

TASK FORCE ON K-12 PUBLIC EDUCATION FUNDING
TECHNICAL ADVISORY COMMITTEE
(SENATE BILL 500, 2013 LEGISLATURE)

June 5, 2014

Work Session

As the Technical Advisory Committee (TAC) is aware, the TAC was tasked with examining and discussing key components pertaining to the development of a plan for revising and implementing Nevada's K-12 funding formula. The plan must equitably account for the needs of, and the costs to educate students based upon the individual educational needs and demographic characteristics of students including, without limitation, students from low-income families (At-Risk), students with disabilities, and students who have limited proficiency in the English language (ELL) through a weighted funding formula. The final recommendations of the TAC will be provided to the Task Force on K-12 Public Education Funding for consideration at its last meeting on June 30, 2014.

As the committee will recall, at its May 8, 2014, and May 21, 2014, meetings the TAC discussed and approved several policy matters in recommending modifications to the state's funding formula for students identified as ELL, students at risk of low academic achievement (At-Risk) and students with disabilities. The following summarizes the recommendations approved by the TAC thus far:

ELL:

- a. *With regard to the identification of ELL students, use the current data collected by the school districts and the Nevada Department of Education (NDE) on the number of ELL students within a particular school district. This data is collected and reported annually as part of the Title III requirements of the federal No Child Left Behind Act (NCLB).*
- b. *With regard to the allocation of ELL funding based on density, do not provide any additional ELL funding based on the density of ELL students within a school district. (Note: The Task Force requested that the TAC have further discussion on the issue of funding based on density.)*
- c. *With regard to the duration of weighted funding for ELL students, provide weighted funding for ELL students for up to six years or until the student reclassifies as non-ELL. After the sixth year, or the year in which the student reclassifies as non-ELL (if the reclassification occurs before the end of year six) two additional years of reduced maintenance funding would be provided.*

With regard to a reduced percentage of the full weight for ELL students for maintenance funding, the TAC briefly discussed this issue, but did not take any action. This issue will be further considered at the June 5, 2014, meeting of the TAC. (Note: The Task Force requested that the TAC have further discussion on the issue of the duration of weighted funding for ELL students.)

- d. *With regard to a weight to be used to allocate funding to ELL students, use a single weight value not less than 1.5 until such time as a cost study may be conducted. For purposes of calculating the base amount upon which the ELL weight would be applied, include all state and local funding within the funding formula per-pupil calculation, but exclude all federal and categorical funding from the calculation. (Note: The Task Force requested that the TAC have further discussion on the ELL and At-Risk weight floors to determine if the weight floor amounts should be changed.)*

At-Risk:

- e. *With regard to the identification of students at risk of low academic achievement, use free and reduced-price lunch (FRL) data to identify students at risk of low academic achievement or when FRL data is not available for a school or a charter school, an alternative measure approved by the NDE may be used.*
- f. *With regard to a weight to be used to allocate funding to At-Risk students, use a single weight value not less than 1.5 until such time as a cost study may be conducted. For purposes of calculating the base amount upon which the At-Risk weight would be applied, include all state and local funding within the funding formula per-pupil calculation, but exclude all federal and categorical funding from the calculation.*

Implementation:

- g. *With regard to the inclusion of the weight to allocate funding for ELL and At-Risk students inside or outside the K-12 funding formula, initially provide weighted funding for these students as a categorical grant program outside the state funding formula with a transition to inside the funding formula at a date to be determined in the future.*

Additionally, the TAC recommended that the NDE develop performance benchmarks and reporting requirements tied to the ELL and At-Risk funding and develop a plan to transition the funding to inside the state's funding formula for review and consideration by the Nevada Legislature prior to implementation.

- h. *With regard to students who qualify for multiple weight categories, apply the highest single weight to a student who qualifies as both ELL and At-Risk, based upon an unduplicated count of students.*
- i. *With regard to an implementation plan for modifications to the state's K-12 funding model for ELL and At-Risk students, hold school districts and charter schools harmless for the 2015-17 biennium by only distributing new funding approved by the Nevada Legislature and the Governor through the modified K-12 funding model for ELL and At-Risk students. Beginning in FY 2018, the TAC recommended a full phase-in over a four-year period through FY 2021, with 10 percent of the total calculated funding change implemented in the first year, 30 percent in the second year, 60 percent in the third year, and 100 percent in the fourth year.*

At its May 21, 2014, TAC meeting, the TAC discussed several policy issues related to funding students with disabilities, but due to time constraints, no action was taken on the issues discussed. Additionally, a status report of the TAC's activities through May 21, 2014, was provided to the Task Force at its May 22, 2014, meeting. Task Force members identified several issues for the TAC to further discuss and consider at its final meeting on June 5, 2014. The issues listed and discussed below represent the remaining policy aspects related to each of these student populations, which the TAC will want to consider in making its upcoming recommendations to the Task Force.

Major K-12 Funding Formula Issues

1. Modification of the Funding Model for Students with Disabilities.
2. Contingency Fund for Students with Disabilities who Require High-Cost Services.
3. Funding for Students with Disabilities Inside or Outside the K-12 Funding Formula.
4. Implementation of Modifications to the State's K-12 Funding Model for Students with Disabilities.
5. Weights to be Used to Determine Funding for ELL and At-Risk Students.
6. Allocation of Funding Based on Density.
7. Duration of ELL Funding and Weight for ELL Maintenance Funding.
8. Phase-in Period Inside the K-12 Funding Formula for ELL and At-Risk Students.
9. Implementation of Modifications to the State's Funding Model for ELL and At-Risk Students.

1. Modification of Funding for Students with Disabilities

Summary of Issue: The funding for special education in Nevada currently is based upon a unit system, with a unit intended to represent the cost of a special education teacher and is treated outside the state's primary funding formula in an entirely separate funding model.

The 2012 AIR report noted several deficiencies in the way Nevada allocates state funding for special education. The authors of the report called attention to the lack of formal documentation of how the number of special education units assigned to each school district is determined. They also pointed out that there is no link between special education units and the services received by any given student with a disability. Indeed, the authors stated that the current unit funding approach for special education does not provide financial support for instructional aides or non-personnel resources (e.g., specialized instructional materials, supplies or technology) that may be necessary to provide services to students with disabilities.

According to testimony from Daniel Thatcher, Senior Policy Specialist with the National Conference of State Legislatures, at the March 31, 2014, meeting of the Task Force on K-12 Public Education Funding, there are many special education funding models used nationwide. Mr. Thatcher indicated that 21 states use a per pupil or weighted funding model, 10 states use a cost reimbursement method, 6 states (including Nevada) use special education units, 5 states utilize a census-based approach, and 8 states employ some other method to fund students with disabilities. Because there is no predominant method of funding special education, the 2012 AIR report outlined four alternative approaches to funding students with disabilities: (1) fixed allocation per student; (2) weighted student

funding that reflects the relative cost of providing educational services; (3) weighted student funding using school district group averages; and (4) a census-based approach. A brief description of each of these approaches is provided below:

- 1) Fixed allocation per student: According to the authors of the 2012 AIR report, a fixed allocation per student method is a simple approach to improving equity for funding students with disabilities. This method allocates an equal amount per student eligible for special education services across all school districts. Each district would get the same amount of funding for each special education student. As indicated in the 2012 AIR report, two potential downsides of a fixed allocation per student method are that it does not take into account specific learning disabilities and can incentivize the over-identification of students with disabilities.
- 2) Weighted student funding: A weighted student funding model allocates special education funds to school districts based on weights for each specific learning disability or service provided. Under this model, each student with a disability is assigned a weight corresponding to the relative cost of serving a student with that disability. Unlike the fixed allocation per student method, this approach treats each school district separately in the determination of both the special education identification rates and the classification of students by disability.

The 2012 AIR report notes that a weighted student funding model is equitable and accounts for the varying costs of educating students with different disabilities. However, the report's authors also cautioned that a weighted student funding approach may incentivize the identification of more students with disabilities and greater portions of students who are classified into high-cost disability categories. Under this method, a school district that identified more students with disabilities would receive greater funding. Likewise, a school district that identified greater proportions of students who are classified in high-cost disability categories would receive greater funding.

According to Mr. Thatcher, of the states that do utilize a weighted student funding approach for providing services to students with disabilities, some states provide a single weight like Oregon (0.5) or West Virginia (2.0), while some states make use of a greater number of weights. For example, Mr. Thatcher indicated that New Mexico has 12 distinct special education weights. Mr. Thatcher also indicated in his testimony that some states weight students based on disability and some states weight based on the services provided. As an example, he provided the weights used in Oklahoma and Texas. These weights have been reproduced in the following tables:

Oklahoma – Weight Based on Disability

| Disability | Weight |
|----------------------------------|---------------|
| Speech Impaired | 0.05 |
| Learning Disability | 0.40 |
| Physically Handicapped | 1.20 |
| Mentally Retarded | 1.30 |
| Autism | 2.40 |
| Multiple Handicaps | 2.40 |
| Traumatic Brain Injury | 2.40 |
| Emotionally Disturbed | 2.50 |
| Hearing Impaired | 2.90 |
| Vision Impaired | 3.80 |
| Deaf & Blind | 3.80 |
| Special Education Summer Program | 1.20 |

Texas – Weight Based on Service Provided

| Service Provided | Weight |
|----------------------------------|---------------|
| Mainstream Student | 1.10 |
| Non-Public Day School | 1.70 |
| Vocational Adjustment Class | 2.30 |
| Off Home Campus | 2.70 |
| Hospital Class | 3.00 |
| Resource Room | 3.00 |
| Self-Contained (Mild & Moderate) | 3.00 |
| Homebound | 5.00 |
| Speech Therapy | 5.00 |

In his March 31, 2014, presentation on special education funding to the Task Force on K-12 Public Education Funding, Mr. Thatcher explained that more states are moving toward funding school districts based on services provided as opposed to disability categories. The reason behind this trend, Mr. Thatcher explained, is that studies have found that the costs for students with disabilities are based on the services they may require and not on their disability classification. Mr. Thatcher also explained that trends in special education funding nationwide show states moving away from broad weight categories such as mild, moderate, and severe, to more narrow weight definitions, which allow the funds to be better targeted.

The 2012 AIR report attempted to identify special education funding adjustments that can be considered best practices. In doing so, the authors relied on data from a national study that developed estimates of spending ratios by student disability based on analysis of a nationwide random sample of students with disabilities. Using general education students as a comparison group, Table 3.5 in the AIR report lists the identified best practice weight for 12 different special education student categories. This table is provided as Attachment 1 at the end

of this document. The weight for the average special education student is identified as 1.9. Of the weights listed in the AIR report, the author's wrote, "we believe that this analysis represents a reasonable basis and an objective source of data upon which to base a student weight and provides comprehensive evidence of best practices currently used to serve these students across the United States."

- 3) Weighted student funding using school district group averages: This method is similar to the weighted student funding model, but uses group-based average identification rates and group-based average proportion of students classified by disability. According to the authors of the 2012 AIR report, by grouping school districts, the ability of any one district to affect its own special education funding allocation through over-identification or classification is reduced. On the other hand, the report's authors noted that this method assumes that school districts in the same size/density group face similar circumstances and conditions that impact the policies and determination of special education services.
- 4) Census-based approach: A census-based approach allocates special education dollars based on the total enrollment (special and general education combined) of a school district. In other words, under a census-based model funding is provided based on an overall percentage of total students in a school district. This approach, according to the 2012 AIR report, assumes that there is a fixed (constant) incidence of special education students across all school districts.

The authors of the 2012 AIR report note that one of the advantages of a census-based approach is that it reduces any incentives for over-identification of special education students or inappropriate classification of students with disabilities into high-cost categories. In addition, the AIR report stated that a census-based approach allows for flexibility in how special education funding is used at the school district level. One potential disadvantage of a census-based approach identified in the AIR report is that it is based on the assumption that over reasonably large geographic areas the incidence of disabilities is relatively uniformly distributed. Committee member Mike Alastuey commented at the May 8, 2014, meeting of the TAC that a census-based approach offers a reasonable aggregate distribution, but not for cost outliers.

Because census-based models do not provide differential funding for variations in identification or any other factors affecting the costs of special education services, the 2012 AIR report notes that a census-based approach is usually combined with a contingency fund to help support the costs of severely disabled children who require extraordinarily high-cost services. Access to this contingency fund, according to AIR, reduces the likelihood that one or a few high-cost children with disabilities can cause excessive financial strain on small districts or charter schools that may be less able to absorb such costs. Please note that contingency funds are discussed in another section of this document.

The Legislative Commission's Subcommittee to Study a New Method for Funding Public Schools included a recommendation in its January 2013 final report that Nevada consider a census-based approach with a contingency fund and that the state study the specific details and implementation of this approach.

An additional option for the TAC to consider was brought up by committee member Julia Teska at the April 21, 2014, meeting of the TAC. Ms. Teska suggested using a hybrid funding approach, which would assign a weight to high-cost students with severe disabilities and use the census-based model for the other IEP designations with low to moderate costs. According to Ms. Teska, this hybrid approach would have the benefit of limiting over-identification while also protecting schools districts and charter schools from potential financial strain caused by the presence of a few high-cost special education students.

The following options are provided to the TAC for consideration in recommending a funding modification for students with disabilities including, but not limited to:

- a. **A fixed allocation per student method.**
- b. **A weighted student funding model. If this option is recommended by the TAC, the committee would need to determine a single weight value or multiple weight values based on disability category or services provided.**
- c. **A weighted student funding model using group averages. If this option is recommended by the TAC, the committee would need to determine a single weight value or multiple weight values based on disability category or services provided.**
- d. **A census-based approach.**
- e. **A hybrid option combining both the census-based approach and the weighted student funding model. If this option is recommended by the TAC, the committee would need to consider the eligibility line between the census-based approach and the weighted student funding model.**

The TAC is reminded that current Nevada law identifies the unit funding approach as the method for providing funding for special education in the state. Whatever option is chosen, a bill would have to be introduced to amend various chapters in Title 34 of *Nevada Revised Statutes*. Additionally, when discussing the various special education funding options, the TAC should be mindful of the maintenance of effort (MOE) requirements of the federal IDEA.

2. Contingency Fund for Students With Disabilities Who Require High-Cost Services

Summary of Issue: A contingency fund acts as a risk management system created by states for local school districts (especially small ones) that encounter extraordinary costs associated with educating high-need special education students.

As the authors of the 2012 AIR report noted, special education finance models that do not provide funding for variations in identification or costs (such as the current unit-funding model, fixed allocation per pupil, or a census-based approach) are often accompanied by a contingency fund.

If Nevada chooses to implement a special education funding model that does not account for variations in identification or costs of students with disabilities, the 2012 AIR report recommended the establishment of a contingency fund to which school districts could apply for funds to help pay for the costs of educating extraordinarily high-cost special education students. Furthermore, during the 2011-12 interim, the Legislative Commission's Subcommittee to Study a New Method for Funding Public Schools included a recommendation in its January 2013 final report that Nevada consider a census-based approach with a contingency fund and that the state study the specific details and implementation of this approach. Fiscal staff notes that while the recommendations from both AIR and the Legislative Commission's Subcommittee call for the establishment of a contingency fund in conjunction with a change to a census-based approach, a contingency fund can be implemented independent of any changes to the existing state special education funding model.

According to a 2013 report sponsored by the Thomas B. Fordham Institute entitled *Financing the Education of High Need Students*, 32 states currently have some type of contingency fund designed to cover some or all of the costs of educating high-need special education students, though the rules vary widely as to how school districts can access the money and how much funding is available. The Institute's report also noted that the federal Individuals with Disabilities Education Act (IDEA) allows states to divert in each fiscal year up to 10 percent of federal IDEA funds, otherwise reserved for administrative costs, into a contingency fund to assist school districts in providing educational services to high-need pupils with disabilities.

As discussed in the Fordham Institute's report, when designing a contingency fund, there are two options widely used for determining the threshold for districts to be eligible to access these funds. The first option is for states to pay for or reimburse a set percentage of costs that exceed a designated amount of per-pupil spending. In both Massachusetts and Kansas, this amount is 75 percent of eligible costs. The 2012 AIR report indicated that the percentage of eligible costs covered by state contingency funds varies from 65 percent to 80 percent. One downside of this approach, according to the authors of the Fordham Institute's report, is that it can be difficult to identify the optimal fixed percentage that both limits incentives to provide unnecessary services yet shields schools districts from bearing hefty educational costs.

The second option discussed in the Fordham Institute's report is a sliding-scale approach that allows for a more refined allocation of state aid. The premise of this approach is that as the cost of an individual student's special education rises, the level of support from the state also rises. The Fordham Institute's report included New Hampshire's methodology as an example of a sliding-scale approach:

| New Hampshire’s Sliding Scale Approach for High-Need Student Costs | |
|--|--|
| <i>High-Need Student Costs Compared to the Costs of an Average Student</i> | <i>Allocation Percentage from Contingency Fund</i> |
| 1 to 3.5 times the average student costs | 0 percent |
| 3.5 to 10 times the average student costs | 80 percent of costs in excess of 3.5 times threshold |
| Greater than 10 times the average student costs | 100 percent of costs in excess of 10 times threshold |

The authors of the Fordham Institute’s report concluded that while a sliding-scale approach does not remove all perverse incentives to “pad” a student’s individualized education plan (IEP) in order to exceed a single identified threshold, it considerably diminishes them.

Two additional examples of contingency fund methodologies are from Oregon and Pennsylvania. A brief overview of both states’ models are provided as follows:

- In Oregon, school districts may apply for reimbursement from the state High-Cost Disabilities (HCD) account for special education service costs greater than \$30,000 per student per fiscal year. The HCD account is capped at \$18 million per year, and if the total reimbursement requests from school districts exceed the amount in the HCD account in any fiscal year, the funding is prorated among those school districts eligible for reimbursement.
- As discussed by committee member Julia Teska in her presentation to the TAC on May 8, 2014, Pennsylvania provides for one percent of the annual appropriation for special education funding to be set aside for grants to school districts and charter schools for special education students for which expenses are \$75,000 or more per student. The amount of funds received by a school district in any school year is limited to its percentage of special education students compared to total special education enrollment statewide.

At the May 8, 2014, TAC meeting, Ms. Teska also described a hypothetical contingency fund model in which a statewide council would be established to receive and review applications to determine eligibility to access the state’s contingency fund. According to Ms. Teska, council membership could include Nevada Department of Education program and fiscal staff, as well as program and fiscal staff from the local school districts and the State Public Charter School Authority (SPCSA).

In this model, the council would set criteria and define the services eligible to be funded by the contingency fund. Ms. Teska indicated that recommendations for allocations from the contingency fund could then be submitted to another group for final approval. This group, Ms. Teska noted, could be the State Board of Education or a group made up of the State Superintendent of Public Instruction, the Director of the SPCSA, and the 17 local school district superintendents. Fiscal staff notes that

this hypothetical contingency fund model differs from the other models described in this document, which determine eligibility based on a cost threshold.

Table 4.6 in the 2012 AIR report, (Attachment 2 at the end of this document) presents data that offers estimates of the potential costs of establishing a contingency fund to support exceptionally high-cost special education students in Nevada. Assuming the state would take responsibility for 75 percent of excess costs under a contingency fund program, the authors of the AIR report estimate the total amount necessary for a contingency fund under three scenarios: (1) setting an eligibility threshold of at least four times the basic support guarantee; (2) classifying as high cost only the top 1 percent of students with disabilities; and (3) classifying as high cost only the top one half of 1 percent of students with disabilities. As reported in Row J of Table 4.6, the amount necessary for a contingency fund under each of the three scenarios is estimated at \$21.2 million, \$6.7 million, and \$4.1 million, respectively.

If the TAC opts to move forward with the recommendation to develop a contingency fund for high-cost students with disabilities, issues that should be considered include, but may not be limited to:

- How to allocate money to the fund. Massachusetts operates two contingency funds. One is supported by annual state appropriations while the other, known as a Pooled-Risk Insurance Fund, allows the state to operate as an insurance company with school district contributions required to be eligible participants. Another option includes using federal IDEA administrative funds.
- How much money to allocate to the fund. Some states use a flat dollar amount (Oregon), and other states use a percentage of total special education funding (Pennsylvania). The authors of the 2012 AIR report noted that there is no straightforward answer to how much money should be allocated to a contingency fund; however, they were able to obtain estimates from two states (Connecticut and New Hampshire), and in both instances, the allocated contingency funds were significantly less than 1 percent of total K-12 spending. Under Nevada's current unit-funding model, 40 discretionary units are reserved each fiscal year to be allocated by the State Board of Education. The FY 2014 dollar amount of the 40 discretionary units, which operate similar to a contingency fund, is approximately \$1.7 million.
- How the fund would operate. According to the authors of the 2012 AIR report, a contingency fund should be designed to be used rarely, be transparent and simple, and be low-cost to administer. To define what constitutes as a high-cost special education student, the AIR report states that most states establish a threshold per-pupil cost based on a multiple of the average cost of a regular education student. For example, if a multiple of 3.0 were established, school districts would be eligible to apply for funds for special education students for whom documented costs are greater than three times that of the average student. The authors of the AIR report also indicate that school districts should bear some responsibility (e.g., copay) for the excess costs of these high-cost students.

Many states provide funding on a reimbursement basis. However, a fund could be structured to permit allocations from the fund in advance of realized costs with a true-up of funding and costs at the end of the year. In addition, many states define the eligible services and put an annual cap on allocations from the fund to any one particular school district. Contingency funds in most states also only cover costs in excess of what is funded by the weighted student funding.

At the May 22, 2014, meeting of the Task Force on K-12 Public Education Funding, State Superintendent of Public Instruction Dale Erquiaga noted that Nevada currently has in place a special education program similar to a contingency fund (in addition to the funding for the 40 discretionary special education units). Under the current program, which is described in Chapter 395 of *Nevada Revised Statutes* (NRS), parents of children with disabilities may apply to their local school board and the Superintendent of Public Instruction to have their child moved to a foster home or other residential facility if the local school district is unable to provide an appropriate special education program and related services for the child's particular disability and grade or level of education. The foster home or other residential facility can be located in or outside of the school district in which the child with the disability resides, including out of state, as long as the home or facility can provide an appropriate special education program and related services for the child's particular disability.

Pursuant to NRS 395.060, funding to support this special education program (known as the NRS 395 program) may be provided by direct legislative appropriation from the State General Fund, federal grants, or any other source of money. Historically, a combination of General Fund appropriations and federal funds have supported the NRS 395 program; however, since FY 2009 no expenditures have been made relating to the program. Beginning in the 2011-13 biennium, the Legislature has approved a General Fund appropriation of \$100 to NDE in each fiscal year so that Interim Finance Committee Contingency Account funds could be requested should applications for participation in the NRS 395 program be approved. Currently, it does not appear any students are participating in the program. If the creation of a special education contingency fund is recommended, the TAC may wish to recommend that NDE research the possibility of transferring the NRS 395 program into the newly created special education contingency fund program.

The following options are provided to the TAC for consideration in determining whether to recommend a contingency fund for students with disabilities who require high-cost services including, but not limited to:

- a. Recommend the creation of a contingency fund for students with high-cost disabilities and recommend that the Nevada Department of Education develop a plan for the operational guidelines of the fund – including how to allocate money to the fund, how much money to allocate to the fund, and how the fund would operate – for presentation to the 2015 Legislature. If this option is selected, the TAC could also recommend that the Department of Education study the possibility of transferring the existing NRS 395 program into the new contingency fund program.**

- b. **Do not recommend the creation of a contingency fund for students with high-cost disabilities.**

Please note that both options can be considered independent of any other decisions the TAC makes regarding the way special education is funded in Nevada.

3. Funding for Students with Disabilities Inside or Outside the K-12 Funding Formula

Summary of Issue: As members of the TAC may recall, states typically use one of two strategies for targeting funding above the per-student base amount to students with special needs. The differences in student needs are addressed by adding weights to the basic funding formula for identified types of students or establishing separate categorical programs to provide funding for programs to meet the needs of identified students.

As mentioned previously, formula funding is generally unrestricted in that a school district directs the spending of this type of funding. One of the concerns with adding weights to the basic funding formula is how to ensure that the targeted funding will be used to provide supplemental services to the identified students. In contrast, funding that is provided through categorical programs is typically targeted for certain purposes, and, as such, is restricted as to how the funding may be expended.

At the May 8, 2014, meeting of the TAC, committee member Dr. Rulffes, with input from Mr. McIntosh, submitted a memo to the chair and a brief Power Point presentation related to funding for students with disabilities inside (unrestricted) or outside (categorical) of the state's K-12 funding formula. They noted that NRS 387.047 requires a special revenue fund for special education expenditures and that the unit-based funding is currently recorded directly into a Special Education Fund within each district and charter school. Based upon the factors listed below, their recommendation was that funding for students with disabilities should continue to be outside the funding formula (categorical):

- Better fit with current statute
- Allows for discrete presentation of special education funding
- Matching of revenues with expenditures
- Makes overfunding/underfunding transparent as transfers to balance the special education fund are made from the General Fund
- Allows for better decision making for resource allocation

In contrast, the 2012 report published by AIR recommended that Nevada integrate funding adjustments for students with disabilities into the state's funding formula to account for these student need cost factors and to ensure equity across districts. The 2012 report by AIR did not contain specific information as to the number of states that incorporate funding adjustments for students with disabilities into the state's funding formula as opposed to outside the state's primary funding formula.

In his March 31, 2014, overview of special education funding in the United States, Mr. Daniel Thatcher, education policy analyst with the National Conference of State Legislatures, reported that one of the trends in special education funding is that states are moving special education funding into the state's primary funding formula. In doing so, he stated, it is easier to connect the overall funding to the program and that funding inside the formula tends to be equalized so that the amount is based on the relative wealth of each school district.

The following options are provided to the TAC for consideration in recommending whether funding for students with disabilities should be inside or outside the state's K-12 funding formula including, but not limited to:

- a. **Recommend that NRS 387.047 be amended to remove the requirement that funding for students with disabilities be accounted for in a separate fund. Funding for students with disabilities should then be incorporated into the state's primary K-12 funding formula to be distributed according to the alternative option for funding special education selected and recommended by the TAC.**
- b. **Continue funding for students with disabilities outside of the state's primary funding formula and distribute the funding according to the alternative option for funding special education selected and recommended by the TAC.**
- c. **Initially provide funding for students with disabilities as a categorical grant program outside the state funding formula with a transition to inside the funding formula at a date to be determined in the future.**

4. Implementation of Modifications to the State's K-12 Funding Model for Students with Disabilities

Summary of Issue: As has been discussed in previous TAC meetings, revisions to the funding formula for students with disabilities may have implications for the maintenance of effort (MOE) provisions of the federal Individuals with Disabilities Education Act (IDEA), which must be considered in developing any implementation plan. As the committee will recall, the MOE is calculated at both the state and local level. At the state level, the state education agency must budget, in aggregate, no less than the prior year funding level. At the local level, the local education agency must expend the same amount of local funds or state and local funds for special education that were spent the previous fiscal year, either on an aggregate or per capita basis. A school district or charter school would be penalized for not meeting MOE due to any reduction of local and state funds supporting MOE.

In AIR's 2012 report, the authors noted that one way to accomplish a phase-in of a change under a new funding mechanism would be to hold harmless school districts and charter schools that incur losses and only provide increases to those districts and charter schools that gain under the new formula. In this way, AIR stated, additional investments in education will be concentrated in those districts that are currently underfunded under the new funding mechanism and MOE provisions would be met.

In addressing MOE issues related to the implementation of proposed modifications to the funding model for students with disabilities in Wyoming, AIR recommended in its *2002 Wyoming Special Education Expenditure Report and Cost-Based Funding Model Final Report* that all school districts be held harmless, in that they would receive at least the same special education state funds received in the base year. The base year would be the year immediately prior to the implementation of the funding modifications.

As the committee will recall, the current methodology utilized by the state to fund students with disabilities is a unit-based model, where a unit is supposed to equate to a full-time licensed professional that must carry a caseload. The number of funded units has been static since 2009 at 3,049 units, although the value of the unit has increased slightly from \$39,768 in FY 2013 to \$41,608 and \$42,745 per unit in FYs 2014 and 2015, respectively. A total of 3,009 units are allocated to the 17 school districts with 40 units reserved to be allocated by the State Board of Education to school districts and charter schools. The total value of the 40 discretionary units totals \$1.66 million in FY 2014 and \$1.71 million in FY 2015.

The allocation of the 40 discretionary units each year does not impact the state MOE, as the funding level is either the same or greater than the prior year. However, because the allocation of the discretionary units changes from year to year, school districts and charter schools may be required to maintain the same special education funding level as in the prior year, even though they may have received fewer or did not receive any discretionary units in the current year. It should be noted, that at the local level, there are certain exemptions for which a local education agency (LEA) may qualify that may reduce or mitigate the total MOE requirement for the LEA.

With this in mind, the discretionary funding, along with any increases in the total special education funding that comprise the remaining 3,009 units, could be prorated, according to the new funding methodology for students with disabilities, to those school districts or charter schools that would receive increases under the new methodology, while holding harmless all districts and charter schools that would receive decreases under the new funding methodology. Staff would note that if the TAC were to recommend utilizing the funding for the 40 discretionary special education units for a contingency fund, this would no longer be an option for consideration.

What recommendation for an implementation plan for modifications to the state's K-12 funding model for students with disabilities does the TAC wish to make?

5. Weights to be Used to Determine Funding for ELL and At-Risk Students

Summary of Issue: At the May 21, 2014, meeting of the TAC, the committee discussed potential ELL and At-Risk weights to recommend to the Task Force on K-12 Public Education Funding. After discussion, the TAC voted to recommend a weight of not less than 1.5 for ELL students and 1.5 for At-Risk students until such

time as a cost study may be conducted. In addition, for the purposes of calculating the base amount upon which the ELL and At-Risk weights would be applied, the TAC voted to recommend that all state and local funding be included within the funding formula per-pupil calculation and to exclude all federal and categorical funding from the calculation.

The recommendations of the TAC were presented to the Task Force at its May 22, 2014, meeting, and various members of the Task Force and the public expressed concern that the recommended weight floors, particularly for ELL, recommended by the TAC may be too low. During public comment, testimony was provided advocating that an ELL weight in Nevada should be in the range of 1.7 to 1.9 and be revisited in five to ten years once the appropriate ELL education infrastructure has been put into place. The Task Force requested the TAC to have further discussion on the recommended ELL and At-Risk weight floors to determine if the weight floor amounts should be increased.

As noted at the May 8, 2014, and May 21, 2014, meetings of the TAC, the 2012 AIR study reported on the ELL weights used in 15 states and grouped these states into three equal categories: the top five, the middle five, and the bottom five. The average ELL weight of the top-five states is 1.63 (ranged from 1.50 to 1.99), while the average ELL weight of the middle five and bottom five is 1.38 (ranged from 1.23 to 1.50) and 1.16 (ranged from 1.10 to 1.22), respectively. Overall, the average ELL weight of the 15 states is 1.39. The 1.5 ELL weight floor recommended by the TAC is above the 15-state average and within the range of the top five states. However, during public comment at the May 22, 2014, meeting of the Task Force, it was suggested that Nevada should consider a higher ELL weight because the state has a large achievement gap between ELL and non-ELL students. Additionally, testimony was provided that six of the ten states in the middle five and bottom five groups have had their school finance systems found to be inadequate by the courts.

At its May 22, 2014, meeting, the Task Force also heard testimony that students identified as at risk of low academic achievement (as identified by participation in free or reduced price lunch, or FRL, programs) underperform academically when compared to their peers who do not participate in FRL programs. In particular, public testimony was provided indicating that African American students in the Clark County School District who participate in FRL programs underperform academically when compared to all FRL students as whole. As a result, it was suggested that an At-Risk weight of 1.7 be applied to all students who participate in FRL programs.

According to a policy brief by University of Nevada, Reno professor Deborah Verstegen titled *How Do States Pay for Schools? An Update of a 50-State Survey of School Finance Policies and Programs*, weights for low-income students/students at risk of low academic achievement vary but range from 1.05 in Mississippi to 1.97 in Maryland. Dr. Verstegen noted that the average At-Risk weight nationally is 1.29; however, she indicated that most states provide a weight of 1.20 to 1.25 for low-income students and target eligibility based on federal FRL status. Fiscal staff notes that based on nationwide surveys, weights for ELL students are generally higher than weights for students at risk of low academic

achievement. One possible reason for this difference is that programs for ELL students may cost more than programs for At-Risk students. Another possible reason is that generally, At-Risk students far outnumber ELL, and therefore costs for At-Risk students can be spread over a larger base. Even in Nevada, with one of the highest percentage of ELL students nationwide, statewide, there are approximately three and a half times more FRL students than ELL students.

Given the information provided about weights for ELL students and students at risk of low academic achievement, the TAC may wish to recommend one of the following options:

- a. Rescind the TAC’s prior recommendation to establish a weight floor of 1.5 for ELL students or At-Risk students, or both categories of students. If this option is selected, the TAC will need to make another recommendation to the Task Force regarding weights for ELL students and students at risk of low academic achievement.**
- b. Do not modify the prior recommendation of the TAC concerning ELL and At-Risk weights, but rather provide an explanation to the Task Force regarding the TAC’s rationale in maintaining the 1.5 weight values for ELL and At-Risk students.**

6. Allocation of Funding Based on Density

Summary of Issue: According to testimony provided at the February 28, 2014, meeting of the Task Force on K-12 Public Education Funding by Mike Griffith, school finance consultant at the Education Commission of States, research has shown that there are factors that can influence the cost of educating ELL students. These factors include small school districts with few ELL students, large school districts with a high density of ELL students, and an ELL student population with multiple native languages. In addition, Mr. Griffith noted that research shows that as the percentage of ELL students within a district increases, the cost to educate the ELL students’ increases.

At the April 21, 2014, meeting of the TAC, Mike Alastuey provided a summary of California’s recently implemented Local Control Funding Formula (LCFF), which provides a density index weight for school districts with many FRL or ELL students. In his summary, Mr. Alastuey noted that the LCFF recognizes that districts with large numbers of high-needs students face extra challenges and costs. Accordingly, if more than 55 percent of a school district’s students fall into a high-needs category (which includes ELL), the district qualifies for an additional concentration grant for each high-needs student over the 55 percent threshold. Mr. Alastuey indicated that the concentration grant equals an additional 50 percent of the base grant for each high-needs student above the 55 percent threshold. According to information provided by Mr. Alastuey regarding the LCFF, the grant is intended to help address research findings showing that students face extra academic challenges if their peers are also poor or struggling to learn English.

During the meeting on May 8, 2014, committee members briefly discussed the density funding issue. Committee member Mike Alastuey noted that in the new LCFF, a district qualifies for an additional concentration grant for each high-needs student (FRL or ELL) over the 55 percent threshold. Mr. Alastuey commented he was not sure how California determined its threshold. Committee member Dr. Chambers stated that in California, the average percentage of FRL students in the state was 55 to 60 percent, so perhaps the threshold was set at 55 percent to provide additional support to districts with above-average FRL student populations. Mr. Alastuey indicated that if the committee were to recommend a density adjustment, it was not clear how the committee would derive a threshold level that would not just be arbitrary. Additionally, he questioned whether the density adjustment would be applied to each incremental student above the threshold or would it be applied to all students. After the brief discussion, the committee voted unanimously not to recommend any additional ELL funding based on the density of ELL students within a school district.

At the May 22, 2014, Task Force meeting, Task Force member Stephanie Smith inquired about the TAC's rationale for not recommending a density adjustment for ELL students and requested that the TAC further discuss this issue at its final meeting. Member Pedro Martinez noted that one way to address a density adjustment without requiring complicated calculations would be to increase the ELL weight value to account for the additional cost to educate ELL students as the percentage of ELL students within a district increases.

Should the TAC desire to rescind its prior action taken on May 8, 2014, regarding the allocation of ELL funding based on density, the following options are provided for consideration by the TAC including, but not limited to:

- a. **Provide additional ELL density funding for school districts that exceed a predetermined density level of ELL students. If this option is selected, the TAC would need to determine the density level that would trigger additional funding, as well as the amount of density funding.**
- b. **Provide additional ELL density funding for school districts that exceed multiple predetermined density levels of ELL students. If this option is selected, the TAC would need to determine the density levels that would trigger additional funding, as well as the amount of density funding associated with each level.**
- c. **Increase the value of the ELL weight to account for the additional cost to educate ELL students as the percentage of ELL students within a district increases.**

7. Duration of ELL Funding and Weight for ELL Maintenance Funding

Summary of Issue: During his presentation to the Task Force on K-12 Public Education Funding on February 28, 2014, Mr. Griffith, noted that one of the goals of state ELL programs is to move students from an ELL designation to a non-ELL

status. He further commented that unlike students from low-income households or special education students, an ELL designation should generally not be a permanent status throughout a student's educational career.

At the May 8, 2014, meeting of the TAC, the committee recommended weighted funding for ELL students for up to six years or until the student reclassifies as non-ELL. After the sixth year, or the year in which the student reclassifies as non-ELL (if the reclassification occurs before the end of year six), two additional years of reduced maintenance funding were recommended by the TAC. The TAC briefly discussed what the amount or weight of maintenance funding should be at its May 21, 2014, meeting; however, no action was taken by the committee, and the issue was recommended to be further discussed at the June 5, 2014, meeting of the TAC.

The Task Force on K-12 Public Education Funding heard the TAC's preliminary recommendations at its May 22, 2014, meeting and expressed concern about limiting ELL funding to only six years. In addition, the Task Force heard public comment about how students who have been classified as ELL for extended periods of time struggle academically and often need continued support to prevent them from dropping out of school. The concern was that limiting ELL funding to a set number of years could reduce the resources available to help long-term ELL students.

Generally, a long-term ELL student is defined as a student who has been enrolled in U.S. schools for more than six years, is no longer progressing towards English proficiency, and is struggling academically. According to information presented during public comment at the May 22, 2014, Task Force meeting, there are over 11,000 long-term ELL students in the Clark County School District alone. Testimony was also provided that long-term ELL students generally have developed habits of academic disengagement, passivity while learning, and social detachment, which resulted in increased dropout rates for these students. Moreover, according to a 2013 study performed by WestEd, in collaboration with the Washoe County School District, titled *Using District Longitudinal Data to Inform the Design and Evaluation of Supports for Students at Risk of Not Graduating: A District Collaborative Research Project*, long-term ELL students are the demographic group least likely to graduate from high school.

The TAC previously heard testimony that there are many factors that influence the rate of English language acquisition and therefore, the amount of time a student is designated as an ELL. As a result, school finance consultant Mike Griffith concluded that setting an ELL funding duration limit may be difficult. However, despite the difficulties in establishing a maximum amount of time an ELL student can receive additional ELL funding, the 2012 AIR study noted generally that states should consider options to minimize or eliminate disincentives associated with reclassification when a student no longer meets the special need eligibility requirement. According to the AIR authors, one approach to reducing over-classification of students with language deficits is to establish a maximum period during which a student may be classified as an ELL for additional funding purposes. The AIR authors indicate that this would encourage districts to monitor

student progress carefully during their periods of eligibility to ensure they are benefitting from the program and are prepared to receive general education services when they exit the program.

Given the information provided about the academic challenges of long-term ELL students, the Task Force has asked the TAC to further discuss its previous recommendation to provide weighted funding for ELL students for up to six years or until the student reclassifies as non-ELL.

With regard to the duration of ELL funding, the following options are provided for consideration by the TAC, including but not limited to:

- a. **Rescind the TAC's previous recommendation to limit ELL funding to six years or until the student reclassifies as non-ELL. If this option is selected, the TAC could make another recommendation to the Task Force regarding the duration of ELL funding.**
- b. **Do not modify the prior recommendation of the TAC concerning the duration of ELL funding, but rather provide an explanation to the Task Force regarding the TAC's rationale to limit the timeframe of such funding. If this option is selected, the TAC would need to recommend a weight value for the two additional years of maintenance funding.**

8. Phase-in Period Inside the K-12 Funding Formula for ELL and At-Risk Students

Summary of Issue: At its May 8, 2014, meeting, in regard to the inclusion of the weights to allocate funding to ELL and At-Risk students inside or outside the K-12 funding formula, the TAC recommended initially implementing the weights as a categorical grant program with phase-in funding inside the state's funding formula at an unspecified future date.

Overall, there were various comments in support of any initial funding for ELL and At-Risk students being provided as categorical funding with a shift to providing the funding inside the formula after a phase-in period. The committee members also discussed the need to be able to measure performance and track results.

With regard to a phase-in period to shift from providing funding for ELL and At-Risk students outside the state funding formula as categorical grants to providing the funding inside the state's K-12 funding formula, the TAC, at its May 21, 2014, meeting approved recommending that the NDE develop performance benchmarks and reporting requirements tied to the ELL and At-Risk funding and develop a plan to transition the funding to inside the state's funding formula for review and approval by the Nevada Legislature prior to implementation.

At the May 22, 2014, Task Force meeting, State Superintendent Dale Erquiaga stated he concurred with the TAC's recommendation that performance measures and reporting requirements be developed and tied to the ELL and At-Risk funding. Additionally, Superintendent Erquiaga requested the TAC discuss and consider

adding a requirement that school districts and charter schools must submit a plan to NDE that outlines how ELL and/or At-Risk funding would be utilized to improve the academic performance of those students and have the NDE review and approve such plans. This would be similar to a requirement under California's new LCFF model where districts are required to adopt Local Control and Accountability Plans that disclose how funds will be spent to provide high-quality educational programs. The LCFF further stipulates that districts that do not meet the goals specified in their plans and fail to improve educational outcomes will receive assistance through a new system of support and intervention.

Does the TAC wish to make a recommendation that each school district and charter school eligible to receive ELL and/or At-Risk funding be required to submit a plan that outlines how the funding would be utilized to increase the academic performance of those student populations, for review and approval by the NDE?

9. Implementation of Modifications to the State's K-12 Funding Model for ELL and At-Risk Students

Summary of Issue: At the May 21, 2014 meeting the TAC recommended an implementation plan for modifications to the state's K-12 funding model for ELL and At-Risk students that would hold districts harmless for the 2015-17 biennium by only distributing new funding approved by the Nevada Legislature and the Governor through the modified K-12 funding model for ELL and At-Risk students. Beginning in FY 2018, the TAC recommends a full phase-in over a four-year period through FY 2021, with 10 percent of the total calculated funding change implemented in the first year, 30 percent in the second year, 60 percent in the third year, and 100 percent in the fourth year. Based upon the TAC's recommended implementation plan, the following are several issues the TAC will need to consider.

Count of ELL and At-Risk Students

For purposes of generating the funding adjustment for ELL and At-Risk student populations, the TAC should discuss and consider the methodology for the count of these students. According to NDE, current year counts for ELL and At-Risk (FRL) are available by December 1 of each school year, several months after payments from the state begin flowing to the school districts and charter schools for a given school year. For this reason, the TAC could consider either utilizing the immediate prior year count for ELL and FRL student populations or, base the ELL and FRL count on a three-year rolling average of ELL and FRL enrollment. Using a single year count could result in greater funding swings to individual school districts and charter schools if there are significant swings in ELL and FRL enrollment. A count based on a three-year rolling average would smooth out enrollment fluctuations and provide a more consistent funding stream to individual school districts and charter schools. It should be noted that California, under its new LCCF model, has adopted a three-year rolling average to determine a district's ELL/LI (Low Income) count.

What recommendation does the TAC wish to make regarding the methodology for the count of ELL and FRL students for purposes of determining the funding adjustment for those student populations?

New Funding

A second issue remaining for discussion and consideration by the TAC concerning an implementation plan for modifications to the state's K-12 funding model for ELL and At-Risk students is how the TAC should define "new funding."

With regard to the clarification of the term "new funding," the TAC could consider defining new funding as enhanced funding approved by Legislature and the Governor for ELL and/or At-Risk students. Alternatively, the TAC could consider the definition of new funding to include funding enhancements for ELL and At-Risk student populations as well as additional funding for enrollment growth, and/or funding provided for the two percent "roll-up" for movement on the salary scale for licensed staff.

Concerning an implementation plan for modifications to the state's K-12 funding model for ELL and At-Risk students, how does the TAC wish to define the term "new funding"?

Implementation of New Funding

In accordance with the TAC's recommended implementation plan, in Years 1 and 2, only new funding for ELL and At-Risk students, as defined by the TAC, would be allocated to school districts and charter schools.

Implementation of Phased-In Funding Changes

Beginning in Year 3, 10 percent of the total calculated funding change above the base-year funding level, would be implemented, 30 percent in Year 4, 60 percent in the Year 5, and 100 percent in Year 6. As such, the TAC should identify the year in which a district's or charter school's total funding level, as calculated utilizing a school district's or charter school's individual per-pupil amount, would function as the base-year funding level. The TAC may wish to consider utilizing the fiscal year immediately preceding the implementation of the funding adjustment for ELL and At-Risk students (FY 2017) as the base-year funding for each school district and charter school.

Which year does the TAC wish to recommend as the base year for purposes of calculating a school district's or charter school's base year funding level?

Please note that with the phase-in of the weight-based funding adjustments occurring prospectively, beginning with Year 3 (FY 2018), school district and charter school base-year funding levels are unknown as are the Year 3 school district and charter school per-pupil amounts.

Does the TAC have any additional recommendations concerning the implementation plan of the ELL and At-Risk funding adjustments?

Eligible Uses of Funding

Another component of an implementation plan for categorical funding is the eligible uses of such funding. The TAC may wish to discuss and recommend a list of approved eligible uses of the supplemental funding directed to students identified as

ELL and at risk of low academic achievement. Such eligible uses might include, but not be limited to:

- a. *Classroom teachers to reduce class sizes or for ELL instruction;*
- b. *Before and/or afterschool academic programs, including transportation to and from programs;*
- c. *Pre-kindergarten programs;*
- d. *Tutors, teachers' aides, counselors, social workers, nurses, and curriculum specialists;*
- e. *Parent education and/or parental engagement;*
- f. *Summer or intersession programs, including transportation to and from programs;*
- g. *Early intervention programs;*
- h. *Materials, supplies, and equipment, including technology used in approved programs or for approved purposes;*
- i. *Funding a longer school day;*
- j. *Funding a longer school year;*
- k. *Remediation programs and/or partnering with higher education institutions.*
- l. *Assessment activities;*
- m. *Community liaison staff with language and cultural skills appropriate to the ELL population; and*
- n. *Professional development activities.*

Does the TAC wish to identify and recommend the eligible uses of categorical funding for ELL or At-Risk students?

ATTACHMENTS – 2