

**State of Washington
Joint Legislative Audit and Review Committee (JLARC)**



K-12 Special Education Study

First Interim Report

Report 00-6

October 11, 2000

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Under the direction of the Legislative Auditor, committee staff conduct performance audits, program evaluations, sunset reviews, and other policy and fiscal studies. Studies focus on the efficiency and effectiveness of agency operations, impact of state programs, and compliance with legislative intent. As appropriate, recommendations to correct identified problem areas are included. The Legislative Auditor also has responsibility for facilitating implementation of effective performance measurement throughout state government.

K-12 SPECIAL EDUCATION STUDY

FIRST INTERIM REPORT

REPORT 00-6

REPORT DIGEST

OCTOBER 11, 2000



STATE OF WASHINGTON

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LEGISLATIVE MANDATE

This interim study was mandated in Engrossed House Bill 2487 from the 2000 Legislative Session. According to that mandate, the study shall focus on:

- A review of the findings of the Special Education Program audit summary reports prepared by the State Auditor;
- The adequacy of the excess cost definition for the Special Education Program adopted by the Superintendent of Public Instruction;
- The ability to determine individual school districts' safety net funding need in light of differing accounting methods in use by school districts; and
- The ability to uniformly determine individual school districts' safety net funding need in light of differing service delivery practices.

Two interim reports are required. The first must be submitted to the legislature by November 20, 2000, and the second by November 20, 2001. The final report must be submitted to the legislature no later than June 30, 2002.

PURPOSE OF THE REPORT

Since the major research and analysis for this study will occur over the next year and a half, the primary purpose of the First Interim Report is to provide background and context for the work to come. The Scope and Objectives for the study are included in Appendix 1.

SUMMARY

Our initial review of the State Auditor's reports and the safety net process was focused on understanding the specific issues that are the subject of the study mandate. Our findings from this initial review include:

- The State Auditor has reported inconsistencies within and among school districts in documenting the need for special education, the relationship between the Individualized Education Program (IEP) and the evaluation of the student, and whether the program provided specially designed instruction.

Limitations related to the number of files reviewed and districts audited, however, prevent generalizing these findings in most cases to those districts reviewed, and further prevent generalizing from any of these cases to the state as a whole. The State Auditor's summary reports, appropriately, did not attempt to generalize findings from the individual files or school districts reviewed.

- There have been questions as to whether the new excess cost methodology, adopted by the Office of Superintendent of Public Instruction (OSPI) for safety net applicants, requires the full use of basic education funds for special education students. This is a matter that is still unsettled. It is clear, however, that while the new methodology provides a more consistent approach to reporting costs, it will not resolve the issue of how funding need relates to differing service delivery practices.

SUMMARY (Continued)

- Due to differing accounting methodologies and service delivery practices, it has been difficult for the Safety Net Committee to verify districts' need for safety net funds and/or to demonstrate that a need does not exist.
 - Districts *not* applying for safety net funding are *not* required to use a consistent excess cost methodology. Therefore, the total amount of special education expenditures in Washington State is unknown.
 - Under state law, special education students are also *basic* education students, and the districts in which they are enrolled receive full special *and* basic education funding for them. The legislature intends for districts to use these basic education apportionment funds to help cover the costs of educating special education students. However, because of the varying excess cost accounting practices used, it is not possible to accurately determine to what extent school districts are using these basic education funds for their special education students.
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REPORT

This first interim report on the K-12 Special Education Program covers background information and discusses key issues and findings related to the study mandate. A second interim report will be completed by November 20, 2001, with the final report due to the legislature by June 30, 2002. The scope and objectives for this study are provided in Appendix 1. A glossary of special education terms is included as Appendix 2.

WHAT IS SPECIAL EDUCATION?

“Special education is instruction that is specially designed to meet the unique needs and abilities of a student with disabilities. It must be provided at no cost to the student or parent.”¹

In addition to instruction, related services may be needed to assist the student in benefiting from special education. Such services may include transportation, physical and occupational therapy, and other types of developmental, corrective and supportive services.

The education provided to each eligible special education student must take place under the guidance of an Individualized Education Program (IEP), in the least restrictive environment possible.

STUDENTS SERVED

During the 1999-2000 school year, 116,148 students in the 3-21 age group were enrolled in special education. They comprised 11.7 percent out of a total of 992,095 students enrolled that year.

On average, each special education student generated approximately \$7,878 for the school district from a combination of state and federal funds. Approximately \$3,832 came from the basic education allocation, with another \$4,046 coming as the **excess**

cost for special education. Excess costs are expenditures for specially designed instruction and related services for special education students that exceed the amount needed to provide all students with a basic education. Additional funding was also available for these students if they qualified for other programs such as bilingual education.

Exhibit 1, page 2, shows the growth in special education students in relation to the overall K-12 student enrollment over the last decade.

THE SPECIAL EDUCATION FUNDING FORMULA

BRIEF HISTORY SINCE 1985

The special education funding formula that was in place until 1995 provided different amounts of money for each of 14 disability categories. Several factors led to the replacement of that formula:

- The formula was considered too complex and cumbersome, and required undesirable labeling of students.
- Special education enrollment was growing over twice the rate of overall K-12 enrollment. **Exhibit 2** illustrates the high-cost categories that were growing rapidly under the old funding formula.

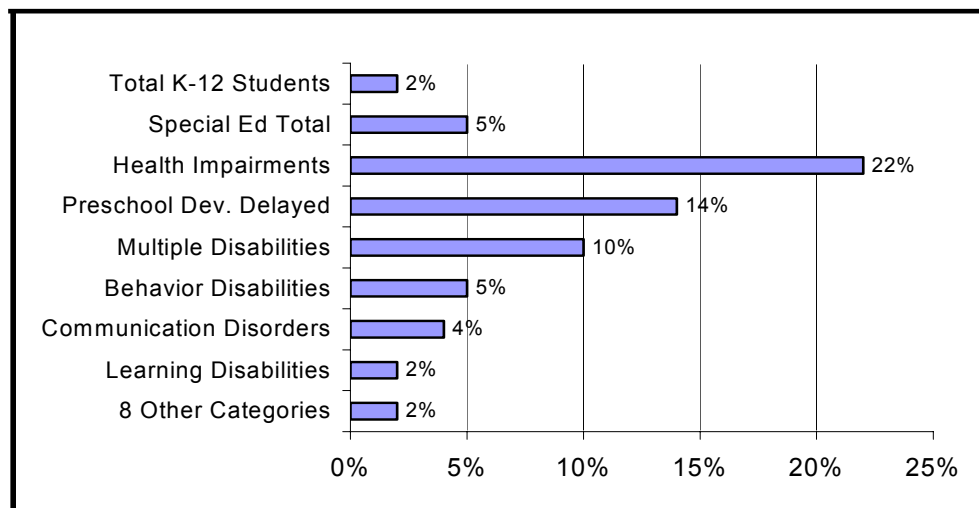
¹ OSPI, *Seventh Annual Report of Special Education in Washington State*, October 1999.

Exhibit 1
Enrollment Growth in K-12 and Special Education Populations
(1990 - 2000)

School Year	Total Enrollment Head Count (K-12)	% Change	Special Ed Enrollment Head Count (age 3-21)	% Change	% of Total Enrollment
90-91	839,320	3.7%	84,805	5.7%	10.1%
91-92	868,676	3.5%	90,302	6.5%	10.4%
92-93	889,692	2.4%	95,605	5.9%	10.7%
93-94	909,525	2.2%	101,108	5.8%	11.1%
94-95	928,669	2.1%	106,758	5.6%	11.5%
95-96	947,857	2.1%	106,665	-0.1%	11.3%
96-97	967,803	2.1%	107,732	1.0%	11.1%
97-98	981,382	1.4%	110,465	2.5%	11.3%
98-99	990,802	1.0%	113,580	2.8%	11.5%
99-00	992,095	0.1%	116,148	2.3%	11.7%

Source: JLARC based on OSPI 2000 data.

Exhibit 2
Growth in Regular and Special Education Students
(1985 - 1994)



Source: JLARC, 1995.

- 1988 superior court decision required that a fiscal safety net be put in place, but no immediate action was taken.

Several studies, including those by the Office of Financial Management (OFM), the Office of Superintendent of Public Instruction (OSPI), the Washington State Institute for Public Policy (WSIPP), and JLARC, identified problems with the current formula and recommended changes, or identified options, for a new funding formula (See Appendix 3 for a bibliography of studies). Concerns about growing special education costs in light of budget limitations imposed by I-601 prompted the WSIPP and JLARC studies.

New Formula

The new funding formula mandated by the legislature in 1995 has only one category of special education student, broken down into two age groups (ages 0-2 and 3-21). Funding for students aged 3-21 is limited to 12.7 percent of the basic education FTE enrollment for each district. A four-year transition period was provided for districts with special education populations above 12.7 percent.

Safety Net Created

At the same time the new formula was put in place, the legislature created a special education safety net. Safety net funds were provided for those districts with demonstrated needs for state special education funding beyond the amounts provided by the new formula.

A Safety Net Oversight Committee was created to review safety net applications. The committee is appointed by the Superintendent of Public Instruction and consists of staff from OSPI, OFM, the State Auditor's Office, and one or more representatives from school districts.

Safety Net Funding Criteria

- Awards are to be based first on maintaining 1994-95 excess cost allocations (the application category is **Maintenance of Effort – State Revenue**).
- Then awards are to be based on demonstrated need due to an unusual concentration or severity of disabilities in the district. The application categories for this criterion have changed over the years and have been called: **Special Characteristics and Costs** (up to 1997), **Demographics** (since 1997-98), **Percentage of Special Education Students Over 12.7 Percent** (since 1997-98), and **High-cost Individuals** (all years). A new category, “Other Factors”, will replace Demographics for the 2000-01 school year.
- Differences in program costs due to district philosophy or service delivery style are *not* a basis for safety net awards.

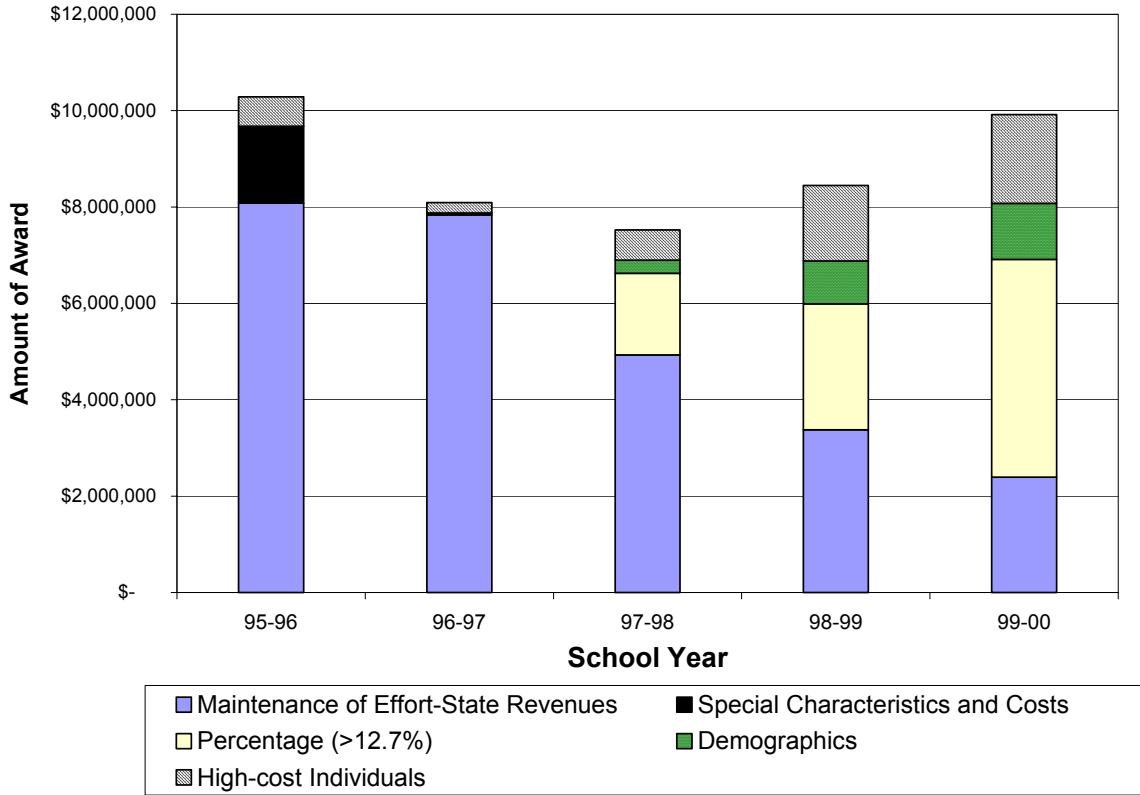
Exhibit 3 on page 4 illustrates the changing patterns of safety net awards since the new funding formula was implemented.

State Auditor's Involvement

Following the 1995 special education funding formula change, the legislature directed and funded the State Auditor's Office (SAO) to form a special education program audit team. Since 1996, this team has examined special education programs with high rates of growth, high costs, or other aspects warranting attention from the Safety Net Oversight Committee.

The legislative directive was expanded in 1998 to include audits of districts in order to establish a baseline for special education program costs. The legislature also directed

**Exhibit 3
Changing Patterns of Safety Net Awards: 1995-2000**



Source: JLARC based on OSPI 2000 data.

the SAO to report any errors found to be common among the districts audited.

FINDINGS RELATED TO THE MANDATED FOCUS OF THIS STUDY

Our initial review of the State Auditor’s reports and the safety net process was focused on understanding the specific issues that are the subject of the study mandate. For each of the four mandated study questions, we cite our findings from our initial review first in summary form, and then followed by supporting information and discussion.

STATE AUDITOR REPORTS

Mandated Focus Issue

The study shall review the findings of the special education program audit summary reports prepared by the State Auditor.

Initial Summary Finding

The State Auditor has reported inconsistencies within and among school districts in documenting the need for special education, the relationship between the Individualized Education Program (IEP) and the evaluation of the student, and whether the program provided specially designed instruction.

Limitations related to the number of files reviewed and districts audited, however, prevent generalizing these findings in most cases to those districts reviewed, and further prevent generalizing from any of these cases to the state as a whole. The State Auditor’s summary reports, appropriately, did not attempt to generalize findings from the individual files or school districts reviewed.

Discussion

1. For the 1997-98 school year, the SAO reviewed 1,109 special education student files in 24 school districts. The districts selected were those that had applied for safety net funding based on the criterion of exceeding 12.7 percent special education enrollment. Districts applying for safety net funding are informed that they are subject to audits for purposes of verifying the information in their applications.

For the 1998-99 school year, the SAO reviewed 655 student files in seven districts, each district serving between 1,000 and 3,000 special education students.

2. The two Summary Reports resulting from these reviews reported inconsistencies in the IEP’s among those files selected for review.

Note: The number of files reviewed in most districts was not large enough for the State Auditor’s findings to be generalized to the entire district.² Nor is it possible to generalize the findings to the entire state. A more scientifically rigorous and extensive sampling design

would have been needed for this purpose. The audit summary reports, appropriately, did not attempt to generalize findings from these reviews.

Subject to these limitations, the State Auditor’s Summary Reports for the school years and 31 districts found:

- Four percent of the IEPs did not establish the need for special education. This was reported in both the 97-98 and 98-99 summary reports.
- Eight percent of the IEPs in 97-98, and 11 percent in 98-99, did not indicate specially designed instruction and *therefore the students were not eligible for special education funding.*

The files without specially designed instruction came to the attention of the SAO auditors only when they found descriptions of instruction that did not appear to meet the definition of “specially designed.” In those instances they consulted with the teachers to learn more. They did not, however, conduct follow-up reviews on files when the descriptions of instruction raised no issues. *Hence, the full extent of the problem, even for those districts in which relatively large percentages of files were reviewed, is not known.*

- Eleven percent of the IEPs in 1998, and 18 percent in 1999, did not reflect the IEP team evaluation of the students’ needs.
- Monthly reporting of the special education enrollment was inaccurate. The SAO auditors found reporting of students who did not have current evaluations or IEPs. *As a result,*

² Out of the total 31 school districts audited in the two school years, six had such small special education populations that the auditors reviewed enough files (100 percent in five of these districts) for the findings to be conclusive for those districts.

districts received funding for students who should have been excluded from the special education count.

- In some instances students were appropriately removed from enrollment reports due to out of date evaluations and IEPs. *As a result, districts did not receive revenue for some students who continued to use special education services.*
3. Different methods of accounting by the districts audited prevented the SAO from concluding whether districts have financial need for safety net funding, and from establishing a baseline or benchmarks for evaluating special education costs.
- Districts had changing methods of accounting from one year to the next.
 - The excess cost basis of allocating funds between special education and basic education was not used consistently. School districts receive two sources of funds for special education students. Across school districts, there is no consistency in allocating funds from these two sources for the education of special education students.

Further review of the SAO's methodology, audit reports and their implications will be part of JLARC's continuing study in 2001.

EXCESS COST DEFINITION

Mandated Focus Issue

The study shall review the adequacy of the excess cost definition for the special education program adopted by the Superintendent of Public Instruction.

Initial Summary Finding

There have been questions as to whether the new excess cost methodology, adopted by OSPI for safety net applicants, requires the full use of basic education funds for special education students. This is a matter that is still unsettled. It is clear, however, that while the new methodology provides a more consistent approach to reporting costs, it will not resolve the issue of how funding need relates to differing service delivery practices.

Discussion

Under state law, special education students are entitled to receive instruction in both basic education and special education. Accordingly, school districts receive full basic education funding for all of their eligible special education students and receive separate special education funding. Special education funding is provided on an "excess cost" basis. Excess costs are the expenditures for specially designed instruction and related services for special education students that exceed the amount needed to provide these students with a basic education. School districts are expected to use both basic and special education funding sources to pay for the education of their special education students, and to budget and report their special education and basic education costs separately. The JLARC study will evaluate the extent to which OSPI's new excess cost methodology, required for safety net applicants beginning with the 2000-2001 school year, accounts for both basic and special education funds.

SCHOOL DISTRICTS' SAFETY NET FUNDING NEED

Mandated Focus Issue

The study shall evaluate the ability to determine individual school districts' safety

net funding need in light of differing accounting methods in use by school districts, and in light of differing service delivery practices.

Initial Summary Findings

- *Due to differing accounting methodologies and service delivery practices, it has been difficult for the Safety Net Committee to verify districts' need for safety net funds and/or to demonstrate that a need does not exist.*
- *If districts do not apply for safety net funding, they are not required to use a consistent excess cost methodology. Therefore, the actual level of special education expenditures across the state is unknown.*

Discussion

The Safety Net Oversight Committee's role of verifying whether a need exists for safety net funding is difficult to fulfill:

- Special education programs are designed at the district, building, and individual student level. They employ a range of service delivery and staffing practices at varying resource levels. *There are no standards for program services, size, or costs.* The absence of benchmarks prevents the Safety Net Committee from assessing the adequacy or "reasonableness" of a district's expenditures.
- OSPI's new standard excess cost methodology is the primary tool the Safety Net Committee relies on to determine special education expenditures. Preliminary information suggests that differing service delivery practices may explain some of the wide range in the costs of special education programs around the state. *OSPI's new excess cost methodology, by itself, will*

not address the problem of determining whether a program's services, size, and costs are adequate, reasonable, or efficient. School districts may still be eligible for higher amounts of safety net funds by having higher expenditures.

- Prior to the 2000-01 school year, districts applying for safety net funds were not required to use a *standard* accounting method to separately report their basic and special education costs. Hence, the Safety Net Committee found it difficult to determine relative need among the applicant districts.

BROADER IMPLICATIONS FOR SPECIAL EDUCATION FUNDING

These safety net and excess cost issues have important implications for special education funding in general.

- School districts *not* applying for safety net funds are not required to use a consistent or standard accounting method for reporting their special education excess costs. *Therefore, the actual level of special education expenditures in Washington State is not known.*
- Under state law, special education students are also *basic* education students, and districts receive full special *and* basic education funding for them. The legislature intends for districts to use these basic education apportionment funds to help cover the costs of educating special education students. However, because of the varying excess cost accounting practices used, *it is not possible to accurately determine to what extent school districts are using these basic education funds for their special education students.*

ACKNOWLEDGEMENTS

We appreciate the assistance provided by the staff of the Office of the Superintendent of Public Instruction and the Office of Financial Management.

Tom Sykes
Legislative Auditor

APPENDIX 1 – SCOPE AND OBJECTIVES

SCOPE

This mandated study will focus on the K-12 Special Education Program with particular attention paid to the safety net funding process and the special education program audits performed by the Office of the State Auditor. The initial phase of the study will be performed in 2000. It will include preliminary site visits and the solicitation of information and suggestions from advisory groups consisting of legislators, key interested parties, and subject area experts. This will assist in the development of a work plan for the second phase, which will take place in 2001 through June 2002. This work plan will encompass the research and analysis required to carry out the study mandate and to address related issues and information needs brought out in the advisory group process.

The study will address the following objectives.

OBJECTIVES

- **Review the findings of the special education program audit summary reports prepared by the State Auditor.**
 - In addition to reviewing the work that the State Auditor has performed, this objective may entail conducting follow-up work on specific issues raised and analysis conducted in those reports.
- **Evaluate the adequacy of the excess cost definition for the special education program adopted by the Superintendent of Public Instruction.**
 - This will include a review of the legal, statutory and regulatory context for special education funding, excess cost accounting, and a review of alternative definitions.
- **Assess the ability to determine individual school districts' safety net funding need in light of differing accounting methods in use by school districts.**
 - This will include an assessment of the districts' alternative accounting methods.
- **Evaluate the ability to uniformly determine individual school districts' safety net funding need in light of differing service delivery practices.**
 - A survey of such practices within Washington State, including on-site visits of programs in school districts, will provide a context for addressing this issue.

APPENDIX 2 - GLOSSARY OF SPECIAL EDUCATION TERMS

Basic Education Allocation (BEA) – Average per student amount allocated to school districts by the state. Rate varies depending on the salaries of each district. School districts receive a BEA for all enrolled K-12 students, including special education students.

Excess Funding – Additional per student amount provided for all special education students up to 12.7 percent of a district’s total student population. Excess Funding Formula: Age Birth through 2 = BEA x 1.15 (*Optional*); Age 3-21= BEA x .9309 (*Mandatory*).

Free Appropriate Public Education (FAPE) – The Education for All Handicapped Act (EHA) of 1975, which became the **Individuals with Disabilities Education Act (IDEA)** of 1990 (with amendments following in 1997), mandates that all school systems provide a “free appropriate public education for students regardless of disability.” The Supreme Court has defined “appropriate education” as education that will “enable the child to receive educational benefits.”³

Individuals with Disabilities Act (IDEA) – Passed in 1990, IDEA provides federal financial assistance to states offering special education programs that comply with federal requirements. To receive federal funds, states must demonstrate compliance with four key elements of special education: provision of free appropriate public education to all eligible children aged 3-21 (**FAPE**) in the least restrictive environment possible (**LRE**) under the guidance of an individualized education program (**IEP**) with established due process policies and procedures for parents of disabled children.⁴

Individualized Education Program (IEP) – IDEA requires school districts to develop a written plan for all special education students. IEPs must include specially designed instruction, student goals and objectives, and any necessary related services. A team of educators, evaluators and parents of the disabled student write the IEPs and the programs are reviewed at least once a year.

Least Restrictive Environment (LRE) – School districts are required to educate disabled students in a regular classroom along with non-disabled students to the maximum extent appropriate to meet the needs of the disabled child. A continuum of alternative placements must be available when instruction in a regular classroom does not meet the individual needs of a disabled student.⁵

³ “A Review of Federal Law Addressing the Education of Children with Disabilities,” Washington State Institute for Public Policy, December 1994.

⁴ Ibid.

⁵ “Special Education and the Law: A Legal Guide for Families and Educators,” William L.E. Dussault, Esq., and Stacy Gillett, February 1998.

Maintenance of Effort (MOE) – A federal requirement that school districts maintain prior-year state and local expenditure levels in aggregate or on a per pupil basis, with allowances made for changes in enrollment. OSPI conducts periodic MOE tests to ensure that districts are not supplanting other state or local funding sources with federal special education dollars.

Safety Net – Created in 1995 to help districts with special education funding needs not met by the new excess funding formula. Districts must demonstrate that legitimate special education expenditures exceed all available revenues.

Types of Safety Net Awards:

- ***Maintenance of Effort-State Revenues (MOESR)*** – MOESR awards were established to help school districts maintain 1994-95 *state* special education revenue levels in aggregate or per funded pupil (whichever is less). OSPI calculates award eligibility for each school district. 1994-95 revenue levels are not indexed to inflation.
- ***Percentage*** – If a district’s percentage of special education students exceeds 12.7 percent of total student enrollment, the district may be eligible for a percentage award.
- ***High-Cost Individuals (HCI)*** – Eligible districts have special education costs that exceed revenues due to one or more high-cost individual students. HCI awards are funded with federal dollars.
- ***Demographic*** – Eligible districts have special education costs that exceed revenues due to the unusual student demographics and needs of students in the district. Note: This type of award has been replaced by the “***Other Factors***” award in the 2000-01 School Year.

Section 504 – Section 504 of the Rehabilitation Act of 1973 guarantees the right of persons with mental or physical disabilities to participate in programs receiving federal funds. While this law is not limited to educational institutions, it does cover all students with disabilities, including disabled students who do not require specially designed instruction. If needed, special accommodations must be provided to disabled students who do not qualify for special education funds.

Specially Designed Instruction (SDI) – Adapting the content, methodology, or delivery of instruction to address the unique needs of a disabled student. Disabled students are eligible for SDI if their disabilities result in an adverse educational impact. SDI may take place within or outside a regular classroom setting.

APPENDIX 3 – BIBLIOGRAPHY

Legislative Budget Committee (with the Washington State Institute for Public Policy), *Special Education Fiscal Study: Final Report*, January 1995.

Legislative Budget Committee (with the Washington State Institute for Public Policy), *Washington's Special Education Safety Net: A Final Report of the 1995-1996 Safety Net Process*, January 1996.

Legislative Budget Committee (with the Washington State Institute for Public Policy), *Student Outcomes in Special Education: A Review of Study Options*, January 1995.

Office of Financial Management, *Special Education Study*, 1990.

Office of the Superintendent of Public Instruction, *Report to the Legislature on Special Education - Safety Net*, January 1992.

Office of the State Auditor, *Special Education Program Audit*, September 1998 Summary Report to the State Special Education Oversight Committee.

Office of the State Auditor, *Special Education Program Audit*, 1999 Summary Report.