

## ***Excess Cost Requirements as a Measure of Equitability***

### ***Building an Effective Funding Allocation Model***

An effective funding allocation/billback model will do the following:

- Foster trust among the members.
- Provide for easy verification of cost data.
- Be transparent and understandable.
- Address the balance between providing a full continuum of services required by the target population while providing full consideration of the financial effects that a small number of students with very expensive needs can have on a single district.
- Address the costs associated with various disabilities in a manner that ensures that high cost programs and services do not severely affect one or two entities but instead are shared by all.
- Ensure reasonable predictability and stability from year to year.
- Promote a sense of shared responsibility for all children and a collaborative effort on the part of the individual members toward that end.
- Ensure that programs providing regional or SELPA-wide services are operated pursuant to budgets that are developed collaboratively by the provider and the districts of residence.

In January 1974, the California State Board of Education adopted the California Master Plan for Special Education. While much has changed since that time, the underlying purpose of the fiscal model remains intact and provides excellent guidance. The objectives essential to the construction of an equitable finance plan for special education are as follows:

1. Provide adequate resources to ensure equality of educational opportunity for all individuals with exceptional needs.
2. Provide levels of support for special education programs that will promote programs and services of equal quality.
3. Provide encouragement for the development of comprehensive programs.
4. Promote both program and fiscal accountability.
5. Clarify fiscal relationships between state, county, and district.
6. Ensure equity in support levels among various program components.

7. Provide adjustments in support levels to reflect changing costs.
8. Provide support based on needs of pupils enrolled in education – funding based on specified programs and services rather than on categorical disability groupings.
9. Ensure that reporting and auditing policies and procedures are meaningful for evaluation and program development.
10. Provide methods for monitoring and evaluating quality control in special education.

California Master Plan for Special Education, California State Board of Education, Jan. 10, 1974, Pages 36-37.

In defining a funding allocation model, SELPAs must keep in mind that these resources are not intended to fully fund the excess cost of providing special education programs and services.

There are four sources for funding special education programs and services:

- Local support from the general unrestricted funds of school districts.
- Revenues from local property taxes levied for the purpose of providing special education programs and services.
- State aid from Part 30 of the state's Education Code, commencing at section 56000.
- Federal local assistance from the Individuals with Disabilities Education Act (IDEA), last reauthorized as P.L. 108-446 in November 2004.

Part 30 of the Education Code provides state aid, and IDEA provides federal local assistance. IDEA and state monitoring place the responsibility for providing special education services on the district of residence. Consequently, a student's district of residence has full fiscal responsibility for special education services for any student with a disability. The federal and state funding sources are intended to lessen the financial burden, or excess cost, to school districts for carrying out their responsibility.

(Note: Two other federal laws impose these requirements on local school districts without providing any financial support. Section 504 of the Rehabilitation Act of 1973 places such requirements on any agency receiving federal funds. The Americans with Disability Act (ADA) requires public and private entities to make reasonable accommodations to address the specific needs presented by a disability.)

We found in our field visits that in many LEAs there is conflict between general and special education concerning the responsibility for providing services for pupils with disabilities. Some LEA administrators believe that students with disabilities are the sole responsibility of the state and federal governments and resent using any local revenue limit funding for special needs pupils. This

viewpoint ignores the fact that the state provides a revenue limit for every pupil and works counter to providing a seamless educational system for all pupils.

A principle of our proposal is that federal, state, and local education agencies will continue to share responsibility for funding special education. State and federal funding is intended to support a portion of an LEA's costs for providing special education for children with identified needs. There will continue to be a local funding share in providing education to these children.

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Therefore, it is very important for the term "excess cost" to be fully understood.

Simply stated, excess cost is not encroachment; these are not synonymous terms.

However, the increasing share of the excess cost, requiring increased funding from the LEA's unrestricted funds, can be viewed as encroachment. These increases result from the federal and state entities failing to provide their fair share of the excess cost. And, after a few years of making progress toward the statutory level, the federal share has decreased over the last couple of years. In addition, the state has taken several steps since AB 602 to reduce its required level of support. As a result, the local responsibility for funding the excess cost is increasing annually.

Ever since its enactment in 1975, IDEA has included the requirement that federal funds are used only to pay the excess cost of providing special education and related services to students with disabilities. The following is from the Code of Federal Regulations (CFR), Title 34.

§300.202 Use of amounts.

- (a) *General.* Amounts provided to the LEA under Part B of the Act--
  - (1) Must be expended in accordance with the applicable provisions of this part;
  - (2) Must be used only to pay the excess cost of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and
  - (3) Must be used to supplement state, local, and other federal funds and not to supplant those funds.
- (b) Excess cost requirement. (1) *General.*
  - (i) The excess cost requirement prevents an LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.
  - (ii) The excess cost requirement does not prevent an LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or state funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.

Note: In California, students 18, 19, 20, and 21 currently have state and local funds available for non-disabled students, and the excess cost requirement applies to this population. However, there are generally no state and local funds for providing education for students ages three and four. Therefore, all costs of providing these students with special education and related services are excess costs. Five-year-old students pose a problem because some of them will be in kindergarten, for which state and local funds are available for non-disabled students. The majority of this population, however, will be in preschool special education settings. Therefore, for calculation purposes, all five-year-olds will be considered in the realm of excess cost.

(2)(i) An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the *education* of its children with disabilities before funds under Part B of the Act are used.

(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess cost in §300.16. That amount may not include capital outlay or debt service.

(3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of “excess cost” in §300.16 in those agencies for elementary or secondary school students, as the case may be.

### ***Calculating the Excess Cost***

Thus, excess cost is not the difference between what a district receives for special education and what it expends for special education. Rather, it is the difference between the average cost per disabled student for total education of students with disabilities (not just the special education students) and the average cost per student for all K-12 students, including students with disabilities.

For example, this would include the education provided in general education programs and settings for a student who only receives speech therapy on pull-out basis. Consequently, the LEA should consider both the costs of a regular education experience and the necessary special education and related services when determining the total cost of educating a child with a disability.

In Title 34 of the CFR, excess cost is defined as follows:

#### **§ 300.16 “excess cost”.**

“*excess cost*” means those costs that are in excess of the average annual per student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting—

(a) Amounts received—

(1) Under Part B of the Act;

(2) Under Part A of title I of the ESEA; and

(3) Under Parts A and B of title III of the ESEA and;

(b) Any state or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (See Appendix A to part 300 for an example of how “excess cost” must be calculated.)  
(Authority: 20 U.S.C. 1401(8))

The average per-student expenditure is determined by subtracting the following from the LEA’s total expenditures from all sources for all students:

- The funding from specified sources.
- The funding used for specified purposes.

The remainder is then divided by the total number of enrolled K-12 students, including students with disabilities. This will yield an average cost per enrolled student.

This average is multiplied by the total number of students ages 6 to 21 with a disability who reside in the district. California Special Education Management Information System (CASEMIS) data can provide this information. For this calculation, the district of residence is used rather than the district of service because the fiscal responsibility rests with the district of residence.

The result of this calculation provides the threshold that must be met before excess cost begins to accrue. The LEA is responsible for funding the amount up to this threshold, for both general and special education services for students with disabilities. This funding comes from all sources except those that were deducted during the calculation of the average cost of education per enrolled student.

Excess cost, then, is the additional amount expended because of the needs resulting from a disability, including special education services.

A logical question at this point is whether or not the excess cost requirement also applies to state funds distributed through the AB602 process. The answer is muddled. While the California Education Code does not contain excess cost language similar to that contained in federal law, there is a clear requirement in Section 56836.04 that those state funds are to be used for the purposes specified in Part 30 of the Education Code. Further, although it has not been stated in statute, the statement above from the state’s final report strongly suggests that the definition in federal law has been largely accepted by policymakers in Sacramento as applicable to state funds.

Because the federal requirement is to subtract expenditures of AB 602 funds and local property taxes before calculating the excess cost threshold, it creates a situation in which those funds cannot be used to demonstrate passing the excess cost threshold.

## *Allocation Model – Equality versus Equity*

A SELPA's fiscal allocation model is a plan to distribute state aid and federal local assistance funding. This funding is intended solely to assist the SELPA and its members in addressing the excess cost associated with providing special education and related services for children with disabilities.

This distribution should be accomplished in a manner that does the following:

- Equitably relieves the additional fiscal burden of each member in providing a free appropriate public education (FAPE) to its students with disabilities.
- Provides assistance in proportion to the cost of the services provided.
- Ensures that each student in the SELPA has equal access to the FAPE he or she requires.

When considering revisions to its fiscal model, a SELPA might want to consider those factors that give rise to greater costs in providing special education programs and services to ensure a more equitable distribution of the state and federal funds.

The SELPA would want to review how and on what basis it develops and implements a fiscal model that emphasizes the use of state and local funds in a manner that focuses on mitigating excess cost. Clearly, some programs and services are more costly than others. For example, a student with autism, deafness, or serious multiple disabilities will require more labor-intensive and costly services than a student with speech disorders, who will usually require less frequent and less intense therapeutic interventions, often in small groups rather than individually. Thus, the excess cost will be greater in the first instance than in the latter. The difference can be mitigated by a funding model that provides for these differences in operating costs.

Other factors may also merit consideration when distributing state and federal funds. A SELPA's fiscal model should take into account the much smaller base size of some districts and the effect that may have on the costs of providing special education services. Socioeconomic factors and bilingual/bicultural factors may also play a role. While districts in communities with a lower socioeconomic status may experience a greater incidence of students with disabilities, districts in communities with a high socioeconomic status may experience greater costs as a result of parental expectations and procedural activities.

Alternatively, the allocation plan should provide relief to those LEAs whose higher costs are primarily a result of local practices or policies. For example, an LEA might negotiate a contract that provides a class size or caseload standard that is significantly lower than the norm. The result of this high labor cost would tend to inflate the excess cost. The allocation plan should not encourage practices or policies that result in higher excess cost.

While considerable concern is often given to the equality of the fiscal model, extensive discussions regarding the equitability of the fiscal model are often lacking. This can result in significant differences among the members in expenditures per child and in the amount of local general fund monies required.

The principles specified in the Master Plan above emphasize equity in the allocation of resources. The term “equal” is used only to describe the quality of the programs and services for students.

Far too often in the development or revision of a SELPA allocation model, the term “equitable” is interpreted as the equal distribution of resources among the recipients. A focus on distributing state aid and federal assistance more equally, based primarily on numbers of students, is not unusual. Usually, the goal is to make the allocation mechanism fairer by equalizing the state and federal assistance provided. This was the philosophy employed when the current funding model was implemented by the passage of AB 602. However, in some cases it can be argued that the more equal the allocations, the less equitable the model can become.

Focusing on equality in the allocations seeks equity at the wrong end of the process. The issue should not be whether the resources are equally distributed; rather, equity is best viewed by a comparison of the outcomes. Thus the issue should be whether the districts are supporting the programs and services from their unrestricted funds in a relatively equal manner. This is best addressed by using an excess cost funding model, either as the basis for the allocation model or as a measure of the equitability of the allocation model.

In 2006, revised regulations were issued to incorporate changes resulting from the reauthorization of IDEA in 2004. Until the appearance of those regulations, the notion of excess cost was largely intuitive. The prevailing view seemed to be that it naturally costs more to provide special education services. The appendix in the new regulations contained a detailed process for determining the threshold that must be met before excess cost begins to accrue. This raised the question of whether federal funds were being expended solely for excess cost.

The underlying concept of the excess cost requirement is that, with the exception of certain specified revenue streams, the fiscal resources of the school district should be equally available to all enrolled students.

If a school district has a net of \$1 million in fiscal resources available and a total student enrollment of 1,000 students, then the available resources have a per capita rate of \$1,000.

If 10% of those 1,000 students are disabled, then excess cost does not begin to accrue until \$100,000 is spent for their education. ( $1,000 \times 0.10 = 100 \times \$1,000 = \$100,000$ )

The following regulatory clause in Section 300.202 of the CFR, Title 34, provides guidance:

(2)(i) An LEA meets the “excess cost” requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

Note that the language of the regulation above refers not to “special education and related services,” but to “the education of its children with disabilities.” This means both general education and special education. Thus, first consideration should be given to expenditures for the education of students with disabilities in the general education setting. As a result, a student who receives speech services uses his or her allocation for the time he or she spends in general

education and the time spent receiving special education services. Similarly, a student in the resource specialist program would generate expenditures from his or her allocation for the time spent in a general education setting and time spent in the resource specialist program. Once a student's allocation is expended, any additional costs are excess costs associated with the special education services provided.

This information can be derived from the information in the SELPA's CASEMIS system regarding the percentage of time each student residing in the district spends in general education. The individual percentages for each student would be totaled into a full time student equivalent (FTSE) total amount.

However, the excess cost concept is not based on expenditures on behalf of individual students, except those in non-public schools. Note that the above language in Sections 300.202(b)(1)(i) and (ii) of the CFR, Title 34 specifies that the excess cost requirement applies to all students ages 6-17 and applies to students ages 3-5 and 18-21 only if local and/or state funds are available for those age groups.

Excess cost is usually considered and computed for the whole group of students with a disability. For example, if a district has a \$1,000 per-student expenditure average and has 10 students, who are in the following settings:

- Four in a general education setting 90% (0.9) of the time,
- Three in general education settings 80% (0.8) of the time,
- One in the general education setting 40% (0.4) of the time,
- One in general education setting 15% (0.15) of the time, and
- One not in the general education setting at all,

it would have an FTSE of 6.55 ( $3.6 + 2.4 + 0.4 + 0.15$ ).

This would mean that, of the \$10,000 that must be spent on these ten students, \$6,550 would be spent providing general education, leaving only \$3,450 to be spent on special education before the excess cost threshold is met and state and federal dollars can be used.

Consideration should also be given to the amounts one district of residence pays another district and/or the county office of education for providing services for its students with disabilities. Also, the revenue limit apportionment that the district or county office serving the students receives for the district's students in a special class placement should be taken into account.

After the above factors have been considered, any remaining threshold amount required would be used to fund special education services. Once the total threshold amount has been expended, federal local assistance and state aid can be expended. The LEA would want to expend the federal local assistance first because a carryover of these funds is not permitted, as is the case with state funds.

## ***Encroachment and the Funding Model***

If a school district has any remaining excess cost after expending its full threshold amount and its full state and federal allocations, these remaining costs could be viewed as encroachment and compared per student.

This comparison should be the measure of an equitable funding model. A range above and below the SELPA composite mean could be adopted. If some districts have rates that greatly exceed those of other districts, they should be analyzed to see if there are legitimate bases for the discrepancy. If legitimate bases exist, the funding model should take them into consideration and should be revised to increase the allocation and decrease the encroachment. If the discrepancy is largely a result of district practices and/or decisions made by the district, then it may be appropriate not to consider the discrepancy in the funding allocation model.

Similarly, if a district has a rate below the range, analysis could determine if the district is receiving an inequitable share of the state and federal funds.

There are caveats to employing this mechanism, whether as the allocation model itself or as a means of measuring the equity of the model used. First, accuracy and consistency in maintaining the CASEMIS database and using the standardized account code system (SACS) is essential. The data derived from these two sources are crucial to sound fiscal management of special education services.

Because there is considerable variation in districts' reporting of indirect support costs, the SELPA must have policies and standards so that all districts use the same factors and elements when determining these amounts.

There should also be consensus regarding the coding of expenditures in SACS. There may be value in using subcodes for various goals and/or functions to facilitate greater precision in monitoring and comparing program costs.

The adjustment for providers of regional programs and services would need to be made at the beginning of the process. Allocations of state and federal supplemental funding for regional program operations can be taken off the top for this purpose, and the revenue limit apportionment that is generated could be a credit against the district of residence's average annual expenditure per student requirement. In this instance, the total program cost and the revenue limit apportionment would be determined, the sum of adjusted average annual expenditures per student would be computed, and the balance would be the excess cost. This amount would then be taken from the total funds to be allocated prior to computing the individual district allocations.

As suggested earlier, the effect of demographic, geographic, and socioeconomic factors on a district's excess cost might be considered and factored into the calculation.

Finally, since no agency should unduly benefit at the expense of others, the SELPA should also adjust the cost per student accordingly after considering negotiated agreements, student

placement preferences, overidentification of students, and other factors that result from district practices and that reduce cost effectiveness.

SELPA governance should adopt the philosophy that the federal local assistance and state aid constitute community property that the SELPA is to allocate based on a model that ensures equal access to programs for all students with disabilities, regardless of their residence. Each LEA has the same interest in other LEAs' use of this funding as it does in its own. Some SELPAs have adopted policies that unused state aid allocations to LEAs must be returned to the SELPA for redistribution to reduce the encroachment of other LEAs.

Another factor to consider is that the MOE expenditure reports display all federal expenditures charged to a 33XX Resource Code and all expenditures charged to the 6500 Resource Code. These charges would include expenditures using federal and state funds that may not be actually allocated through the allocation model. They will come from special grants and a SELPA practice that may distribute specific funds based on some other criteria, such as out-of-home funds, regionalized services and program specialist funds, low incidence funds, etc. Since these are not a part of the allocation model, their inclusion would significantly distort the outcomes for comparative purposes.