

Background Paper: Special Education: State and Federal Requirements and Aid.

Budget Pages.... C-27; D-82 and D-83; and D-86

New Jersey has a long history of providing special services for a child whose disability or disabilities make it difficult for that child to participate in the system of "thorough and efficient education" in this State. This background paper first provides a brief history of the development of the State legislative and regulatory framework under which this aid was initially provided and a brief overview of the federal regulatory framework which now preempts state law. Then this background paper provides a more detailed description and analysis of State and federal aid covering the eight years since State special education aid was first calculated under the provisions of the "Comprehensive Educational Improvement and Financing Act of 1996" (CEIFA) P.L.1996, c.138 (C.18A:7F-1 et seq).

Background

State Legislative History

In 1911, legislation was enacted in New Jersey¹ which required boards of education to "ascertain what children, if any, there are in the public schools who are three years or more below the normal" and to establish a special class or classes where 10 or more of these children were resident in a district. In addition, boards of education which determined that there were 5 or more children who were blind or 10 or more children who were deaf or hard of hearing were required to provide special classes for these children limited to 10 in a class. Finally, districts were also required to provide "special equipment and facilities adapted to the accommodation, care, physical restoration, and instruction of children of school age who are physically handicapped to such an extent, or who possess such chronic organic defects, diseases, or bodily deformities that they cannot, in the opinion of an orthopaedic surgeon of recognized standing or of the director of medical inspection or of the medical inspector of the school district, be properly accommodated in the classrooms regularly or usually provided; such special facilities shall include, when recommended or approved by the commissioner, (a) home-teaching, bedside instruction, and transportation, (b) the payment of tuition in and transportation to special classes for physically handicapped children, or maintenance while being away from home to attend a special class, in another school district, and (c) scholarships in vocational and technical schools; . . ." In 1912, the Legislature recognized that to require special classes would also cost more and provided the "sum of five hundred dollars for each teacher employed in a special class for the instruction of blind, deaf, or crippled children or for children who are three or more years below the normal." The maximum amount apportioned for high school teachers in the regular classroom was \$300 and for elementary school teachers, \$200.²

By enacting this legislation, New Jersey was among the earliest states to require that local school districts provide special services for children with special needs with respect to learning. This set the framework for the debate which continues to this day: how to ascertain, classify and educate those who need additional services in order to learn effectively and how much to pay for those additional services.

¹P.L.1911, c.234. Compiled Statutes of New Jersey, First Supplement 1911-1915. General School Law: Revision of 1903 with Supplements and Subsequent Acts, section 158.

²Id., section 94.

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In 1954, three bills sponsored by Senator Beadleston were enacted as P.L.1954, cs.178, 179 and 180. These laws covered persons in the age range of 5 to 20 inclusive. They established three categories for classifying persons who were considered mentally retarded -- educable mentally retarded, trainable mentally retarded and not educable or trainable; and multiple categories for physically handicapped. The bills required districts to: conduct thorough examinations, whether as a separate district or in cooperation with other districts; and provide suitable facilities and programs of education and training including special classes if needed, whether in the school district or by sending to another school district or by the provision of individual instruction or training at home. By creating a classification of "not educable or trainable," New Jersey did exclude some children from the public education system in the State. "The superintendent of schools, or the principal of the school in a district where there is no superintendent, may, upon the advice of the examiner making the diagnosis and classification required under this act, refuse to admit, or having admitted, exclude any child whose mental retardation is so severe that he had been diagnosed and classified as not trainable under section 2 of this act."

"Any child so refused admission or excluded shall be re-examined, upon the request of the parents or other person having custody and control of the child, after a period of 1 year shall have elapsed from the date of the last previous examination. . . ." For such children, the State bore no further responsibility for education services to the family.

Section 5 of P.L.1954, c.178 (C.18:46-71.5) was amended by section 5 of P.L.1966, c.29 to require that "whenever a child shall be confined to a hospital, convalescent home, or other institution in New Jersey or an adjoining state and is enrolled in an educational program approved under this act, the board of education of the district in which the child is domiciled shall pay the tuition of said child in the special education program upon determination in the manner provided in this act, that it is advisable for the child to be so confined."

In 1967 when Title 18A was enacted, these sections of law were carried forward as 18A:46-1 et seq. The term "handicapped" was used now to refer to any person within the age group 5-20 who was in need of special services to participate in the State's education system. However, handicapped persons were still classified in the same three categories introduced under the Beadleston acts. It was not until amendments were made to N.J.S. 18A:46-9, by the "Public School Education Act of 1975," P.L.1975, c.212, that the classification of certain children was changed from "not educable or trainable" to "eligible for day training." In the same act, N.J.S. 18A:46-13 was amended to provide that it was "the duty of each board of education to provide suitable facilities and programs of education for all the children who are classified as handicapped under this chapter except those so mentally retarded as to be eligible for day training pursuant to N.J.S.18A:46-9." For these students, a new section of law was added by this act, N.J.S.18A:46-18.1, which read, "It shall be the duty of the State board in concert with the Department of Institutions and Agencies to provide suitable facilities and programs for all the children who are classified as eligible for day training."

While these changes were taking place in the public schools, a significant change with respect to special education took place for the nonpublic schools with passage of legislation which extended State aid to nonpublic schools for the provision of services to the handicapped, P.L.1977, c.193 (C.18A:46-19.1 et seq.) and the provision of auxiliary services, P.L.1977, c.192 (C.18A:46A-1 et seq.).

P.L.1977, c.192 (C.18A:46A-1 et seq.) provided auxiliary education services to children ages

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5-20 enrolled in nonpublic schools: compensatory services related to computation and communication skills; supportive services for children of limited English-speaking ability; and home-instruction services. Under this act, it is the responsibility of the public school district in which the nonpublic school is located to provide for the receipt of auxiliary service for children residing in the State and enrolled full-time in that non-public school. Additional State aid is provided to the public school district, initially determined by finding the Statewide average for furnishing similar services to children in public school and finally in, 1996, under CEIFA, by determining dollar amounts or a weight to be used in relation to the T & E amount.

P.L.1977, c.193 (C.18A:46-19.1) provided examination, classification and speech corrections services for children enrolled in a nonpublic school and required the school district in which the nonpublic school was located to provide such services. Additional State aid was also provided to the public school districts to implement these provisions. Initially, aid was provided to the districts based on the amount of aid appropriated in that act, and subsequently in the budget, and the number of pupils in each district eligible for these services. Under the "Quality Education Act of 1990," P.L.1990, c.52, the amount of aid received by a district for nonpublic handicapped students was determined by using cost factors for providing certain kinds of services multiplied by the foundation amount and the number of students receiving those services. P.L.1996, c.138 s. 75 (the legislation enacting CEIFA) established a dollar amount for each of four kinds of services: for an initial evaluation for examination and classification, \$990.73; for an annual review for examination and classification, \$297.06; for speech correction services, \$786.70; and for supplementary instructional services, \$752.41. For FY 2005 the recommended dollar amounts for these services are: initial evaluation for examination and classification, \$1,225; an annual review for examination and classification, \$380; for speech correction services, \$930; and for supplementary instructional services, \$826.

Further refinement of the treatment of children in State facilities was provided by the enactment of "The State Facilities Education Act of 1979," P.L.1979, c.207 (C.18A:7B-1 et seq.). The purpose of this act was to provide a thorough and efficient education for children in all State facilities. Local school districts were required to pay the tuition for the education provided in State facilities, which was funded, in part, through increased State aid and an amendment to the definition of "resident enrollment" in section 3 of the "Public School Education Act of 1975" to include each child in State facilities in the enrollment count of that child's district of residence. This was revised further by P.L.1992, c.129 which amended N.J.S. 18A:46-13 and made the local school districts, instead of the State board in concert with the Department of Institutions and Agencies, responsible "to provide suitable facilities and programs of education for all of the children who are classified as handicapped under this chapter."

With the enactment of the "Comprehensive Educational Improvement and Financing Act of 1996," a shift in how handicapped students were classified took place. The previous model, called a "medical model" by the Report of the New Jersey Legislative Task Force on Special Education (p. 10), was changed to avoid "overburdening children with disability labels." In its place, a tier system was developed which considered the types of special education services a child needed to participate in a free and appropriate education in the least restrictive environment. Under this act, appropriate education was to be defined in terms of the core curriculum content standards and related assessments.

Two further legislative changes have taken place, one impacting the way federal aid is provided to nonpublic schools and the other impacting the calculation of aid under subsection b.

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of section 19 of CEIFA, extraordinary special education aid.

When amendments to the federal "Individuals with Disabilities Education Act" (IDEA) regulations were promulgated in 1997, States were required to spend federal dollars for students in nonpublic schools as follows: calculate the proportion that the number of nonpublic school children with disabilities aged 3-21 residing in the school district's jurisdiction is to the total number of children with disabilities residing in the school district aged 3-21 and multiply that proportion times the amount of the federal grant received by the district. This calculation was repeated to make a similar determination with regard to the grant for children ages 3 through 5 inclusive. Since New Jersey provided State aid since 1977 to nonpublic schools for special education purposes, the State Department of Education requested clarification concerning this requirement -- were districts required to spend that proportion from the federal grant or just that dollar amount? Until such time as the clarification was received, the State Department of Education allocated federal dollars to the nonpublic schools in the proportional amount. The federal Department of Education subsequently ruled that the federal law required only that a dollar amount equal to the proportionate amount need be spent for services to nonpublic students, not that it had to be federal dollars. After this ruling, the department revised the allocation of federal aid dollars for special education, so that if the State aid amounts provided under P.L.1977, c.193 (C.18A:46-19.1 et seq.) were sufficient to meet the proportionate requirement, federal dollars could be retained by the public school district rather than used for nonpublic services. The Legislature overturned the department's decision with its enactment of P.L.2001, c.230 (C.18A:46-19.10); "State funds appropriated pursuant to P.L.1977, c.193 (C.18A:46-19.1) to provide special education and related services to students enrolled in nonpublic schools shall not be included by a school district in the calculation of the minimum funding requirement for nonpublic students under the Individuals with Disabilities Education Act, 20 U.S.C. s. 1400 et seq."

Under subsection b. of section 19 of CEIFA, P.L.1996, c.138 (C.18A:7F-19), a district was able to apply for extraordinary special education aid under three circumstances: when the cost of providing education for an individual classified pupil exceeds \$40,000; when a district has to educate an extraordinary number of classified pupils; and when a district is ordered to make a high cost placement by a tribunal of competent jurisdiction. Under the provisions of this subsection, a district's application was reviewed by a panel established by the commissioner based on specific criteria in the law. Under P.L.2001, c.356 which amended subsection b. of section 19 of CEIFA, two of the three situations under which a district could seek extraordinary special education aid were deleted as well as the requirement for a review of a district's application. Now a district can apply for such aid only in the situation where the cost of providing education for an individual classified pupil exceeds \$40,000 and a district has only to make an application which details the expenses incurred on behalf of the particular classified pupil for which the district is seeking reimbursement. As in the original provisions, aid received under this section of law is to be recorded as revenue in the current school year and paid to the district in the subsequent school year. In addition, under P.L.2001, c.356, extraordinary special education aid for costs in excess of \$40,000 incurred for an individual classified pupil by a school district in the school years 2002-2003 through 2004-2005 is to be calculated as follows: State aid for any individual classified pupil whose costs are in excess of \$80,000 shall be provided to a district as the sum of 80 percent of the costs in excess of \$80,000 plus \$26,000 (70 percent of \$20,000 and 60 percent of \$20,000); State aid for any individual classified pupil whose costs are in excess of \$60,000 and equal to or less than \$80,000 shall be provided to a district as the sum of 70 percent of the amount in excess of \$60,000 and equal to or less than \$80,000 and \$12,000 (60 percent of \$20,000); and State aid for each individual classified pupil whose costs are in excess of \$40,000 and equal to or less than \$60,000

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shall be provided to a district in the amount of 60 percent of those costs. For the school year 2005-2006 and thereafter, the district is to receive additional State aid equal to 100 percent of the costs in excess of \$40,000.

Federal Legislative History

The following brief description of the development of federal law with respect to handicapped students is from a report of the Center for Special Education Finance whose work is supported by funding from the Office of Special Education and Rehabilitation Services in the federal Department of Education.

The Federal presence in elementary and secondary education in general, and special education in particular, was negligible until the 1960s. In 1966, hearings before an ad hoc subcommittee of the House of Representatives Education and Labor Committee revealed that only about one-third of the 5.5 million children and youth with disabilities in the country were being provided appropriate special education services. According to the committee report, the remaining two-thirds were either totally excluded from public schools or "sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.'" Federal programs directed at children with disabilities, the Committee reported, were "minimal, fractionated, uncoordinated, and frequently given a low priority in the education community" (House Report No. 72-611, June 26, 1975, p. 2).

As a result of these hearings, Congress added Title VI to the Elementary and Secondary Education Act (P. L. 89-750) in 1966, establishing a two-year project grants program to assist the States in educating children and youth with disabilities. Allotments were based on the population of exceptional children age 3 through 21 in the State. The Elementary and Secondary Education Amendments of 1970 repealed Title VI as of July 1971 and created the Education of the Handicapped Act (EHA), P. L. 91-230. EHA consolidated a number of separate Federal grant programs related to children with disabilities under one statute. This new authority, the precursor of the current IDEA, was the first free-standing statute written expressly for children and youth with disabilities.³

The requirements for providing special education to all students with disabilities are organized around six principles contained in the federal "Education for All Handicapped Children Act of 1975," (20 U.S.C. s. 1400 et seq.) and, as amended in 1997, the "Individuals with Disabilities Education Act" (IDEA). The six principles set forth in IDEA are: a free appropriate public education (FAPE); appropriate evaluation; individualized education program (IEP); least restrictive environment; parent and student participation in decision making; and procedural safeguards.

Free Appropriate Public Education (FAPE). This is defined in IDEA as follows: The term "free appropriate public education means special education and related services that -- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the

³<http://www.ed.gov/pubs/OSEP95AnIRpt/ch5a-1.html>

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individualized education program required under section 614(d)."

Appropriate Evaluation. This involves the use of "evaluation procedures that assure all children with disabilities are appropriately assessed for purposes of eligibility determination, educational programming, and individual performance monitoring." The amendments in 1997 added a new dimension to the understanding of "appropriate evaluation" by emphasizing that a child should not be subjected to unnecessary tests and assessments, nor should a school district be saddled with the additional expenses of unnecessary tests and assessments. These same amendments focused the evaluation on the gathering of "information related to enabling the child to be involved in and progress in the general curriculum, or for preschool children, to participate in appropriate activities."

Individualized Education Program (IEP). As provided in federal law, "the term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, written, and, as appropriate, revised in accordance with Section 614(d)." The development of the IEP and its implementation and ongoing revision, as appropriate, is the focal point of the provision of education and related services to each child with a disability. Federal law sets forth what must be included in the IEP, who is to develop the IEP and the school district's obligation to provide the special education and related services identified in each child's IEP.

Least Restrictive Environment (LRE). The IDEA's first option for providing education for students with a disability is that they are "most appropriately educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" (20 U.S.C. s.1412(a)(5)(A)). Critical in determining the least restrictive environment is the IEP team (child study team). If the IEP developed by the child study team can provide that the LRE for the student is the general education classroom (with supplemental aids and services, if necessary), subject to the approval of the parent, that will be where the student is educated. However, if the child study team determines that the student cannot be satisfactorily educated in the general education classroom, then an alternative placement must be considered. "Accordingly, schools have been, and still are, required by law to ensure that a continuum of alternatives is available to meet the needs of children with disabilities for special education and related services. This continuum includes special classes within the school to instruction in hospitals and institutions."

Parent and Student Participation in Decision Making. The law has always required the participation of a student's parents in developing the student's IEP. Parents have to be notified concerning the IEP development, given an opportunity to provide input and must give consent before the IEP is finalized. With the inclusion of the requirement to provide for transition services in the IEP of a student 14 years and older, input of a student in the ongoing review of that student's IEP must be part of the process.

Procedural Safeguards. The law contains procedural provisions which: protect rights of students and parents -- basically to ensure that school districts cannot act unilaterally; ensure that information is provided to parents and students -- access to the information they need in order to make informed decisions; and that mechanisms are in place to provide for the resolution of disagreements between the interested parties.

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A change in federal law with major impact on states' provision of education services to individuals with disabilities came in the beginning of 2002 with the enactment of the federal "No Child Left Behind Act of 2001" (NCLB). Under this federal law, as implied by the name, all schools are required to meet adequate yearly progress measures as determined primarily by the performance of their students in grades 3 through 8 and grade 11 on annual Statewide assessments in math and language arts/literacy. Reporting on adequate yearly progress of student performance is to be disaggregated by certain subgroups, among which is a subgroup of students with disabilities. The federal law requires 95 percent of a school's students in a given grade with a disability, as defined under IDEA, to take the Statewide assessments, unless the number is small enough to make the report unreliable. These students are held to the states' standards for proficiency. In addition, states are required to make reasonable accommodations and adaptations for students with disabilities by creating alternative assessments. Prior to the implementation of the federal law, the State reported on the Statewide assessments in the categories of "regular education," "special education," and "limited English proficiency," and only the scores of the regular education students were considered in looking at the extent to which the students in a particular school and school district were performing at a proficient level, even though the scores of the other groups were reported.

State Aid for Special Education

Since the 1997-98 school year State special education school aid provided to public school districts under section 19 of the "Comprehensive Educational Improvement and Financing Act of 1996" (CEIFA), P.L.1996, c.138 (C.18A:7F-19), and to nonpublic schools under section 14 of P.L.1977, c.193 (C.18A:46-19.8) and the language of the annual Appropriations Acts, has increased from \$666.8 million in FY 1998 to \$1,077 million in FY 2005, an increase of \$410.4 million (61.5 percent). During this same period, the cost of living index has increased less than 16 percent.

Table 1: State Aid for Special Education (\$000)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY05 (proposed)	Pct Chng
Public*	\$642,429	\$711,065	\$772,384	\$864,983	\$1,009,120	\$1,009,120	\$1,046,120	\$1,046,120	62.8%
NPublic	\$24,337	\$26,364	\$27,155	\$27,155	\$29,864	\$30,741	\$30,741	\$30,999	27.4%
Total	\$666,766	\$737,429	\$799,539	\$892,138	\$1,038,984	\$1,039,861	\$1,076,861	\$1,077,119	61.5%

*Includes transportation aid for special education students. For FY 2001-02 and subsequent fiscal years this amount has not changed since the department has not calculated transportation aid since the 2001-02 school year. For nonpublic school students, the amount includes transportation for handicapped and auxiliary services.

Under the "Comprehensive Educational Improvement and Financing Act of 1996," a tier classification system was established to set per pupil costs for determining categorical special education aid for districts. Tier I is the category used to represent "related services," under the federal definition of special education, that a person classified in the other Tiers is eligible to receive. An individual may receive up to four related services. Under federal law, "related services" means transportation, and certain developmental, corrective, and other supportive services. The supportive services include: speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling,

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orientation and mobility services, and medical services (for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. 20 U.S.C. s. 1402 (22).

Pursuant to section 19 of CEIFA, the per pupil dollar amounts for the classification tiers used in determining State aid for special education, were fixed as a proportion of the unweighted per pupil T&E spending amount for FY1998. For tier I, the weight is 0.0223; tier II, the weight is 0.4383; for tier III, the weight is 0.8847; and for tier IV, the weight is 1.12277. Under CEIFA, the per pupil dollar amounts for FY1999 were increased by the increase in the cost of living (CPI). For subsequent years, the cost factors are those established in the Biennial Report on the Cost of Providing a Thorough and Efficient Education, unless changed by the Legislature. The last school year for which special education aid was calculated was 2001-02. For that year, the Tier III per pupil amount recommended in the Biennial Report (March 2000) was \$6,607. It was reduced to \$5,975 in the FY 2002 Appropriations Act. Table 2, below, provides information on the changes to the cost factors for the Tiers from FY 1998 to FY 2004.

Table 2: Tier Cost Factors FY 1998-FY 2004

Tier	FY98	FY99	FY00	FY01	FY02*	FY03	FY04	% Change FY98 to FY04	% Change FY 00 to FY04
I	\$150	\$154	\$300	\$305	\$310	\$310	\$317	111.3%	5.7%
II	\$2,945	\$3,024	\$3,155	\$3,207	\$3,260	\$3,260	\$3,329	13.0%	5.5%
III	\$5,945	\$6,104	\$4,207	\$4,276	\$5,975	\$5,975	\$6,101	2.6%	45.0%
IV	\$8,250	\$8,470	\$12,620	\$12,827	\$13,037	\$13,037	\$13,312	61.4%	5.5%

The two major cost factor increases above (Tier IV in FY 2000 and Tier III in FY 2002) took place after research by the department on the actual cost experiences of school districts, as reflected in statements in the March 1998 and March 2000 Biennial Reports.

The March 1998 Biennial Report, based on a study done of the Tier IV actual expenditures and intensive services provided to pupils with disabilities, recommended that the following pupils be included in Tier IV:

- pupils meeting the criteria for Eligible for Day Training
- Pupils meeting the criteria for Autistic
- Any pupil receiving one or more of the following intensive services -- individual instruction; pupil:aide ratio of 3:1 or less; high level assistive technology; extended school year; intensive related services; interpreter services; personal aide; residential placement for educational purposes; and individual nursing services

The March 2000 Biennial Report recommended that the cost factor for Tier III be increased from \$4,276 to \$6,607, an increase of 54.5 percent. This recommendation was based on an audit of actual expenditures by the districts which showed that the actual expenditures for Tier III pupils were approximately 60 percent of the expenditures for Tier IV pupils, while the cost factor for State

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aid being provided to the local districts was only 33 percent of the Tier IV cost factor. The actual increase in the cost factor for Tier III (\$5,975) brought the per pupil cost for Tier III to 45.8 percent of the Tier IV cost factor and represented a 39.7 per cent increase over the FY2001 Tier III cost factor.

Table 3 indexes the cost factors to provide information on their relative costs over this period of time, FY 1998 to FY 2004. Tier II is used as the base and its value is divided into the cost factors for the other Tiers for each year.

Table 3: Index of Tier Cost Factors (Relative Cost of Special Education Aid)

Tier	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Tier II Cost	\$2,945	\$3,024	\$3,155	\$3,207	\$3,260	\$3,260	\$3,329
Tier II Index	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Tier III	2.02	2.02	1.33	1.33	1.83	1.83	1.83
Tier IV	2.80	2.80	4.00	4.00	4.00	4.00	4.00

As shown in the above table, in FY 1998, State aid for pupils classified as Tier III was a little more than twice the aid for pupils in Tier II and State aid for pupils in Tier IV was almost three times as much as for pupils in Tier II. A major change in the relative amount of State aid provided for pupils in different Tiers took place in FY 2000 and then again in FY 2002. In FY 2000, State aid for pupils in Tier III relative to pupils in Tier II decreased. In FY 2000, it was one and a third times greater than that provided for Tier II pupils. However, State aid for pupils in Tier IV was now four times that provided for students in Tier II and that ratio of State aid has remained at that level since. For pupils in Tier III, the relative amount of State aid per pupil increased in FY 2002 approaching twice the amount of aid provided for pupils in Tier II.

Table 4 provides information on the proportion that pupils classified for special education services make up of total resident enrollment.

Table 4: Special Education Pupils as a Percent of Total Resident Enrollment

	Oct 97	Oct 98	Oct 99	Oct 00	Oct 01	Oct 02	Oct 03
Special Ed	150,572	157,211	163,343	172,116	180,085	187,959	195,020
Resident Enr	1,247,164	1,269,671	1,292,459	1,314,084	1,344,190	1,366,001	1,381,925
Percent	12.1%	12.4%	12.6%	13.1%	13.4%	13.8%	14.1%

Prior to considering in more detail the distribution of classified pupils by tier and grade level, this table presents an overall perspective on State enrollment and the percent that classified pupils make up of that enrollment. The number of pupils classified as special education students (Tiers II through IV) has increased from 150,572 on the October 1997 Application for State School Aid (ASSA) forms to 195,020 on the October 2003 ASSA, an increase of 44,453 (29.5 percent). At the same time, total State enrollment grew by 134,164 pupils (10.8 percent). Since the base numbers from which growth percents are calculated are quite different, it is useful as well to consider the change in proportion that classified pupils make up of the total State enrollment. In

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October 1997, special education pupils comprised 12.1 percent of total enrollment. In October 2003, special education pupils comprised 14.1 percent of total enrollment. Additionally, as the percents are considered over the 7 years of enrollment data in the table, the increase in the percent that special education pupils make up of total enrollment shows a steady and consistent increase. As will be seen in the tables that follow, this steady and consistent increase in special education pupils over time and their allocation to the different tiers has significant cost implications for the State and local districts going forward.

Table 5: Number of Pupils Classified by Tier, SY 1997-98 to SY 2003-04

Tiers	Grade	Oct 97	Oct 98	Oct 99	Oct 00	Oct 01	Oct 02	Oct 03	Pupil change	Percent Change
II	Elem	43,254	43,592	41,586	40,104	38,172	36,594	35,829	(7,425)	-17.2%
	Middle	30,359	30,926	32,072	32,682	32,942	33,092	32,211	1,852	9.0%
	H.School	38,007	39,166	39,739	40,759	41,420	43,009	44,009	6,002	15.8%
	Total II	111,620	113,684	113,397	113,545	112,534	112,695	112,052	432	0.4%
III	Elem	11,289	12,432	13,318	15,786	18,044	19,723	21,129	9,840	87.2%
	Middle	6,607	7,488	8,224	9,851	11,793	13,483	14,744	8,137	123.2%
	H.School	10,881	12,769	12,889	13,907	15,248	16,972	18,676	7,795	71.6%
	Total III	28,777	32,689	34,431	39,544	45,085	50,178	54,549	25,772	89.6%
IV	Elem	4,453	6,345	9,335	11,518	13,765	15,381	17,028	12,575	282.4%
	Middle	1,898	1,851	2,650	3,290	3,945	4,400	5,172	3,274	172.5%
	H.School	3,824	2,642	3,530	4,219	4,756	5,305	6,224	2,400	62.8%
	Total IV	10,175	10,838	15,515	19,027	22,466	25,086	28,424	18,249	179.4%
Overall Total		150,572	157,211	163,343	172,116	180,085	187,959	195,025	44,453	29.5%

As shown in Table 4, Statewide there has been an increase of 44,453 (29.5 percent) in the number of pupils classified for special education services. Within this overall increase in the number of classified pupils, it is instructive to consider the changes, numbers and percents, in the different Tiers. The number classified as Tier II has increased by 433 pupils (.4 percent); the number classified as Tier III has increased by 25,772 pupils (89.6 percent); and the number classified as Tier IV has increased by 18,249 pupils (179.4 percent). Considering the dynamics within this table of the overall change in pupils classified for special education services -- the changes in numbers at different grade levels and in different tiers -- the State and local school districts face considerable and constant increases in the costs associated with providing those services. The least costly tier, Tier II, has little growth over this time; in fact there has been a decrease in the number of pupils classified in this Tier at the elementary school level (entry point into special education services). In contrast, the elementary school numbers in Tier III and Tier IV have increased by 87.2 and 282.4 percent respectively. Again it is important to note that these are students who most likely will remain in those tiers throughout their school life and that the trend shown in the table for increases in these tiers and at the elementary level portends dramatic increases in costs in the future.

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Another way to consider the changes in the number of pupils classified into the different tiers for purposes of providing State aid for special education is to consider changes in the proportion that the pupils in each tier make up of the total number of classified pupils over time.

Table 6 provides information for each year on the number of pupils in each tier as a percent of the total number of classified pupils. Table 7 provides information on the percent of total classified pupils by tier for the elementary grade level. This could be considered the entry level for classification purposes and changes in how these pupils are allocated between tiers over time has significant implications for State aid and local district costs.

Table 6: Pupils in Each Tier as a Percent of Total Classified Pupils, All Grade Levels

Tiers	Oct 97	Oct 98	Oct 99	Oct 00	Oct 01	Oct 02	Oct 03
II	74.1%	72.3%	69.4%	66.0%	62.5%	60.0%	57.5%
III	19.1%	20.8%	21.1%	23.0%	25.0%	26.7%	28.0%
IV	6.8%	6.9%	9.5%	11.1%	12.5%	13.3%	14.6%
Total	150,572	157,211	163,343	172,116	180,085	187,959	195,025

Table 7: Pupils in Each Tier as a Percent of Total Classified Pupils, Elementary Grade Level

	Tier	Oct 97	Oct 98	Oct 99	Oct 00	Oct 01	Oct 02	Oct 03
Elementary Level	II	73.3%	69.9%	64.7%	59.5%	54.5%	51.0%	48.4%
	III	19.1%	19.9%	20.7%	23.4%	25.8%	27.5%	28.6%
	IV	7.5%	10.2%	14.5%	17.1%	19.7%	21.5%	23.0%
Total Elementary Pupils		58,996	62,369	64,239	67,408	69,981	71,698	73,986

Table 6 shows that the proportion of pupils classified in the more costly tiers, Tier III and Tier IV, is increasing relative to the proportion of pupils classified in the least costly tier, Tier II. Table 7 looks specifically at the distribution of pupils among the tiers at the elementary grade level. The results here are even more dramatic. The data reflect a change in how pupils in the early grades are classified. The proportion of pupils is decreasing in the least costly tier, Tier I, and increasing in the more costly tiers, Tiers III and IV. This has long term cost implications for the State and local districts, since these students are likely to remain in these classifications for the duration of their school life.

In addition to State aid for special education, under CEIFA, additional State aid has been provided as extraordinary special education aid. Table 8 provides information on extraordinary special education aid under CEIFA. As shown in the table, while the average cost per individual classified pupil whose costs are in excess of \$40,000 has increased only by about 3 percent, the number of individual classified pupils whose costs are in excess of \$40,000 has grown dramatically since the 1997-98 school year, from 946 to 7,212 in the 2003-04 school year. With this growth in number, the total cost in excess of \$40,000 has also grown, from \$12,916,298 in school year 1997-98 to \$109,643,705 in school year 2003-04.

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Table 8: Extraordinary Special Education Aid Under CEIFA

Measure	Costs Incurred in School Year							Percent Change 1998-2004
	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	
Applications	946	944	1,434	2,199	3,647	5,440	7,212	662.4%
Total Cost	\$50,756,298	\$51,630,749	\$78,625,619	\$121,115,977	\$201,366,186	\$299,258,118	\$398,123,705	684.4%
Cost > \$40,000	\$12,916,298	\$13,870,749	\$21,375,316	\$33,155,977	\$57,806,186	\$81,658,118	\$109,643,705	748.9%
State Aid	\$10,000,000	\$10,000,000	\$10,000,000	\$15,000,000	\$15,000,000	\$52,000,000	\$51,999,868	420.0%
Avg Cost/Appl	\$53,654	\$54,694	\$54,830	\$55,078	\$55,214	\$55,011	\$55,203	2.9%

State extraordinary special education aid has not kept pace with the growth of costs, even with the increased appropriation of \$37 million in FY 2004. The extraordinary special education State aid provided in FY 2004 through budget language in the FY 2004 Appropriations Act for extraordinary special education costs incurred by school districts in FY 2003 provided 99.5 percent of the aid required (\$52,267,547) under the provisions of current law, subsection b. of section 19 of CEIFA (C.18A:7F-19). The recommended FY 2005 extraordinary special education aid (\$52 million) will provide 74.1 percent of the extraordinary aid required (\$70,209,371) under current law. Beginning with the costs incurred in FY 2005 and thereafter, current law will require the State to fund the total extraordinary special education costs for an individual classified pupil in excess of \$40,000, which in FY 2003-04 was \$109.6 million. Under current law, as enacted in 1996, costs in excess of \$40,000 are considered for extraordinary special education aid. If that value were inflated by the Consumer Price Index, the value as of July 2003 would have been \$46,181.

So far, this paper has looked at the amount of State aid provided for special education services. In addition to State aid, the costs of local school districts for special education services have been increasing. While data on these costs is not complete, available data has been used to estimate the total cost of providing special education services for the 2003-04 school year as follows:

Table 9: Audited Total Costs for Special Education

Year	Audited Costs	State Aid	Local Cost
1997-98	\$1,527,703,087	\$767,121,590	\$760,581,497
1998-99	\$1,561,220,688	\$848,802,710	\$712,417,978
1999-00	\$1,737,561,616	\$906,848,810	\$830,712,806
2001-02	\$2,390,092,505	\$1,028,389,249	\$1,361,703,256
2002-03	\$2,681,191,413	\$1,028,389,249	\$1,652,802,164

Data for the school year 2000-2001 is not included. State aid for the 1997-98 through 1999-00 school years includes special education aid and an estimate of the amount of district transportation aid that goes for special education students. State aid for the 2001-02 and 2002-03 includes special education aid and the amount of district transportation aid that goes for special education students according to the CEIFA formula calculations.

This table shows the cost of providing special education services which are in addition to regular education costs. Of interest is the growing dependence on local school boards for these

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costs. The data used for total costs are the audited school district data, i.e., they reflect actual, not budgeted, school district expenditures. In addition, Abbott v. Burke Parity Remedy Aid is calculated by comparing per pupil regular education expenditures in each Abbott district with the average per pupil regular education expenditure of the districts in district factor groups "I" and "J". Special education aid is not included as a component of regular education expenditures, but a district's general fund tax levy is included. Abbott districts, under court order, are the only districts in the State that have not been required to increase their general fund tax levies in the past several years. To the extent that local district costs for special education are increasing (see the growing disparity between State aid for special education and the total costs for special education in Table 9), local districts have to increase their general fund tax levy. In turn, for the purposes of calculating Abbott v. Burke Parity Remedy Aid, this will increase the disparity between an Abbott district's per pupil regular education expenditure and the average per pupil regular education expenditures in the districts in district factor "I" and "J" with the result being a greater amount of Abbott v. Burke Parity Remedy Aid. For FY 2005 the recommended amount of Abbott v. Burke Parity Remedy Aid is \$907 million. This represents an increase of over \$200 million (28.6 percent) from FY 2004 Abbott v. Burke Parity Remedy Aid.

Federal Aid for Special Education

Table 10 provides information on the amount of federal aid the State has received each year FY 1999 to FY 2004. The information, with the exception of FY 1999, shows federal aid provided for special education in public and nonpublic schools.

Table 10: Federal Aid for Special Education

Schools	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	Pct Change
Public	\$116,094,872	\$137,451,872	\$145,790,134	\$204,588,651	\$224,870,393	\$268,406,556	131.2%
Nonpublic		\$9,823,965	\$9,683,460	\$14,242,360	\$14,661,026	\$17,195,507	75.0%
Total Aid	\$116,094,872	\$147,275,837	\$155,473,594	\$218,831,011	\$239,531,419	\$285,602,063	146.0%

Local school districts receive federal funds under two sections of the federal law, "Individuals with Disabilities Education Act;" one for children aged 3-21 (20 U.S.C. s.1411) and a separate preschool grant for children aged 3-5 (20 U.S.C. s.1419).

"The maximum amount of the grant a State may receive under this section for any fiscal year is--

(A) the number of children with disabilities in the State who are receiving special education and related services--

(i) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(ii) aged 6 through 21; multiplied by

(B) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States. (20 USCA s 1411).

Federal law and regulations also determine the amount that local school districts are to spend for children with disabilities in **nonpublic** schools by calculating the proportion that the number of nonpublic school children with disabilities aged 3-21 residing in the school district's

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jurisdiction is to the total number of children with disabilities residing in the school district aged 3-21 and multiplying this proportion times the amount of the federal grant received by the district. This is repeated to make a similar determination with regard to the grant for children ages 3 through 5 inclusive.

As enacted, IDEA committed Congress to provide funding for up to 40 percent of special education costs in the states based on the calculation using the national average per pupil expenditure in public elementary and secondary education. However, even with the increases in recent years, the federal government currently funds only about 15 percent of the national average per pupil expenditure in public elementary and secondary schools in the United States. Additionally, when a comparison is made between the national average per pupil expenditure and the per pupil expenditure in New Jersey, the dollar amount of federal aid for special education received by New Jersey would have to be increased by 152 percent to make it equivalent to the average New Jersey per pupil expenditure. Another way of describing this is that while the federal government is funding special education services at about 15 percent of the national average per-pupil expenditure, federal aid for special education services in New Jersey funds only about 10 percent of New Jersey's average per pupil expenditure.

The Future of Special Education in the State

The following points summarize the material presented in this background paper:

- The proportion of total State enrollment that is classified is steadily increasing;
- Of the number of students being classified each year, the proportion being classified in the more costly tiers is steadily increasing, with the most rapid increase in Tier IV, the most costly tier;
- The cost ratios relating the different tiers have remained constant since FY 2001-02. However, the changes in the cost factors in the Biennial Report are not reflected in changes in State aid for special education;
- The number of special education students whose costs are in excess of \$40,000 is increasing dramatically;
- The costs for special education are increasingly being borne by local school districts which impacts on the calculation of Abbott v. Burke Parity Remedy Aid;
- Federal aid for special education, while it has increased in the last three years still only funds special education at a level which is below the 40 percent commitment contained in the original legislation; and in light of the federal formula for funding special education in the states, every dollar New Jersey receives is actually worth about \$.67 with respect to the average per pupil expenditure in New Jersey; and
- The State, along with all other states, faces a considerable amount of uncertainty and costs with respect to its schools and districts meeting the requirements for adequate yearly progress under the federal "No Child Left Behind Act of 2001," and

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uncertainty with respect to potential new requirements under the reauthorization of the "Individuals with Disabilities Education Act" now being considered in Congress.