

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 312 (O'Donnell) – As Amended February 28, 2017

**SUBJECT:** School finance: special education funding

**SUMMARY:** Requires that special education funding rates be equalized to the 90<sup>th</sup> percentile after the Local Control Funding Formula (LCFF) is fully funded, and creates a funding mechanism for state support of special education preschool. Specifically, **this bill:**

- 1) Requires that, in the first fiscal year following the full funding of the LCFF, the Superintendent of Public Instruction (SPI) compute an equalization adjustment for each special education local plan area (SELPA), and sets the target equalization rate at 90<sup>th</sup> percentile of statewide funding rates.
- 2) Specifies the method for calculating this equalization adjustment as follows:
  - a) Multiply the amount computed for each SELPA by the ADA used to calculate its funding for the year in which an appropriation is made for equalization.
  - b) Divide the amount appropriated for purposes an equalization adjustment by the statewide sum of the amount computed above.
  - c) Multiply the amount computed for the SELPA by the amount computed above.
- 3) Requires that, for the purpose of providing funding for preschool-aged children with special needs, commencing with the first fiscal year after the full funding of LCFF, a SELPA that reports serving children three or four years of age who meet the definition in Section 56026, for purposes of calculating units of average daily attendance, count twice all units of ADA generated by children enrolled in kindergarten, less those children eligible for transitional kindergarten.
- 4) Requires that any growth in average daily attendance generated by the preschool adjustment be funded at the prevailing statewide target rate.
- 5) Requires the SPI, in each year following an equalization adjustment, to perform the following computations to determine the statewide target amount per unit of ADA in order to determine the inflation adjustment and growth adjustment:
  - a) Total the amount of funding computed for each SELPA
  - b) Total the number of units of ADA reported for each SELPA for the fiscal year preceding the equalization appropriation
  - c) Divide the total funding by the total ADA

**EXISTING LAW:**

- 1) Establishes, commencing with the 1998-99 fiscal year, a “census based” funding system for the allocation of state special education funds, providing most funding appropriated for support of special education programs on the basis of the ADA of special education students enrolled in the prior year, multiplied by a funding rate unique to each SELPA. (EC 56836)
- 2) Establishes a calculation for determining a statewide target rate of funding used for the purpose of calculating the funding rate of ADA growth in each SELPA. (EC 56836.11)
- 3) Requires, in specified fiscal years, equalization adjustments to be made to increase the funding rates of SELPAs with rates below the 90<sup>th</sup> percentile.
- 4) Establishes an extraordinary cost pool for the extraordinary costs associated with single placements in nonpublic, nonsectarian schools. (EC 56836.21)
- 5) Establishes a low incidence disability fund for costs associated with the education of students who are visually impaired, hearing impaired, and severely orthopedically impaired, and any combination thereof. (EC 56838.22)
- 6) Requires, through state and federal law, that children with exceptional needs between the ages of three and five be provided with a free and appropriate education. (EC 56026)

**FISCAL EFFECT:** The Office of Legislative Counsel has keyed this bill as a possible state mandated local program.

**COMMENTS:**

***Need for the bill.*** The author states: “Under state and federal law, local educational agencies are mandated to provide a free and appropriate public education to children with disabilities aged birth to age 22, including preschool-age children with special needs. In spite of this mandate, no state funding is allocated for special education preschool programs.

Early intervention programs for preschoolers are an excellent investment. Children who receive high quality care and education before kindergarten are 40% to 60% less likely to require special education interventions when they reach school-age, resulting in significant future cost savings to the state and local educational agencies.

In California, no dedicated state funding is provided to support the estimated \$490 million schools report spending on special education preschool programs. The California Statewide Special Education Task Force and the Public Policy Institute of California have recommended that the state establish a funding mechanism to support preschool special education programs.

California’s special education funding formula, known as AB 602, does not equitably provide the necessary funding to pay for the costs of providing educational services to the state’s 700,000 students with disabilities. For decades, California’s special education funding rates have varied considerably – from \$480 to \$930 per pupil - for no logical reason.

The Legislative Analyst’s Office, the Public Policy Institute of California, and the California Statewide Special Education Task Force have all recommended that the Legislature provide funding to equalize special education AB 602 funding rates.”

***Recent reports and Governor's Budget Statement.*** This analysis cites the following recent reports and recommendations frequently:

- **Special Education Task Force (Task Force).** In 2015, the Statewide Task Force of Special Education, convened the State Board of Education, the Superintendent of Public Instruction, and the Commission on Teacher Credentialing, issued a comprehensive report titled "One System: Reforming Education to Serve ALL Students." This report made a number of recommendations regarding special education finance.
- **Legislative Analyst's Office (LAO).** The LAO has for several years recommended that funding be appropriated to equalize special education funding rates. The LAO also provides much of the background information about special education finance which informs this analysis.
- **Public Policy Institute of California (PPIC).** In 2016 the Public Policy Institute of California issued a report titled, "Special Education Finance in California," which analyzed California's special education finance system in light of the principles that underlie the Local Control Funding Formula (LCFF): local control and accountability, transparency, and equity. In 2009 PPIC also released a report which looked broadly at special education finance ten years after the enactment of AB 602.
- **Governor's Budget Statement.** In his 2017-18 Governor's Budget Summary the Governor committed to engaging in stakeholder meetings throughout the spring budget process to solicit feedback on the current special education finance system. He stated that central to these discussions would be principles which are consistent with the LCFF and apply to all students, including students with disabilities. He stated that school funding mechanisms should be equitable, transparent, easy to understand, focused on the needs of students, and that general purpose funding should cover the full range of costs to educate all students.

***Special education in California.*** Federal law, the federal Individuals with Disabilities Education Act (IDEA), and corresponding state law requires that students with exceptional needs aged birth to 22 be provided a free and appropriate public education in the least restrictive environment. IDEA was established in 1975 and was most recently reauthorized in 2004.

According to the CDE, in 2015-16 there were 734,000 children aged birth to 22 who were identified as having exceptional needs. 662,000 of these children were enrolled in grades K-12, representing roughly 11% of K-12 enrollment.

The most common disabilities among students are specific learning disabilities, speech and language impairments, and other health impairments, which together constituted about 73% of all students with exceptional needs in 2015. While the prevalence of students with Autism Spectrum Disability (ASD) is relatively rare (affecting about 1.5 percent of California students), the number of students diagnosed with ASD has increased notably over the last decade.

Viewed as a whole, there is a significant achievement gap between students with disabilities and their peers. The LAO notes that while performance on standardized tests (including those specifically designed for students with disabilities) has improved over the past several years, a majority of students with disabilities still fail to meet state and federal achievement expectations, and that 60 percent of these students graduate on time with a high school diploma and about

two-thirds of are engaged productively after high school (with about half enrolled in an institute of higher education and 15 percent competitively employed within one year after high school).

**Special education finance in California.** Special education in California is funded with a combination of federal, state, and local revenues, totaling \$13.2 billion in 2015-16. In 2015-16 local general purpose funds covered the largest share of these costs (\$8.2 billion, or 62 percent), followed by state special education categorical funds (\$3.8 billion, or 43 percent), combined with federal special education funds (\$1.2 billion, or 9 percent).

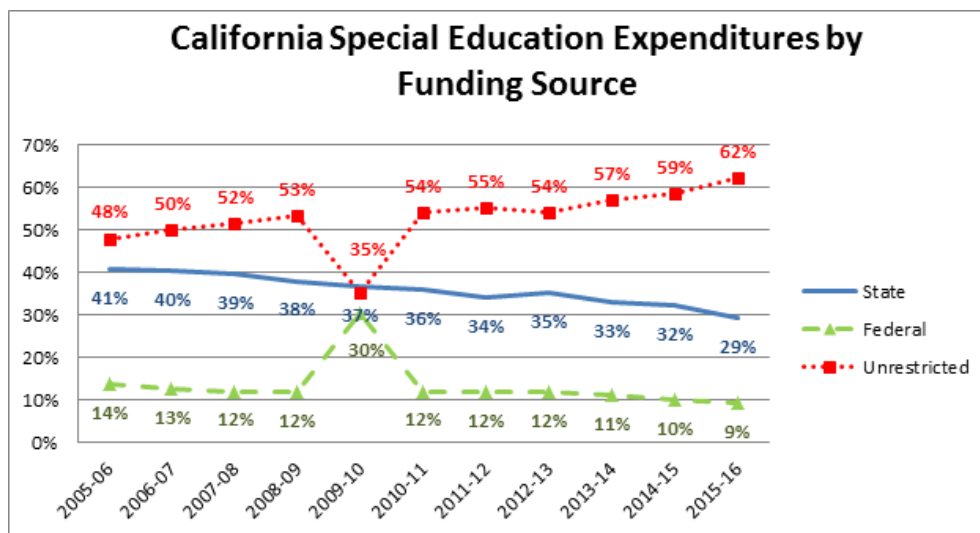
State law requires that funding be allocated to Special Education Local Plan Areas (SELPA), which are either a collection of local educational agencies (LEAs), single school districts, or a collection of charter schools. The SELPAs develop allocation plans and disburse funding to LEAs to serve students.

About 85% of state special education funding is provided as categorical funds known as “AB 602” (Chapter 854, Statutes of 1997). This allocation method provides funding using a census-based method that allocates special education funds to SELPAs based on the total number of students attending school within the area. AB 602 was based on the assumption that students with disabilities are fairly equally distributed in the student population. The intent of AB 602 funding was to remove financial incentives to over-identify students with disabilities that existed under the prior J-50 model. AB 602 also included a “special disabilities adjustment” which accounted for variation in the enrollment of students with more severe disabilities. This adjustment was eliminated in 2011-12, and at the time totaled \$74 million.

**Local funds covering an increasing share of special education costs.**

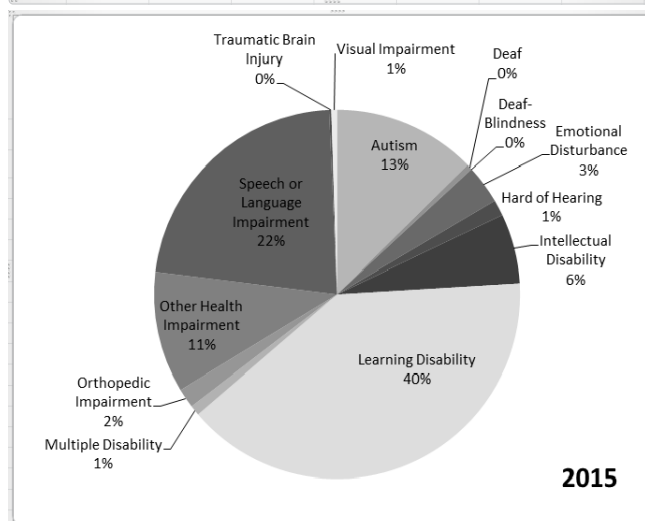
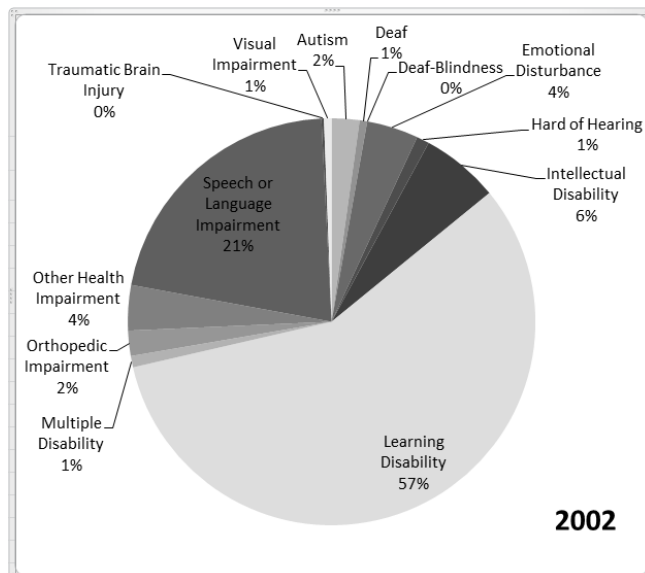
In recent years local budgets have been covering an increasing share of special education costs.

As shown in the adjacent chart, provided by the LAO, in the last ten years the local share of special education funding has increased from 48% to 62%. This is a result of a number of factors:



- As discussed below, the growth formula for AB 602 is based on overall student growth and not on growth in special education, and overall student growth has been flat while special education enrollment has increased significantly. The result has been a flat level of state funding for a growing student population.
- Federal special education funding has declined since 2013-14 due to sequestration.

- Two compensation-related factors contribute to this increased local share: 1) since special education personnel are paid on the same salary schedules as general education personnel, any negotiated increases in compensation raise special education costs, and 2) in recent years the state has required LEAs to provide an increased share of contributions to the state teachers' retirement system (CalSTRS).
- There has been a marked increase in special education placements which require a higher level of service (such as ASD), and a decline in placements requiring a lower level of service (such as Specific Learning Disability).
- Dedicated funding for higher cost placements, already small in proportion to overall funding, has either declined or remained flat, depending upon the source.
- Districts with a large number of fiscally independent charter schools which enroll less than a proportionate share of students with severe disabilities may find that district special education costs increase as their severely disabled students comprise a larger share of their special education enrollment. Data presented to the board of one large school district, for example, show that the district serves three times as many severely disabled students than the charter schools within the district.
- SELPAs report that 1) funding cuts during the recession reduced the provision of early intervention services which reduce the need for later, more costly services, and 2) some programs are providing a higher level of service for the same placements, as understanding of effective practices evolves.

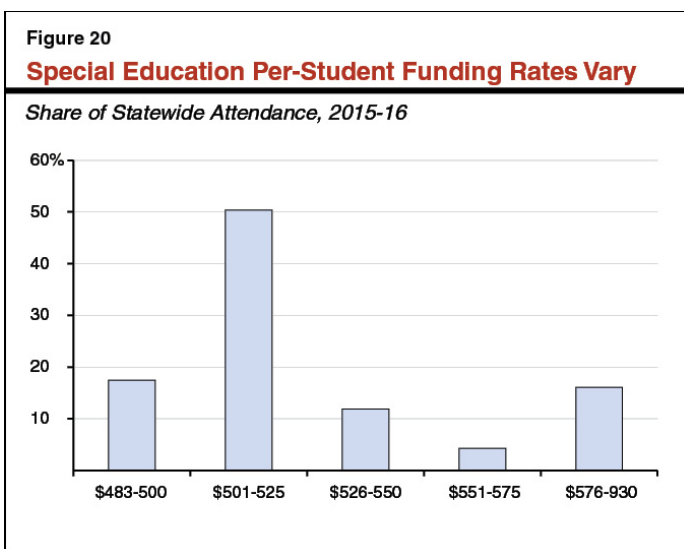


***Inequities in special education funding are a legacy of an informal survey conducted in 1979.***

As shown in the chart provided by the LAO below, AB 602 special education funding rates vary widely across SELPAs, ranging from \$480 to \$925 per unit of average daily attendance (ADA) in the districts comprising the SELPA. These inequities are a relic of the prior funding system.

From 1980, when the Master Plan for Special Education was enacted, until 1998 when AB 602 was enacted, state special education funding was allocated based on a model known as J-50. Under J-50 the state provided funding in unequal amounts to SELPAs based in part on an informal survey of special education expenditures in 1979–80. According to this Committee’s analysis of AB 602 in 1997, “reporting practices throughout the state were erratic and the

reliability and accuracy of the information obtained from them [were] suspect.” In addition, school districts were required to contribute money from their local general fund at the same rate that was reported in 1979-80, and as a result local contributions varied widely.



The J-50 system was based on Instructional Service Personnel Units (IPSUs), which largely represented the cost of teachers. J-50 provided greater levels of funding to SELPAs that identified a larger proportion of students for special education and served students in more expensive settings, which often meant more restrictive placements. This system raised concerns that schools had a fiscal incentive to place students in more restrictive settings, potentially violating students’ rights to an education in the least restrictive environment under federal and state law.

When AB 602 was enacted in 1998, the state determined the new allocations by dividing the prior year funding received by total average daily attendance (ADA), effectively locking in the rate at which SELPAs were funded in that year. In the early years of AB 602, two rounds of equalization funds were allocated. In the 2013-14 budget the Legislature included \$30 million for equalization, but this funding was vetoed.

The state funds enrollment growth in special education at a target rate which represents the statewide average (\$530 per student in 2014–15), so that in a low funded SELPA growth is funded at a slightly higher rate per student. However, the LAO notes, statewide attendance has been virtually flat over the last 10 years, so this approach has had little effect on funding inequities. Nearly forty years after the Master Plan for Special Education, and twenty years after AB 602, significant funding disparities remain.

To understand the effect of these differences in rates on expenditures per special education pupil, it may be useful to consider the adjacent table, which was included in the Task Force report.

SELPA	AB 602 Bifurcated 13-14	SELPA Total Prior Year ADA	Special Ed Pupil Count	AB 602 Funding per sped pupil
SELPA A	\$721.52	4,338.23	474	\$6,604
SELPA B	\$492.84	4,372.15	518	\$4,160

**Recommendations for equalization of special education funding rates.** For decades, reports have recommended that the state equalize special education funding rates. Some of the recent recommendations for equalization are shown below:

- For several years the LAO has recommended that the state equalize AB 602 rates to the 90<sup>th</sup> percentile. The LAO notes that since 2013–14 the state has dedicated billions of new dollars toward implementing LCFF which, among other things, equalizes funding rates across

districts by allocating based on a “gap” approach, such that districts receive additional funding based on the difference (or gap) between their prior-year funding level and their target LCFF funding level, but that because special education funding was not shifted into LCFF special education funding rates remain unequal.

- In 2015 the Task Force recommended that all SELPAs be funded at a new statewide target rate (90% of the current statewide average), that no SELPA would receive less funding than it did the year prior, and that the amount be adjusted in future years to reflect cost of living adjustments. It also recommended increasing the statewide target to \$665 within five years.
- In 2016, PPIC recommended that the state equalize to the 90th percentile. Alternatively, they recommended equalizing to the 2007 per-ADA rate, the peak year per ADA. Finally, they offered the option of increasing funding to recognize the higher costs generated by rising caseloads relative to ADA and the shift towards more severe disabilities, while equalizing by withholding funding from districts at the top of the distribution.

While not proposing equalization of special education rates, the 2017-18 Governor’s Budget Summary stated that the administration’s review of special education finance would adhere to the LCFF principle of equity.

***This bill’s approach to funding special education equalization.*** This bill requires that, for the first full fiscal year after LCFF funding targets have been met, the SPI compute an equalization adjustment for each SELPA, setting the target equalization rate at the 90<sup>th</sup> percentile of statewide funding rates.

The LAO estimates that the 90th percentile is approximately \$570 per ADA in 2016–17 and that funding that equalization target would cost \$307 million in 2016–17. This bill also requires that, subsequent to the equalization and preschool adjustment, the SPI adjust upwards the statewide target rate for growth.

When will LCFF targets be met? In their 2017-18 Fiscal Outlook the LAO estimates the timing under both a growth and a recession scenario. The LAO concludes that under their growth scenario the state could fully fund the LCFF as soon as 2018–19. Under the recession scenario, they estimate the state would not fully fund LCFF until 2020–21. They also estimate that under both scenarios growth in Proposition 98 funding would be more than sufficient to cover the LCFF targets as adjusted for changes in attendance and cost of living. Under the growth scenario, after supporting LCFF, the Legislature would have an additional \$1.5 billion to \$2.5 billion per year to spend on other Proposition 98 priorities.

***Special education preschool funding.*** State and federal law require LEAs to provide services for preschool-age students with exceptional needs. Dedicated support for costs of providing special education services for preschool age students comes from federal and local funds, but funding is not specifically provided for these students through AB 602. According to the author, LEAs spent approximately \$500 million in 2014-15 for special education preschool services.

Federal funds are provided from two sources: Preschool-Local Assistance and Federal Preschool, totaling \$97 million in 2014-15. State Preschool, which serves students with and without disabilities, was funded at \$884 million in 2015-16. Full day state preschool provides an adjustment factor of 1.2 to the reimbursement rate for children with exceptional needs, with a

rate of 1.5 for students with severe disabilities. The 2015 Budget Act an addition of 2,500 part-day preschool slots, with priority for contractors who intended to use them to increase access for children with exceptional needs. Costs not covered by federal and other funds are covered by local funds.

***Special education preschool services as an investment in later school success and in reduced costs.*** The Task Force notes that many children who receive interventions as infants and preschoolers make significant gains and are able to be educated in general education with their peers with little or no special education support as they enter the primary grades. They also note that early intervention efforts in recent years have contributed to reducing the number of preschoolers with milder disabilities who are in need of intensive special education services once they reach the primary grades, and that at the same time, the incidence of preschoolers with more significant disabilities such as ASD, requiring intensive and more costly services, has increased significantly. Finally, the Task Force notes that there is a severe shortage of general education preschool options which would provide these students with services in the least restrictive environment with their typically developing peers.

***Preschool enrollment increasing rapidly, particularly enrollment of children with Autism Spectrum Disability.*** According to CDE data, in 2005-06 there were 38,563 preschool age students with exceptional needs. In 2015 there were 46,596 such children - an increase of 21% over ten years. The increase in special education enrollment among children of other ages was 7% over the same time period.

Between 2005-06 and 2015-16 the number of preschool age children identified with Autism Spectrum Disability (ASD) increased from 4,845 to 10,688 – an increase of 121%. The next highest increase in that time period was among students identified as having Other Health Impairments, who increased from 1,270 to 1,913, a 51% increase. In 2005-06 children identified with ASD comprised 13% of preschool enrollment; in 2015-16 children with ASD represented nearly 23% of all preschoolers with exceptional needs.

***Recommendations for providing state support for preschool special education.*** Several reports have recommended that the state provide support for preschoolers with exceptional needs:

- The Task Force recommended that an additional \$150 million dollars be provided for preschool children with disabilities, equating to approximately \$3,000 for each preschool identified as needing special education services, with a cap so that funding would not exceed 11% of kindergarten and first grade enrollment. The Task Force also recommended that the state provide additional funds for facility modifications, professional learning opportunities for preschool staff, and increase the availability of “slots” in Least Restrictive Environments.
- In 2016 PPIC also supported providing state funding for special education preschool, offering the idea of counting preschool attendance toward school and district average daily attendance (ADA). Alternatively they suggested boosting incentives to serve special education children by increasing the supplemental funding state preschool programs receive for special education students. They noted that one problem with this proposal is that districts in more affluent areas do not operate state preschool programs, but suggested that this option might reduce the emphasis on separate classes for special education preschool students.



While not proposing state support for special education preschool through special education funding, in the 2015-16 budget the Governor proposed giving priority to students with special needs in an expansion of state preschool. In the 2017-18 Governor's Budget the Governor proposed to allow part-day State Preschool programs to serve children with special needs from families above the income threshold, provided that all eligible children are served first.

***This bill's approach to providing state support for preschool special education.*** This bill provides funding for special education preschool by adding an estimate of preschool ADA to the AB 602 funding formula.

AB 602 provides funding on a census basis, allocating an amount per pupil enrolled in schools within each SELPA. Because the state has no count of preschool age students, there is no pupil count to use as the basis for a census-based allocation for preschool age children.

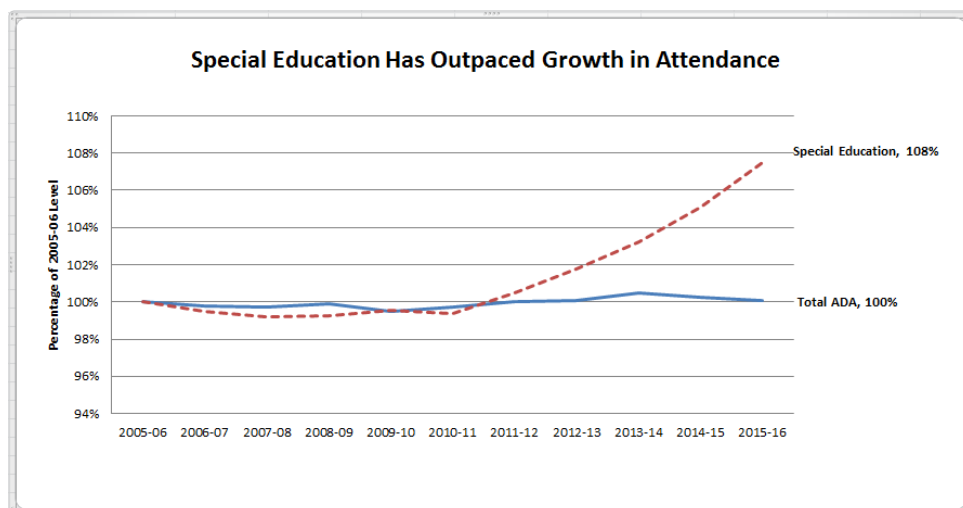
In light of that, this bill uses a proxy for preschool population based on Kindergarten enrollment. This proxy is based on an assumption that the number of three and four year olds is roughly similar to double the number of Kindergartners. So in theory, two additional years of Kindergarten ADA could be added as a proxy to AB 602.

However, doing so would significantly overstate the number of students who are identified as having exceptional needs at that age because, according to the LAO, Kindergarten students are identified for special education at a rate of about half that of students overall.

Instead, this bill adds one additional year of Kindergarten ADA to AB 602, as a proxy for a representative share of preschool special education enrollment. This is expected to require \$229 million in funding. This approach allows preschool funding to be provided in a manner consistent with AB 602, and without the creation of a new categorical program within special education.

***Growth funding for special education does not reflect actual growth.***

One issue not addressed by this bill is the manner in which funding is provided through AB 602 for growth in special education enrollment. Though AB 602 is funded as a separate categorical program, growth in the overall program is funded at the same rate as the overall student population.



This method of funding special education growth would seem to conflate the separate issues of the distribution of disabilities and the incidence of them. In other words, disabilities may generally be evenly distributed across the state, but the incidence of disability may not move in

tandem with the overall student population. For example, special education identification may increase at the same time that general education enrollment may be flat.

This is indeed what has been happening in recent years, as the chart above (provided by the LAO) shows. Overall ADA has been flat since 2005-06, growing by only 6,000, but special education enrollment has increased by 51,000. The result has been flat funding for AB 602 in spite of growth in special education enrollment. *The Committee may wish to consider* whether the current method of funding growth in special education provides should reflect actual growth or decline in special education enrollment.

**Related and prior legislation.** AB 1449 (Muratsuchi) of this Session would create a supplemental grant within the LCFE for students with severe disabilities, as defined, as a percentage of LCFE base grants.

SB 1071 (Allen) of the 2015-16 Session would have required, upon an appropriation in the Budget Act, a permanent one-time adjustment to the base funding calculation for each special education local plan area to support special education and related services for three and four year old preschool children with exceptional needs.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Coalition for Adequate Funding for Special Education (co-sponsor)  
California Association of School Business Officials (co-sponsor)  
Alexander Valley Union School District  
Antelope Valley SELPA  
Antelope Valley Union High School District  
Atascadero Unified School District  
Bonsall Unified School District  
Briggs Elementary School District  
California Association of the Deaf  
California County Superintendents Educational Services Association  
California State PTA  
Capistrano Unified School District  
Center for Early Intervention on Deafness  
CCHAT Center Sacramento  
Cloverdale Unified School District  
Columbia Union School District  
Davis Joint Unified School District  
Deaf & Hard of Hearing Service Center, Inc.  
Del Mar Union School District  
Disability Rights California  
Duarte Unified School District  
East Valley SELPA  
Echo Horizon School  
Educate. Advocate.  
El Dorado County Office of Education  
El Monte Union High School District

Fallbrook Union Elementary School District  
Fallbrook Union High School District  
Forestville Union School District  
Fremont Union High School District  
Fresno County SELPA  
Garvey School District  
Goleta Union School District  
Greater Anaheim SELPA  
John Tracy Clinic  
Kern County Superintendent of Schools  
Las Virgenes Unified School District  
Los Gatos Union School District  
Los Angeles County Office of Education  
Mid-Alameda County SELPA  
Monte Rio Union School District  
Moorpark Unified School District  
Moreland School District  
Napa County SELPA  
NorCal Services for Deaf & Hard of Hearing  
North Coastal Consortium for Special Education  
North Coastal Consortium for Special Education Community Advisory Committee  
North Region SELPA  
North Santa Cruz County SELPA  
Oak Park Unified School District  
Oakland Unified School District  
Pleasant Valley School District  
Project Secure Special Education Program of the Ventura Unified School District  
Rincon Valley Union School District  
Riverside Unified School District  
Riverside County Superintendent of Schools  
San Diego South County SELPA  
San Dieguito Union High School District  
San Gabriel Unified School District  
San Marcos Unified School District  
San Mateo County Board of Education  
San Mateo County SELPA  
Santa Clara Unified School District  
SELPA Administrators of California  
Soulsbyville School District  
Spectrum Center Schools and Programs  
St. Helena Unified School District  
Stockton City SELPA  
Sunol Glen Unified School District  
Tehama County SELPA  
Torrance Unified School District  
Tri-Valley SELPA  
Tuolumne County SELPA  
Valle Lindo School District  
Ventura County SELPA

West Contra Costa Unified School District  
West End SELPA  
West San Gabriel Valley SELPA  
Windsor Unified School District  
Wright Elementary School District  
Yolo County SELPA  
Numerous individuals

**Opposition**

Special Education Advocate Leaders

**Analysis Prepared by:** Tanya Lieberman / ED. / (916) 319-2087