the rights of special education students to receive specific services. Under the newly reauthorized IDEA, states cannot use federal funds to supplant state funds for normal budget increases such as growth and COLA.

LAO proposal to comply with federal law. For the budget year, the LAO proposes fully funding growth and COLA. However, the LAO proposes a different method for complying with the reauthorized IDEA provisions (hereafter termed “supplanting provisions.”) It proposes separating state and federal special education funding, and then using any increased federal funds to pay for the growth and COLA costs of the federal portion of special education funding. Growth and COLA for the state-funded portion of special education funding would be funded with state (Proposition 98) funds. If there were insufficient federal funds to pay for growth and COLA for the federal portion, the state could either decide to 1) not provide full growth and COLA for the federal portion, or 2) use Proposition 98 funds to pay for growth and COLA for the federal portion.

Savings identified by the LAO. The LAO’s method would result in substantial savings to the state. Specifically, it would free up \$43 million in General Fund, which could be used for special education or any other Proposition 98 purpose. The LAO’s method also frees up \$18.9 million in federal special education funds, which must be spent on special education purposes. The LAO also identifies some prior-year Proposition 98 savings in special education, which are one-time. However, because of maintenance of effort requirements for that prior year, these savings must be spent on special education programs.

The LAO proposes to spend \$42.8 million of the \$62 million savings it identifies as part of proposal to shift the responsibility of providing mental health services to special education students to school districts. It also proposes to spend \$4.4 million for a technical adjustment related to the new formula for special education students residing in licensed children’s institutions (see issue 3). It also proposes to distribute the one-time savings to SELPA’s as a one-time block grant for special education purposes.

COMMENTS:

The LAO will present at today’s hearing on their alternative for complying with the reauthorized IDEA and the savings that result. It will also present its plan for how to spend the savings it identifies.

ISSUE 2: SPECIAL EDUCATION – GOVERNOR'S PROPOSAL TO SUSPEND MENTAL HEALTH MANDATE FOR SPECIAL EDUCATION STUDENTS

The issues for the subcommittee to consider are:

- The Governor's proposal to suspend a long-standing mandate that counties provide mental health services to special education students, and the proposal's effect on students, school districts and counties.
- An alternative proposal by LAO to shift the responsibility for providing mental health services back to school districts, with additional funding for them to provide the services.
- Should the counties or school districts be responsible for providing this service, and how and at what level should the state fund the service?

BACKGROUND:

Current law: "AB 3632" mandate. Federal law requires schools to provide mental health services to special education students that need it, to help them better take advantage of educational services. Under state law, while schools have the responsibility for providing most services to special education students, counties are responsible for providing mental health services to these students (AB 3632 (Stats. 1984, Ch. 1747.)) They are also responsible for providing mental health services to special education students in out-of-state residential facilities. Because these requirements are state mandates, counties can claim state reimbursements for complying with the mandate. The LAO estimates annual claims for both these mandates at \$145 million annually. For the past two years, the state has deferred payment of these claims. However, last year the Legislature provided \$69 million in federal special education funds to county mental health agencies to help pay the costs of complying with the mandate. It also provided \$31 million in Proposition 98 funds to school districts to support pre-referral mental health services provided by school districts.

Governor's budget. The Governor's proposed budget suspends the existing mandate by not providing mandate funding for the item (Under the terms of Proposition 1A of last year, local governments are relieved of their responsibility to comply with a mandate if the state budget does not provide funding for the associated mandated costs.) However, federal law still requires the services to be provided. Thus, the effect of the administration's suspension of the county mandate would be to make the school districts responsible for providing the services. The budget proposes to continue last year's set-aside of \$69 million in federal special education funds to help pay for the costs of the mandate, even though it is suspended, and the \$31 million in Proposition 98 funds to school districts for pre-referral services.

LAO alternative. The LAO recommends permanently shifting the responsibility of providing mental health services to special education students to SELPA's. It believes this will result in 1) incentives to use resources more efficiently and 2) more effective early intervention services for students. It accordingly recommends that the \$69 million currently earmarked for counties to provide these services be provided to school districts. It also recommends providing an additional \$42.8 million to school districts to provide the services, for a total of \$142.8 million (which includes the \$31 million Proposition 98 funding for pre-referral services), (The LAO uses \$42.8 million of the savings it identified above to pay for the augmentation.)

COMMENTS:

Can Prop. 63 money be used for this? Last November, California voters approved Proposition 63, which will generate roughly \$750 million a year for county mental health services, beginning in 2006-07. The funds will not be appropriated via the budget act, and as such operate independently of the Governor and Legislature. In order to receive funding, each county must submit for state review and approval a three-year plan for the delivery of mental health services within its jurisdiction. The subcommittee may wish to ask if mental health services for special education students are an allowable expense for these funds, and if so, if counties intent to include these services in their plans to spend the funding.

Subcommittee No. 1. The issue of whether to suspend the mandate is under the jurisdiction of Subcommittee #1. The issue will be heard by that subcommittee later in the month. However, this subcommittee will need to coordinate with Sub. #1 on the issue of the suspension of the mandate and what effect this will have on counties and school districts.

ISSUE 3: SPECIAL EDUCATION – IMPLEMENTATION OF NEW FORMULA FOR SPECIAL EDUCATION STUDENTS IN LICENSED CHILDREN'S INSTITUTIONS

The issues for the subcommittee to consider are:

- A technical adjustment recommended by LAO.
- Which year should be considered the base year for purposes of implementing the formula?

BACKGROUND:

Reforms adopted. Last year the Legislature adopted legislation, SB 1316 (Alpert) and AB 1858 (Steinberg) to change the way the state provides funding for special education students residing in licensed children's institutions. That legislation addresses the concerns of a state-mandated study that found that the former funding formula created funding inequities between foster youth in special education served in non public schools/licensed children's institutions and those same type of youth served by school districts. That is, the former funding formula provided a powerful financial incentive for identifying pupils at licensed children's institutions as special education and placing them in non public schools, thereby violating important provisions of federal special education law.

According to the bills' authors, the new formula is placement neutral, and provides funding to SELPA's to serve these students regardless of the type of placement chosen. The current formula has a two-year hold harmless provision that ensures that no SELPA will lose funding. After that, there is a five-year phase in period to bring SELPA's to their new calculated amount based on the new formula. A few SELPA's will lose funding under the formula in the long run; most will gain.

Technical adjustment. The LAO notes that last year's legislation inadvertently omitted a class of group homes from the formula. Specifically, it forgot to include 129 community care facilities that serve disabled youth who are referred by regional centers for the disabled. Adjusting the formula to include these homes would cost a total of \$4.4 million (\$2.2 million of this one-time) for the 2004-05 and 2005-06 years. The LAO recommends using some of the savings it has identified (see Issue 1) to pay for this. It also recommends corresponding trailer bill language to correct this error.

Changes to the Base Year: The hold-harmless provisions of the new formula are based on claims from a base year. When last year's legislation was adopted, there was consensus for using 2002-03 as the base year for establishing hold harmless levels, due to concerns about irregular and possibly inflated reimbursement claims from SELPA's in 2003-04. According to CDE, irregularities in the 2003-04 data have now been corrected. For this reason, there is interest among SELPAs for changing the base year from 2002-03 to 2003-04.

COMMENTS:

It is not yet known what a change in the base year would mean for all SELPAs. CDE has recently certified reimbursements for both 2002-03 and 2003-04. Reimbursements to SELPAs increased by more than \$10 million during this time. However, claims did not uniformly increase for all SELPAs. It is also not known how these changes affect new estimates of winners and losers that will be developed by CDE during the month of April. If the base year is changed, it could increase the amount of funding going to hold harmless SELPAs and decrease new funding for SELPAs that are winners under the new formula, unless new funding is provided.

ISSUE 4: SPECIAL EDUCATION – INCIDENCE FACTOR

The issue for the subcommittee to consider is a LAO recommendation to address the use of outdated data for the special education incidence adjustment, which was created to recognize the possibility that some SELPA's have higher proportions of high-cost special education students than others.

BACKGROUND:

Under current law, SELPA's receive special education based not on the total number of special education students but on the general population. This formula was intended to remove any fiscal incentive to identify children as special education students. The formula also includes an "incidence" supplement for certain SELPA's, to recognize the possibility that some SELPA's have higher proportions of high-cost special education students than others. Those supplemental adjustments are based on 1996-97 cost data. A few years ago, the Legislature required CDE to contract for a study to update the cost data, so as to ultimately adjust the incidence supplements to reflect more recent cost data. The study was completed in 2003. It cited serious concerns about the quality of available data to re-compute the adjustments.

LAO recommendation. The LAO recommends asking CDE to report on the feasibility of updating the data and readjusting the incidence factor on an annual basis. If the CDE is unable or unwilling to take on the responsibility, it recommends eliminating the adjustment or spending \$150,000 each time the state wants to update the data used to calculate the supplements.

COMMENTS:

Staff notes that if the adjustment is eliminated it could either be rolled into base funding levels or redistributed equally between SELPA's. If it is rolled into base funding levels, will this create pressure for future equalization efforts?

ISSUE 5: GOVERNOR'S PROPOSED CHANGES TO THE ENGLISH LANGUAGE ACQUISITION PROGRAM

The issue for the subcommittee to consider is a proposal to change the allowable uses of funds from the English Language Acquisition Program.

BACKGROUND:

The Governor's proposal. The administration proposes new budget control language for the English Language Acquisition Program. The new language would place new requirements on how program recipients spend the money from this program. Specifically, the language would require participating school districts to use their existing program funds to provide services that are consistent with the Reading First program, which are different than the existing allowable uses for the program. The Governor proposes a total funding level of \$57.6 million for this program, roughly the same level provided last year, adjusted for growth and COLA. This program serves English learners in grades 4-8.

Existing law. Under current law, the English Language Assistance Program provides up to \$100 per English learner in grades 4-8, per school year. As a condition of receiving funding from this program, participating school districts and county offices of education must certify that they will do all of the following, and may use these funds to accomplish these goals:

- Conduct academic assessment of English learners to ensure appropriate placement.
- Provide a program of instruction to assist English learners in achieving existing English language development standards.
- Provide supplemental instructional support (such as before and after school opportunities or summer school) to provide students with continuing English language development.
- Coordinate existing services and funding for English learners.

Existing law also provides for a one-time \$100 per-pupil allocation for each English learner that is reclassified as English proficient, but to date the budget has never contained funding to implement that provision.

Existing uses of the funding. According to information provided to CDE at staff's request, there are 868 school districts that are eligible to receive funds under the existing program. Of these, 631 applied and 532 were funded. Approximately 550,000 English learners in grades 4-8 receive funding from the program, at \$100 per student. Participating school districts reported that they spent the funds as follows:

- Roughly 20% on core academic instructional programs.
- Roughly a third on ELD instructional programs.
- Between 16% and 23% on extended time programs.
- Roughly 4% on newcomer services
- 8% on staff development
- Between 9% and 20% on language assessment and testing
- Between 6 and 10% on other programs.

COMMENTS:

Proposal would require districts to change how they are currently spending the funding. The Governor's proposal would change the allowable uses of these funds, and thereby require some districts to change the way they are currently spending the funds. Under the Governor's proposed language, funding could be used for the allowable uses of the Reading First program, which include purchasing reading materials, participating in state-approved professional development in reading and language arts, hiring reading coaches, and reading assessments. These uses place more of an emphasis on reading than the current allowable uses, which are more broad and focus on English acquisition. Therefore, the proposed language could force school districts to either cut programs they are currently supporting with ELAP funds, or find some other way to fund them.

ISSUE 6: GOVERNOR'S PROPOSAL FOR SCHOOL BUSINESS OFFICER TRAINING

The issue for the subcommittee to consider is the administration's proposal to provide \$1 million in one-time funding for a new program to train school business officers.

BACKGROUND:

Governor's proposal. The administration is proposing a three-year plan to train all school business officers in the state. The proposed budget contains \$1 million in funding for the first year. According to the plan, each year of funding would be sufficient to train 350 business officers. The proposed amount would amount to just under \$3000 per participant, on average. Priority would be given to officers from districts currently operating with a state-appointed administrator or trustee, or from districts with certified or qualified budget certifications within the last 5 years.

The training would involve at least 100 hours, with at least half of these involving intensive individualized support and professional development in the following areas:

- School finance, including revenue projections, cash-flow management, budget development, financial reporting, monitoring controls and average daily attendance projections, and accounting.
- School operations, including matters relating to facilities, maintenance, transportation, food services, collective bargaining, risk management, and purchasing.
- Leadership, including organizational dynamics, communication, facilitation, and presentation.

In order to participate, school districts and county offices must submit a program proposal, and the State Board of Education must approve the proposal. Program participants must use a state-qualified training provider approved by the State Board of Education.

COMMENTS:

The administration is sponsoring SB 352 (Scott) to carry out the proposal. It states that this proposal is modeled after a program adopted several years ago to train principals across the state.

ISSUE 7: CATEGORICAL REFORM

The issues for the subcommittee to consider are:

- A proposal by the Governor to add two professional development programs to a new professional development block grant created in last year's categorical reform bill.
- A proposal by the Governor to add provisional language to the professional development block grant item, requiring that all professional development funded by the block grant be aligned to state academic content standards and curriculum frameworks.
- The need for technical clean-up to last year's categorical reform bill (which may be accomplished outside of the budget through an existing bill).
- Whether there is a need for the budget bill to confirm with whatever statutory clean-up takes place.

BACKGROUND:

Governor's proposal. The administration proposes trailer bill language to add three professional development programs to a new professional development block grant created in last year's categorical reform bill. Specifically he proposes to add: Peer Assistance and Review (\$27.3 million), Bilingual Teacher Training (\$1.9 million) and Teacher Dismissal Apportionments (\$43,000). The largest of these, Peer Assistance and Review, was created several years ago to help school districts develop peer review programs for teachers. It was originally funded at a much higher level, and was reduced in recent years when the state reduced funding for a number of categorical programs due to the budget crisis. The Governor also proposes to allow school districts to use funds from the block grant to fund professional development related to the Advancement Via Individual Determination program, which the Governor proposes to cut slightly in this year's budget.

In addition, the Governor proposes provisional language corresponding to the professional development block grant, which would require that all professional development opportunities funded by the block grant money be aligned to state academic content standards and curriculum frameworks.

The Governor's budget reflects the approval last year of major reform legislation regarding existing categorical programs. That reform legislation, AB 825 (Firebaugh), Chapter 871, Statutes of 2004, consolidated 26 different programs into six different theme-based block grants. Appendix A contains a table prepared by the LAO that details the programs included in the six block grants. Last year's legislation also allows school districts to transfer funds between the six block grants and into other categorical

programs – up to 15% out of any block grant (except for the Pupil Retention and Teacher Credentialing Block Grants), as long as the amount transferred does not exceed 20% of the receiving block grant's original amount.

Technical problems. Since passage of last year's legislation, a number of technical problems have arisen, namely 1) the inadvertent repeal of the school safety block grant for grades 8-12 and the need for reinstatement, 2) concerns about the workability of a provision that requires 25% of each district's apportionment for the pupil retention block grant to be held back pending full funding of two supplemental instruction programs that are not in the block grant: supplemental instruction for students in grades 2-9 retained or recommended for retention and supplemental instruction for students in grades 7-12 who are at risk of failing to pass the High School Exit Exam.

LAO recommendations. The LAO recommends a partial adoption of the Governor's proposal to add programs into the professional development block grant. It agrees with the inclusion of Peer Assistance and Review and Bilingual Teacher Training but disagrees with including Teacher Dismissal Apportionments. It also recommends adding the Math and Reading Professional Development program, which currently provides teachers with 120 hours of highly structured, standards-aligned training. (It also recommends the adoption of a statewide database on professional development activities, which will be discussed at a later hearing.)

The LAO also recommends that the Legislature eliminate the existing hold-back provisions and move the two remaining supplemental instruction programs that were not included in last year's reforms into the pupil retention block grant (supplemental instruction for students in grades 2-9 retained or recommended for retention and supplemental instruction for students in grades 7-12 who are at risk of failing to pass the High School Exit Exam). It recommends that these two programs get first call of any funding in the block grant, arguing that their inclusion could increase incentives for local cost containment and eliminate the problems with the existing hold back provisions.

New costly supplemental instruction mandate. The LAO notes that the Commission on State Mandates recently approved the supplemental instruction program for students in grades 2-9 as a reimbursable mandate (even though the state provides funding for this), and that it approved parameters and guidelines for cost claims that give substantial latitude to districts in determining the level of service that complies with the mandate (and this is reimbursable.) That is, the claims from this mandate could be very large in the future, particularly without any proposal to create incentives for cost containment.

COMMENTS:

Vehicle for technical clean-up. AB 682 (Karnette) contains some clean-up provisions to last year's AB 825 (Firebaugh). Currently, the legislation reinstates the School Safety Act, and addresses some of the technical problems with the Pupil Retention and Teacher Credentialing block grants.

ISSUE 8: MEGA-ITEM FLEXIBILITY

The issue for the subcommittee to consider is the proposed continuation of “mega-item” categorical flexibility, which allows school districts to transfer funding between different categorical programs.

BACKGROUND:

Governor’s proposal. The Governor proposes to continue last year’s budget bill “mega-item flexibility” language. That language allows school districts to transfer up to 10% of the funding from any one categorical program into another categorical program, as long as the total increase to any one program does not exceed 15% of the base of the receiving program. The programs that are subject to these eligibility provisions are the following:

- Home to School Transportation
- Educational Services for Foster Youth
- Specialized Secondary Programs
- Gifted and Talented Education Program
- Economic Impact Aid
- American Indian Education
- Agricultural Vocational Educational Incentive Program
- Educational Technology Program
- Various staff development programs
- Child Nutrition Programs
- Teacher Dismissal Apportionments
- Year-Round School Grant Programs

COMMENTS:

Last year, the Legislature adopted legislation to provide school districts with significant new flexibility in how they can spend categorical funds (see issue 7). Prior to that legislation, the mega-item flexibility was the only source of funding flexibility for school districts. Now that the state has provided more flexibility, is there a need to continue the existing mega-item flexibility? The existing mega-item flexibility allows school districts to transfer funds between programs that have completely different purposes. Is this type of flexibility consistent with the type of flexibility that was provided in last year's categorical reform bill, which combined similar programs and provided funding flexibility between similar types of programs?

Appendix A: Programs consolidated as part of last year's categorical reform legislation, AB 825 (Firebaugh). Source: LAO

Figure 1

Six New Block Grants

Pupil Retention Block Grant—\$172.9 Million

- “Core” programs supplemental instruction.
- Continuation high schools.
- Drop Out Prevention and Recovery.
- Reading, writing, math supplemental instruction.
- Tenth Grade Counseling.
- High-Risk Youth Education and Public Safety.
- Opportunity Programs.
- Los Angeles Unified At-Risk Youth Program.
- Intensive reading supplemental instruction.^a
- Algebra academies supplemental instruction.^a
- Early Intervention for School Success.^a

School Safety Consolidated Competitive Grant—\$16.3 Million

- Safe school planning and partnership mini-grants.
- School community policing.
- Gang Risk Intervention Program.
- Safety plans for new schools.
- School community violence prevention.
- Conflict resolution.

Teacher Credentialing Block Grant—\$83.9 Million

- Beginning Teacher Support and Assessment program.

Professional Development Block Grant—\$248.6 Million

- Staff Development Buyout Days.
- Comprehensive Teacher Education Institutes.
- College Readiness Program.
- Teaching as a Priority Block Grant.^b

Targeted Instructional Improvement Block Grant—\$874.5 Million

- Targeted Instructional Improvement Grant Program.
- Supplemental Grants.

School and Library Improvement Block Grant—\$421.6—Million

- School library materials.
- School Improvement Program.

^a These programs were not funded in 2004-05, but school districts are allowed to use new block grant monies for their purposes.

^b Program defunded as of 2003-04, but school districts are allowed to use new block grant monies for its purposes (teacher recruitment and retention).