



Jody Hauer, principal evaluator for the Office of the Legislative Auditor

Review of special education reveals difficult cost-control issues

An Interview with The Civic Caucus

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Present

Dave Broden, Pat Davies, Sarah Roberts Delacueva, Paul Gilje (coordinator), Jody Hauer, Randy Johnson, Sallie Kemper, Ted Kolderie, Dan Loritz (chair), Paul Ostrow, Jodi Munson Rodriguez, Dana Schroeder, Clarence Shallbetter. By phone: Audrey Clay, Janis Clay.

Summary

As of 2011, nearly 112,000 students in Minnesota were receiving special education, 13.6 percent of all students in grades K-12, according to Jody Hauer, principal evaluator for the Office of the Legislative Auditor. Hauer, project manager for the Auditor's March 2013 evaluation of special education, points out that special education revenues in 2011 amounted to \$1.8 billion. She discusses the four main lines of inquiry of the evaluation: funding; state and federal legal requirements for special education; legal compliance monitoring and enforcement; and characteristics of the students receiving special education. She reports that the per student costs for providing services to children in 13 different disability categories vary widely by category, from \$2,583 to \$47,252. Hauer also points out the rise in special education costs and the impact of that increase on local school districts. She also discusses major disincentives for school districts to implement cost-control measures for special education and recommends ways of adding cost-control incentives.

Introduction: Jody Hauer is principal evaluator for the Minnesota Office of the Legislative Auditor, which is a nonpartisan research office under the direction of the Legislature. Hauer was project manager for the Legislative Auditor's March 2013 evaluation report on special education. Sarah Roberts Delacueva and Jodi Munson Rodriguez assisted in the evaluation.

Prior to her current position, Hauer worked for two years as director of research for the State Auditor's Office. Before that, she worked for eight years as a research associate for the Citizens League, a private, nonprofit organization that conducts public policy research.

Hauer has a master of planning degree from the Hubert H. Humphrey School of Public Affairs at the University of Minnesota and a bachelor of arts in political science from the College of St. Catherine in St. Paul.

Discussion:

Background:

The Legislative Auditor's Office produces independent reports for the Legislature. Jody Hauer, principal evaluator for the Office of the Legislative Auditor, began by pointing out that the office is an arm of the Legislature. Every year the Legislative Audit Commission instructs the legislative auditor to investigate five or six topics. A year ago, one of those topics was special education.

At that point, the Legislature's role in the process is essentially done. The Legislative Auditor's Office takes control of designing and conducting the research, pulling together conclusions and recommendations, writing the report and then releasing it. "Legislators have no say as to what goes into the reports," Hauer explained. "They don't even see a draft of the report. It really is a report of our office and it's to be seen as an independent, unbiased look at whatever the topic is."

The reports are released back to the Legislature, and it's up to them to decide what to do with the report's conclusions and recommendations, she said. "It usually takes a year or two before action is taken," she said. "But we find that they often pay attention to what we say." The special education report was released in March and several bills have been introduced in this legislative session that embody recommendations from the report, Hauer said.

The full report may be found online [here](#).

The special education evaluation had four main lines of inquiry:

1. **Funding.** How is special education funded? What drives that funding? How has that changed over time?
2. **Legal requirements for special education.** How do the state laws and regulations applying to special education compare with the federal requirements?
3. **Enforcement.** What is the process that the Minnesota Department of Education uses to make sure school districts comply with all the regulations?
4. **Students.** Who are the students receiving special education, and how has that changed over time?

Profile of special education students.

As of the 2010-2011 school year, nearly 112,000 students in Minnesota were receiving special education. That amounts to 13.6 percent of all students in grades K-12.

The number of students receiving special education has increased every year since the 1999-2000 school year and increased by 11 percent over the full 12-year time period covered by the study, from 2000 to 2011. At the same time, the number of all K-12 students in the state decreased by three percent.

While the number of students receiving special education has grown in Minnesota, the national trend is downward, Hauer said. But the evaluation did not include comparisons with other states to offer suggestions about why that is true.

Once students are found eligible for special education, they are assigned a primary disability (even if they have multiple disabilities) and then grouped with others into one of 13 disability categories.

- Eight of the 13 categories showed an increase in the number of students over the 12-year period (ranging from two percent to 613 percent growth); one category stayed relatively constant; and four categories declined (ranging from an 11 percent to 22 percent decrease).
- The number of students in the specific learning capabilities category went down by 22 percent over time. But in both 2000 (39.1 percent) and 2011 (27.3 percent), that category represented the largest number of students receiving special education services.
- Autism spectrum disorders was the disability category that experienced the largest numerical growth between the 1999-2000 and 2010-2011 school years (11,462 students), a 555 percent increase.

Noting that students with learning disabilities account for the highest proportion of students receiving special education, an interviewer questioned whether the problem is with the students or with the school-whether the students have disabilities or, instead, a conflict with a particular teaching style. He asked whether there is anything associated with schools that could explain the high proportion of students in learning disabilities categories.

Hauer responded that the study didn't analyze the huge body of literature about the problems of evaluating students for special education.

There is a wide variation in expenditures per student among the special education disability categories. They range from \$2,583 per student for children with traumatic brain injuries to \$47,252 per student for children with severe/profound developmental cognitive disabilities.

Minnesota is attempting to identify at a younger age those students needing special education. In response to a question about using early childhood programs to lower the need for later special education services, Jodi Munson Rodriguez said the state is making an effort to identify students early. "A huge percentage of special education students are identified in kindergarten or earlier," she said.

The number of minority students receiving special education increased more on a percentage basis than in regular education. There was a 75 percent increase over the 12-year period in the number of minority students receiving special education and a 44 percent increase in minority students in general education.

There are federal and state requirements that special education students be in the least restrictive environment to the maximum extent appropriate. If students spend 80 percent or more of their day in a classroom with their nondisabled peers, they're in setting one, the least restrictive environment. The scale goes up to setting eight, for students who are homebound or in a hospital setting. Most children receiving special education in 2011 (61 percent) were in setting one.

During each year from 2000 to 2011, an average of about 17 percent of special education students moved to a less restrictive special education setting or exited special education altogether (by means other than graduating). In response to a question, Hauer explained that the majorities of students who moved to less restrictive settings did so by exiting special education altogether.

Chartered schools may not refuse students needing special education services. In fact, Hauer pointed out, some schools are chartered around special education needs, such as the Fraser School, Metro Deaf School and Lionsgate Academy. Chartered schools assess the costs back to the resident school district.

Funding of special education.

Revenues for special education in Minnesota amounted to \$1.8 billion in 2011. Between 2000 and 2011, revenues increased by 38 percent (in 2011 dollars). The revenues come from state, federal and local school district funds. These figures do not include additional services or treatments not delivered by school districts or chartered schools that are paid for by private or public insurance or by families themselves.

School districts must pay for the portion of special education costs not covered by state and federal funding. Over the 12-year period, state funding accounted for a majority of special education revenues (a median of 56 percent). Federal revenues were a median 11 percent. The remainder, a median of about one-third, came from what school districts must pay beyond state and federal funding to cover special education costs. This "cross subsidy" includes districts' use of a portion of state general education revenues and/or of local operating levy referenda to pay for special education expenditures. Hauer said districts have had to use more general education revenues to pay for

special education costs, so those funds aren't available to pay for general education costs for all students.

Between 2000 and 2011, the school district cross subsidy increased 40 percent in 2011 dollars adjusted for inflation. Total school district cross subsidies in the state amounted to \$571.5 million in 2011.

For school districts across the state, the average 2011 cross subsidy per student was \$631. (The per-student subsidy is determined across all students in a district, special education *and* general education.) According to Hauer, some districts paid \$105 per student; some paid more than \$1,000. Larger school districts and those located in the metro area or regional centers around the state tend to bear the largest school district cross subsidy burdens. St. Paul (at \$36.3 million), Minneapolis (at \$34.0 million) and Anoka-Hennepin (at \$30.9 million) paid the largest cross subsidies in the state.

Lack of cost-control incentives.

There are three major disincentives to districts being able to control costs of special education:

1. Decades ago federal courts established that children with disabilities have a Constitutional right to an education. Students with disabilities will get the services they need. School districts have very little control over costs, because they can't say no to meeting students' needs.

2. The school district where a child lives is responsible for all special education costs, no matter where the child attends school. A child can open enroll into another school district or attend a chartered school and the district where the child lives must still cover all special education costs.

Children generally are evaluated for special education eligibility in the school district where they live. If they attend school in a different district or at a chartered school and are not already deemed eligible for special education, they can be evaluated in their district of attendance.

Teachers, specialists, parents and administrators develop an individualized education program (IEP) for each child deemed eligible for special education. The IEP lays out what services a child will receive, based on his or her unique needs. It also contains goals and objectives for the child to meet. General education students do not have IEPs.

If the child will be receiving services in the school district where he or she lives, the IEP team members are all from that home district. If the child is enrolled in another district or at a chartered school, nearly all members of the team developing the IEP are from the district or chartered school providing the services. Only one member of the team is from the student's resident district.

So, the spending decisions for the child's services are made in the school district or chartered school where the child is enrolled, but the services are paid for by the district where the child lives.

3. Every school district providing special education services is subject to a federal requirement that school districts must maintain their level of spending on special education from year to year. This is called the "maintenance of effort" requirement. Districts can lose their federal funding if they don't maintain their level of spending, unless there are special circumstances, such as a decrease in the number of students receiving special education services.

The report on special education recommends three ways of introducing some cost-control incentives to school districts' spending on special education:

- 1. The Legislature should consider reducing school districts' reliance on their general fund revenues to pay for special education.** This would involve either increasing the state money going to special education or transferring it from some other part of the budget.
- 2. The Legislature and the Minnesota Department of Education (MDE) should work with school districts to identify cost control measures districts are already using.** The Department should help other districts understand and implement those measures that are effective. At a minimum, Hauer said, MDE should provide comparative information among districts to help districts understand how they compare to similar districts.
- 3. The Legislature should make changes so that the district providing special education services should bear some of the costs of the services, so the whole burden doesn't fall on the resident district .** That would align the decision on what services to provide with at least some of the responsibility for paying for those services. Hauer said the House version of the Omnibus Education Bill (HF630) includes a provision that would limit to 90 percent the amount of unreimbursed special education costs the resident district must pay for students attending school in another school district or a chartered school.

State and federal requirements for special education.

Many of Minnesota's rules and statutes governing special education exceed federal requirements. According to Hauer, three-fourths of Minnesota rules specific to special education exceeded those at the federal level and 42 percent of such state statutes exceeded federal requirements.

"We didn't see any data to help legislators and policymakers understand the costs and educational benefits of the state requirements," Hauer said. The report recommended that the Legislature should direct MDE to analyze the costs and education benefits of the Minnesota-only requirements. Two bills introduced this legislative session (HF 1698/SF 1552 and HF 1685) would require MDE to do such an analysis. Both bills also provide that MDE develop ways to reduce teachers' paperwork burdens.

Evaluation and compliance.

Some students receiving special education services made little progress towards reaching the goals and objectives identified in their IEPs. Districts must report three measures of effectiveness for special education students: the dropout rates, graduation rates and test performance of special education students. Hauer said that the study looked at a small sample of students' IEPs (137) and at progress reports on those students to see if they had met the goals and objectives contained in the IEPs. While the results are not generalizable to the whole state because of the small sample size, out of the 447 annual goals for the 137 student IEPs studied, students met only eight percent of the goals over the course of a year.

MDE's compliance monitoring to assure that all school districts in the state comply with special education requirements is often seen by school districts as confusing, inconsistent or trivial. The Legislative Auditor's report encouraged MDE to identify ways to improve special education teachers' understanding of compliance requirements and streamline required paperwork.

In conclusion, Hauer said the MDE agreed with the recommendations of the report. In a letter to the Office of the Legislative Auditor, Commissioner Brenda Casselius commends the auditors who conducted the research and produced a "valuable, fair and comprehensive report." She states that MDE agrees with the six main recommendations of the report and that she is "hopeful that this document will guide policy makers in addressing this critical area...in order to help us fulfill our goals of providing a high quality education to every Minnesota student so that all can reach their highest potential."