

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
SPECIAL EDUCATION
CATASTROPHIC AID PROGRAM
PERFORMANCE AUDIT REPORT
JULY 1999**



State Of New Hampshire

MICHAEL L. BUCKLEY, CPA
Legislative Budget Assistant
(603) 271-3161

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

CATHERINE A. PROVENCHER, CPA
Director, Audit Division
(603) 271-2785

TO THE FISCAL COMMITTEE OF THE GENERAL COURT:

We have conducted an audit of the catastrophic aid program managed by the New Hampshire Department of Education's Bureau of Special Education to address the recommendation made to you by the Legislative Performance Audit and Oversight Committee. We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to provide a reasonable basis for our findings and conclusions. Accordingly, we have performed such procedures as we considered necessary in the circumstances.

The purpose of our audit was to review the Department of Education's management of the catastrophic aid program and identify factors that have impacted the increases in catastrophic aid expenditures. The six-year audit period encompassed fiscal year 1993 through fiscal year 1998.

This report is the result of our evaluation of the information noted above and is intended solely for the information of the Department of Education and the Fiscal Committee of the General Court. This restriction is not intended to limit the distribution of this report, which upon acceptance by the Fiscal Committee is a matter of public record.

Office of Legislative Budget Assistant

Office Of Legislative Budget Assistant

July 1999

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**STATE OF NEW HAMPSHIRE
CATASTROPHIC AID PROGRAM**

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ABBREVIATIONS

DoE	New Hampshire Department Of Education
IDEA	Individuals With Disabilities Education Act
IEP	Individualized Education Program
IPA	Individual Program Approval
LEA	Local Education Agency
RCC	UNH Research Computing Center
SAU	School Administrative Unit
SERESC	Southeastern Regional Education Service Center
SPEDIS	Special Education Information System

STATE OF NEW HAMPSHIRE CATASTROPHIC AID PROGRAM

SUMMARY

PURPOSE AND SCOPE OF AUDIT

This audit was performed at the request of the Fiscal Committee consistent with a recommendation from the joint Legislative Performance Audit and Oversight Committee and was conducted in accordance with generally accepted government auditing standards. It describes how special education is delivered, funded, and overseen by the State and specifically reviews the catastrophic aid program during fiscal years 1993 through 1998.

BACKGROUND

Federal law requires a free appropriate public education for students with disabilities in states that choose to participate and receive federal special education funding. It is the policy of New Hampshire (RSA 186-C:1) to provide all children with equal educational opportunities. The State Department of Education's Bureau of Special Education (the Bureau) sets statewide standards for special education programs, monitors local school district compliance with these standards, and ensures that special education programs are integrated with general curriculum and instructional programs in accordance with State law. It also maintains the Special Education Information System commonly known as SPEDIS.

FUNDING

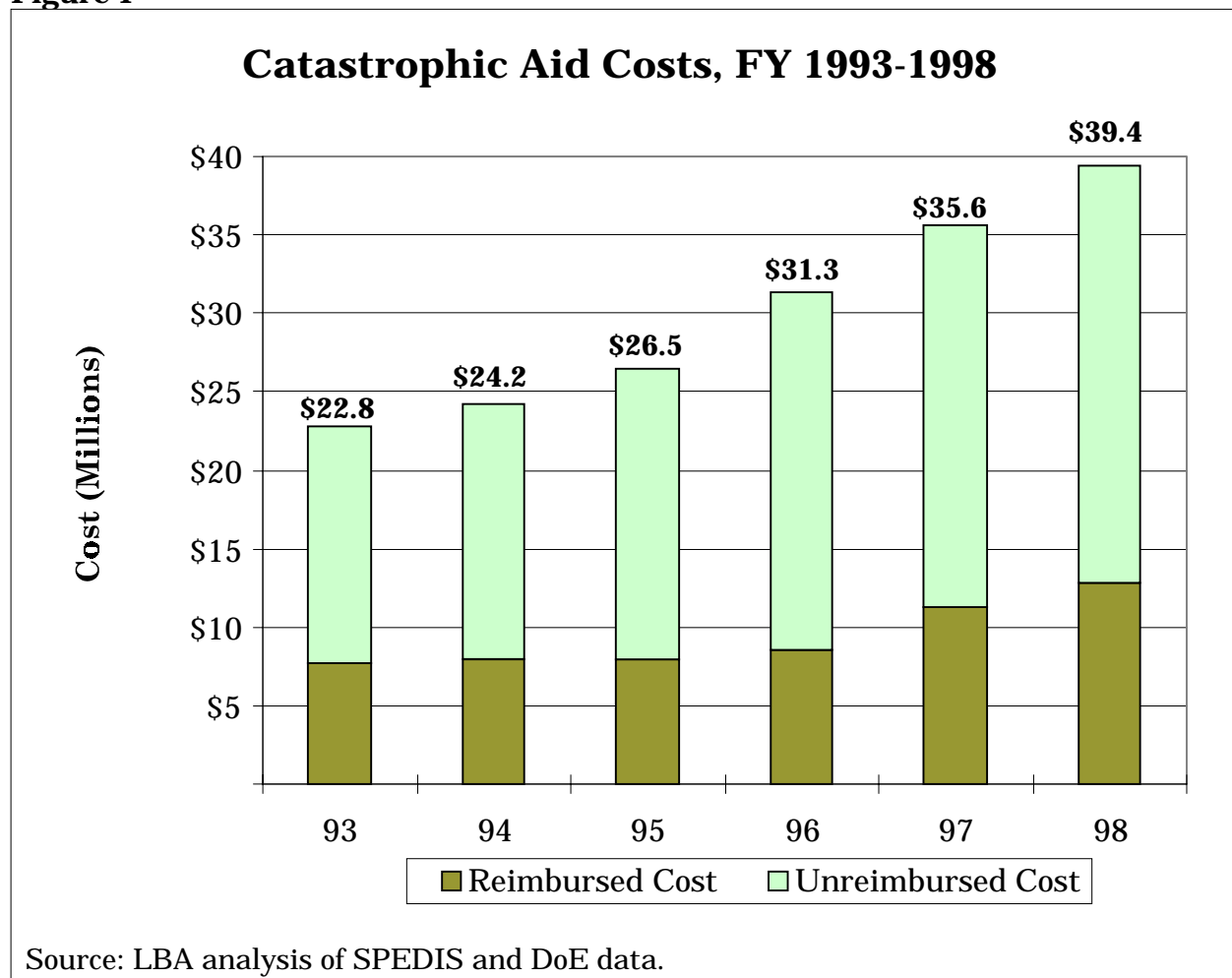
Over the six-year audit period, special education costs increased 51 percent and totaled \$1.1 billion. Local school districts fund the bulk of special education services. Districts have the responsibility to implement and finance special education programs pursuant to the standards set by the federal and State governments. The federal government has set certain minimum standards for the education of all students with disabilities. The Individuals with Disabilities Education Act, Amendments of 1991 (P.L. 102-119, also known as IDEA), sets these standards and is the primary source of federal aid for the instruction of and support services for students with disabilities. New Hampshire's Department of Education (DoE) sets statewide standards that at a minimum must meet federal standards in order for the State to receive federal funds. School districts may also receive Medicaid reimbursements to offset certain costs for eligible students with disabilities.

During our audit period, the State provided funding for special education primarily through two sources: special education basic aid and catastrophic aid. The State has historically budgeted a certain level of funding for special education basic aid which it distributed through the foundation aid formula. However, there was no mandate requiring special education basic aid be expended by the local school districts for special education programs. The State also provides special education funds through the catastrophic aid program; this reimburses school districts for the most expensive services provided to students with disabilities. Catastrophic aid reimbursements are made in the year after local school districts incur the expenditures. The State covers 80 percent of the costs of implementing a student's Individualized Education Program (IEP) after the costs exceed 3½ times the estimated State

SUMMARY (Continued)

average expenditure per pupil, and 100 percent of all costs over 10 times the State estimated average expenditure per pupil. In fiscal year 1998, the estimated State average expenditure per pupil was \$5,801, creating an initial threshold of \$20,304 and a district cap at \$58,010, resulting in a maximum liability for the school district of \$27,845 per student (see Table 2 on page 20). Figure 1 shows the total amount of catastrophic costs incurred and the portion reimbursed by the State between fiscal years 1993 and 1998. State catastrophic aid costs represent about five percent of all special education expenditures during the same time period. We note that these students represent a very small but growing percentage of all special education students, increasing from 2.9 percent in State fiscal year 1993 to 3.6 percent in 1998 (see Exhibit 2 on page 22 for more student information).

Figure 1



School districts only report cost information in SPEDIS for special education students whose individual costs exceed 3½ times the estimated State average expenditure per pupil in order to receive reimbursement under catastrophic aid. As a result, the Bureau does not have individual cost information for the vast majority of special education students. Throughout the school year districts report catastrophic aid program placement and cost information online to the Bureau. SPEDIS collects and calculates individual student cost information to

SUMMARY (Continued)

determine the catastrophic aid reimbursement for each school district. The State reimburses districts on or before January 1 of the following fiscal year.

RESULTS IN BRIEF

Insufficient Staffing A Factor In Many Bureau Problems

We found that staffing was a contributing factor in many problems we identified at the Bureau of Special Education. Bureau staff and 90 percent of the schools we surveyed reported that the Bureau is understaffed. We see this affecting the Bureau's management over some of its operations. For example, we found the Bureau's oversight of its special education electronic database to be seriously lacking and its review of catastrophic aid claims to be inadequate. To further aggravate the situation, the Bureau has experienced a significant amount of staff turnover resulting in a loss of institutional knowledge.

Lack Of Compliance With State Laws Weakens Control Over Resources

We identified a number of instances where the Department has not followed State law or its administrative rules. The Bureau has not adopted administrative rules for the catastrophic aid program as required by statute. Following an undocumented decision 25 years ago, the Department has not submitted a majority of its special education service contracts for Governor and Council approval. In fiscal year 1998 alone, these projects amounted to over \$3 million. In addition, the Bureau has not followed its own rules when setting reimbursement rates and limiting the number of special education students placed at non-approved facilities.

Multiple Factors Increasing Special Education And Catastrophic Aid Expenditures

We concluded the State has very little control over special education expenditures. The federal government sets the rules and teams within schools determine the services that must be provided to students with disabilities. While the State can control how much it contributes for special education through catastrophic aid and a few other programs, local taxpayers have been directly responsible for about 81 percent of special education expenditures. During the audit period the State has provided \$127 million in special education funding, including \$57 million through the catastrophic aid program. Our interviews and survey identified the following factors as increasing special education costs (particularly, catastrophic aid related costs):

- increases in total student populations,
- growing percentage of students with severe disabilities,
- increases in the number of one-on-one aides,
- parental threats of taking schools to expensive due process hearings,
- increases in the use of out-of-district placements, and
- increases in associated costs such as transportation.

Due to inadequate and unavailable cost data, it was problematic to attribute specific cost increases to the above factors.

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**STATE OF NEW HAMPSHIRE
CATASTROPHIC AID PROGRAM**

RECOMMENDATION SUMMARY

OBSERVATION NUMBER	PAGE	LEGISLATIVE ACTION REQUIRED	RECOMMENDATION	AGENCY RESPONSE
1	31	NO	Re-evaluate Bureau staffing to better manage special education activities and improve oversight of funding.	Concur
2	35	NO	Develop and adopt comprehensive administrative rules for the catastrophic aid program.	Concur
3	37	NO	Develop and implement adequate controls to ensure that catastrophic aid and special education funding are paid only for eligible services.	Concur
4	39	NO	Submit projects funded by federal discretionary funds to the Governor and Council for approval.	Concur
5	43	NO	Set rates for non-approved in-state facilities according to Department rules.	Concur

RECOMMENDATION SUMMARY (Continued)

OBSERVATION NUMBER	PAGE	LEGISLATIVE ACTION REQUIRED	RECOMMENDATION	AGENCY RESPONSE
6	43	NO	Limit individual program placements at in-state non-approved facilities according to Department rules.	Concur
7	45	NO	Develop policies, procedures, and in-house knowledge of SPEDIS.	Concur
8	49	NO	Report to the Legislature no later than February 2000, on the new SPEDIS application.	Concur
9	51	YES	Ensure State funding formulas are placement neutral.	Concur

STATE OF NEW HAMPSHIRE CATASTROPHIC AID PROGRAM

1. INTRODUCTION

1.1 Overview

The federal government initiated special education laws in the 1960s because public schools were not always providing adequate services to students with disabilities. These laws have affected how schools manage and educate their students. General and special education are based on two distinct premises. General education focuses on group instruction, taxpayer involvement, and local control, whereas special education focuses on individual instruction, parent program approval, legal accountability, and federal mandates. As a result, school districts are challenged to manage a dichotomy of efforts and resources.

The training required of general and special education teachers reflects these two distinct premises. General and special educators, trained to instruct their students in differing ways, sometimes use conflicting approaches. In the past, students with disabilities were commonly taught in separate classrooms and facilities. With the increased emphasis on integrating special education students within the classroom, general and special education teachers and their students are working together on a more frequent basis.

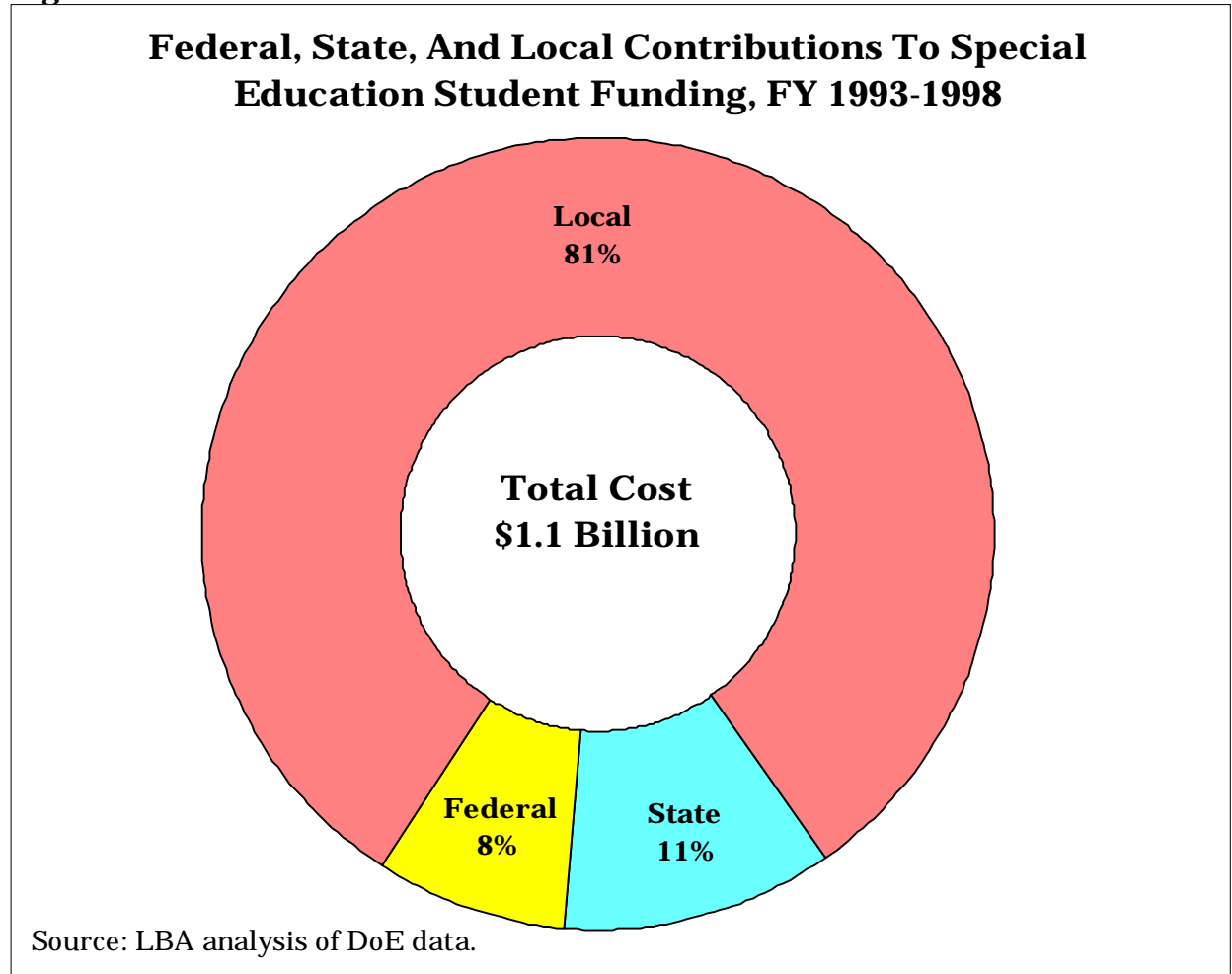
In New Hampshire, the struggle to provide adequate resources for all students can cause funding dilemmas for school districts and local taxpayers. The Individuals with Disabilities Education Act (IDEA) requires schools to provide free appropriate public education to each student identified as having a disability. IDEA also provides funding specifically for special education, along with mandates on what schools must provide. States that receive this funding have little control over the services deemed necessary to support students with disabilities. We found that State and school officials seemed genuinely concerned about providing the necessary support to children with disabilities to assist them in achieving the same standards as their classmates. However, many officials complained that federal special education legislation is an example of an under-funded mandate because the federal government has never funded special education as originally intended.

We spoke with school officials who expressed concern about the predicament they face when their schools experience unexpected special education costs. As shown in Figure 2, local governments paid for 81 percent of all special education expenditures. Schools may find themselves in the unenviable position of reducing resources for general education and extra-curricular activities in order to pay for required expenditures in special education. We spoke with one district that incurred exceptionally high special education costs. This district canceled extra-curricular activities, after-school help sessions, and field trips. In addition, the district was faced with having to justify the need for more funding to a skeptical public.

1. INTRODUCTION (Continued)

1.1 Overview (Continued)

Figure 2



Catastrophic aid is one way the State assists schools with the costs of their most expensive students. For State fiscal year 1998, almost \$13 million in catastrophic aid was reimbursed to school districts for 3.3 percent of the special education population. Because catastrophic aid is reimbursed the year after funds are expended, school districts may issue reimbursement anticipation notes to pay for a portion of the catastrophic costs. The State will reimburse the school district for the cost of borrowing the money.

1.2 Scope, Objectives, And Methodology

This report describes how special education is delivered, funded, and overseen by the State. We focused our attention on identifying the factors driving special education costs, especially those reimbursed by the State through the catastrophic aid program. In addition, we reviewed other management controls relevant to the catastrophic aid program and federal

1. INTRODUCTION (Continued)

1.2 Scope, Objectives, And Methodology (Continued)

funding, and followed up on the recommendations in the 1991 LBA Performance Audit of the Developmental Services System related to our current audit objectives.

Scope And Objectives

In April 1998, the Fiscal Committee of the General Court adopted a recommendation by the Legislative Performance Audit and Oversight Committee to conduct a performance audit of special education. In June 1998, the Legislative Performance Audit and Oversight Committee accepted our scope statement which identified the State's catastrophic aid program as the focus of our audit. The scope of the audit included other interrelated functions within the Bureau of Special Education.

Our audit addresses the following specific objectives:

- assess the management controls related to special education, especially the catastrophic aid program;
- identify the factors that have increased catastrophic aid program costs;
- identify State special education requirements that exceed federal minimum standards; and
- provide the readers of our report with a fundamental understanding of how special education is administered and funded.

It must be noted that we were unable to audit a sample of catastrophic aid claims as originally planned. Our access to the Department's management information system which contains student data is allowed by State law. However, our authority to review student records at the schools was not as clear. Our authority to audit students' special education records may have been challenged by parents or local school districts. Beginning in the summer of 1998, and throughout the duration of our fieldwork, personnel from the State Department of Education made inquiries with the federal Department of Education to receive written confirmation that the LBA has the authority to examine student records. As of the close of our field work in March 1999, we did not receive any written response from the federal Department of Education. As a result, we adjusted our audit plan and extended our timeline accordingly.

Methodology

This performance audit was conducted in accordance with generally accepted government auditing standards and included such procedures as we considered necessary in the circumstances. In order to gain an understanding of how special education functions and is funded in New Hampshire, we conducted a literature search, reviewed pertinent State laws and administrative rules, federal laws and regulations, prior reports, Department documentation, and newspaper articles. We attended a number of local special education conferences and training sessions. We also interviewed members of the New Hampshire House of Representatives; officials from the Departments of Education, Health and Human

1. INTRODUCTION (Continued)

1.2 Scope, Objectives, And Methodology (Continued)

Services, and Administrative Services; as well as an attorney, school officials, and representatives of pertinent associations.

To obtain information related to the audit objectives, we used four basic methods:

- structured interviews with State and school representatives, and other knowledgeable people;
- document reviews of State statutes and regulations, federal statutes and regulations, SPEDIS material, and prior reports;
- mail survey of public school special education administrators; and
- analysis of SPEDIS data.

Other Reviews Of Special Education In New Hampshire

We note that in recent years there have been a number of reviews of special education by the State including:

- LBA Performance Audit of the State's Developmental Services System (1991),
- Special Education Task Force (1996),
- House Bill 784 Study Commission (1997), and
- Senate Bill 462 Study Commission (1998).

In addition, the Bureau of Special Education has been reviewed by the U.S. Department of Education (1994).

1.3 Special Education Legislation

Federal Legislation

Federal special education legislation spans the past 30 years (see Exhibit 1). Legislation in the 1960s and early 1970s addressed the right for all children with disabilities to receive an appropriate education. Federal funding also increased during this time to assist states in providing services. In the mid 1970s, federal legislation expanded the types of disabilities covered and the age of children who must receive a free appropriate education in the least restrictive environment.

IDEA

The federal government under the Education for All Handicapped Children Act of 1975 (P.L. 94-142) and later under the Individuals with Disabilities Education Act, Amendments of 1991 (P.L. 102-119, also known as IDEA) sets certain minimum standards for the education of all students with disabilities. IDEA is the primary source of federal aid for instruction and support services for students with disabilities. Part B of IDEA (the federal to state grant-in-aid program) requires participating states to furnish all students with disabilities with a free appropriate public education in the least restrictive setting. The least restrictive setting may

1. INTRODUCTION (Continued)

1.3 Special Education Legislation (Continued)

range from the general classroom to a private out-of-state placement, depending on the needs of each child as determined in their respective Individualized Education Program (IEP).

Exhibit 1

Chronology Of Federal Special Education Legislation 1966-1990

The 1966 amendment (P.L. 89-750) to the Elementary and Secondary Education Act of 1965 gave federal grants to states to assist in the education of children and youth with disabilities.

The Education of the Handicapped Act of 1970 (P.L. 91-230) was the first free-standing statute for children and youth with disabilities.

The Education Amendments of 1974 (P.L. 93-380) expanded federal authority and appropriations of basic aid-to-states programs, instituted due process procedures, and mandated that children with disabilities be integrated into regular classes whenever possible.

The Education for All Handicapped Children Act of 1975 (P.L. 94-142) set certain minimum standards for the education of all handicapped children which must be followed by the states and local school districts in order to receive federal funding.

The Education of the Handicapped Amendments of 1983 (P.L. 98-199) expanded incentives for preschool special education programs from birth to age five.

The Education of the Handicapped Amendments of 1986 (P.L. 99-457) increased aid for all children with covered disabilities between the ages of three and five years old.

The Education of the Handicapped Amendments of 1990 (P.L. 101-476) revised the definitions of disabilities to include autism and traumatic brain injury.

IDEA's funding mechanism is a formula grant based on the number of identified students with disabilities. The distribution of funding is based on each state's population of special education students; this number is known as a state's "child count." The states count the number of children in compliance with IDEA on December 1, and must report it to the federal government no later than May 1. The federal funding formula requires that no more than 12 percent of the total student population be reported as educationally disabled for

1. INTRODUCTION (Continued)

1.3 Special Education Legislation (Continued)

funding considerations. Additionally, although IDEA legislation promised the federal government would fund states up to 40 percent of the national average education expenditure per pupil, IDEA has never been fully funded.

1997 Amendments To Federal Legislation

Several changes were made to IDEA under the 1997 Amendments (P.L. 105-17). Final federal regulations to implement the 1997 Amendments were not published until March 1999. Some of the more significant features include the following:

- changing the formula used to allocate grants to states when federal appropriations exceed \$4.9 billion;
- changing the least restrictive environment provisions, benefits for non-disabled students, and fiscal accountability; and
- providing services to students with disabilities who have been suspended or expelled.

Other Federal Legislation

The Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) are two other pieces of federal civil rights legislation. They protect individuals with disabilities from discrimination, and ensure their equal access to services and programs, respectively. Congress modeled the ADA after Section 504. An individual may file a complaint or lawsuit against a school district alleging both a violation of Section 504 and the ADA. The major difference between Section 504 and the ADA is that Section 504 only applies to recipients of federal financial assistance, whereas the ADA protects individuals from discrimination by both public and private entities.

To qualify under the IDEA, students' disabilities must have a significant impact on their ability to learn. However, under Section 504, a disability need not have any affect on their ability to learn, so long as it substantially limits some other major life activity. The school district must evaluate any student it knows or has reason to believe has a disabling condition. Due to that condition, the student may need special services. For example, asthma and allergies are disabling conditions which may only be covered under Section 504 because they do not have a significant impact on a student's ability to learn. In these cases, the district must make accommodations to the student's program to assure an appropriate education. An appropriate education is one designed to provide the student an equal opportunity to participate when compared to their non-disabled peers. No IEP is required, but the district should document what accommodations, if any, it is making. The district is also obligated to provide notice to the parent whenever identification, evaluation, or placement is at issue.

1. INTRODUCTION (Continued)

1.3 Special Education Legislation (Continued)

State Legislation

Early in the 20th century, New Hampshire created programs for individuals with severe disabilities at the Philbrook Center in Concord and the Laconia State School. In 1965, New Hampshire enacted its first comprehensive special education law regarding an education for disabled children (RSA 186-A). The law allowed local school districts to provide education for “intellectually retarded” and “emotionally disturbed” disabled children and required “every physically handicapped child capable of being benefited by instruction” to attend school. A “handicapped child” was defined as a child between the ages of five and 21 in any one of the three following categories: 1) physically handicapped, 2) intellectually handicapped, or 3) emotionally handicapped. By 1971, the State’s special education law was revised to require school districts to provide special education programs for all disabled children, not only physically disabled children. A later provision granted State financial assistance to local school districts when tuition exceeded the State per pupil average.

In 1981, New Hampshire amended its special education law to comply with federal law. As a result, RSA 186-C replaced RSA 186-A, requiring all students with disabilities age three or older, but less than 21 years of age, be provided a free and appropriate public education. RSA 186-C:2 defines a student with an educational disability as having been “identified and evaluated by a school district according to the provisions of RSA 186-C:7 and determined to be mentally retarded, hearing impaired, speech or language impaired or both, visually impaired including blindness, seriously emotionally disturbed, orthopedically impaired, otherwise severely health impaired, deaf-blind, multi-disabled, traumatic brain injured, autistic, or as having specific learning disabilities, who because of such impairment, needs special education or special education and educationally related services.”

State Regulations Exceeding Federal Requirements

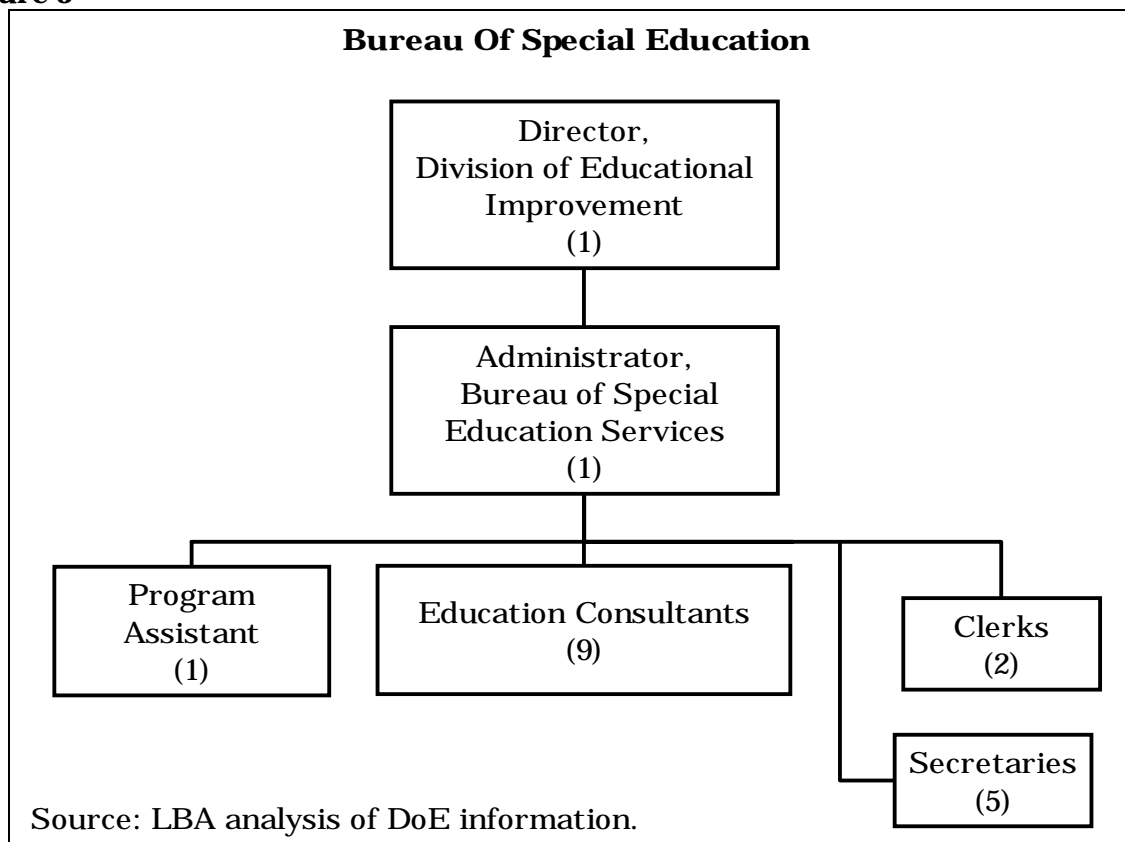
State law (RSA 186-C:3-a) requires that “[t]he department shall ensure that the regulation and monitoring of school district activities shall not exceed what is necessary for compliance with this chapter and with federal law regarding the education of students with educational disabilities.” There was concern that the State may be exceeding federal minimum requirements which may be increasing the costs of special education. Similar to the 1996 Special Education Task Force Report, we found that “by and large, New Hampshire regulations parallel those at the federal level.” While interviews and our survey of SAUs identified a handful of examples where federal and State regulations differ, there was no indication that the areas where New Hampshire exceeds federal requirements result in substantial cost increases. Department staff stated that recent amendments to IDEA have moved the federal law closer to New Hampshire’s in a number of cases. This statement verifies that New Hampshire has differed from federal requirements in the past. (For further information, see Other Issues And Concerns.)

1. INTRODUCTION (Continued)

1.4 Organization Of The Bureau Of Special Education

Throughout the 1990s, the Bureau has gone through a number of reorganizations. In 1992, the Bureau was disbanded and its staff reassigned to other divisions within the Department. The special education duties remained with the staff who worked as a “special education team.” In 1997, the Bureau of Special Education (called Special Education Services) came back together under a “realignment” and was the only bureau under the Division of Educational Improvement. Recently, the Division of Educational Improvement was renamed as the Division of Instruction¹ and includes the Bureaus of Integrated Programs, Professional Development, and Special Education – basically reverting back to a similar organizational structure in place before the initial reorganization. Figure 3 presents an organizational chart of the Bureau’s structure.

Figure 3



The division has authority to appoint and assign personnel or contract for services for the proper operation of special education programs. Additionally, it has taken advantage of federal discretionary funds to contract out portions of its workload, such as monitoring school districts, operating and upgrading its computer system, conducting the annual special education personnel census, and developing forms.

¹ For the purpose of this report we will continue to refer to the division overseeing the Bureau of Special Education as the Division of Educational Improvement.

1. INTRODUCTION (Continued)

1.5 Administration Of Special Education

The Department's Bureau of Special Education administers State special education programs. The New Hampshire Standards for the Education of Students with Disabilities (Standards) are the State regulations governing special education. The Standards have been adopted as New Hampshire Administrative Rules pursuant to RSA 541-A. The State requires that special education and educationally related services be provided to children ages three to 21, who are identified as educationally disabled. Local school districts are responsible for providing these services either directly or through another provider, in compliance with the Standards. Educationally related services may include transportation, physical and occupational therapy, speech pathology and audiology, and diagnostic and evaluative medical services.

Schools are responsible for identifying children who may have educational disabilities and need to be evaluated. Figure 4 shows this evaluation and placement process. A referral to a special education evaluation team can be made by anyone who suspects a child has an educational disability, such as a parent, a teacher, or a principal. Parents are notified in writing of referrals and their due process rights. The team has 15 days to determine if an evaluation is required or if existing pupil support services can address the concerns raised by the referral.

If it is determined that further evaluation is necessary, and the parent provides written consent to the evaluation, appropriate information will be gathered by a multidisciplinary group of persons including at least one qualified examiner for each area of suspected disability. Evaluation results are sent to parents within ten days of the evaluation. The evaluation team will consider the results of the evaluations. If the evaluation team determines that the child has a disability and needs special education or special education and related services, the IEP team shall develop an IEP. Children who are evaluated to have disabilities must receive an IEP within 30 days from when the parents receive notice.

Federal and State laws require that students determined to be educationally disabled must be provided a free appropriate public education. A free appropriate public education includes the following: 1) special education and related services provided at public expense under public supervision, at no charge to the parent; 2) compliance with Department of Education Standards; 3) preschool, elementary, and secondary school education; and 4) a written IEP. Each child's IEP is the formal record of what is deemed a free appropriate public education. It is written by a local school district special education evaluation and placement team. According to the Standards, each child's IEP must contain components such as:

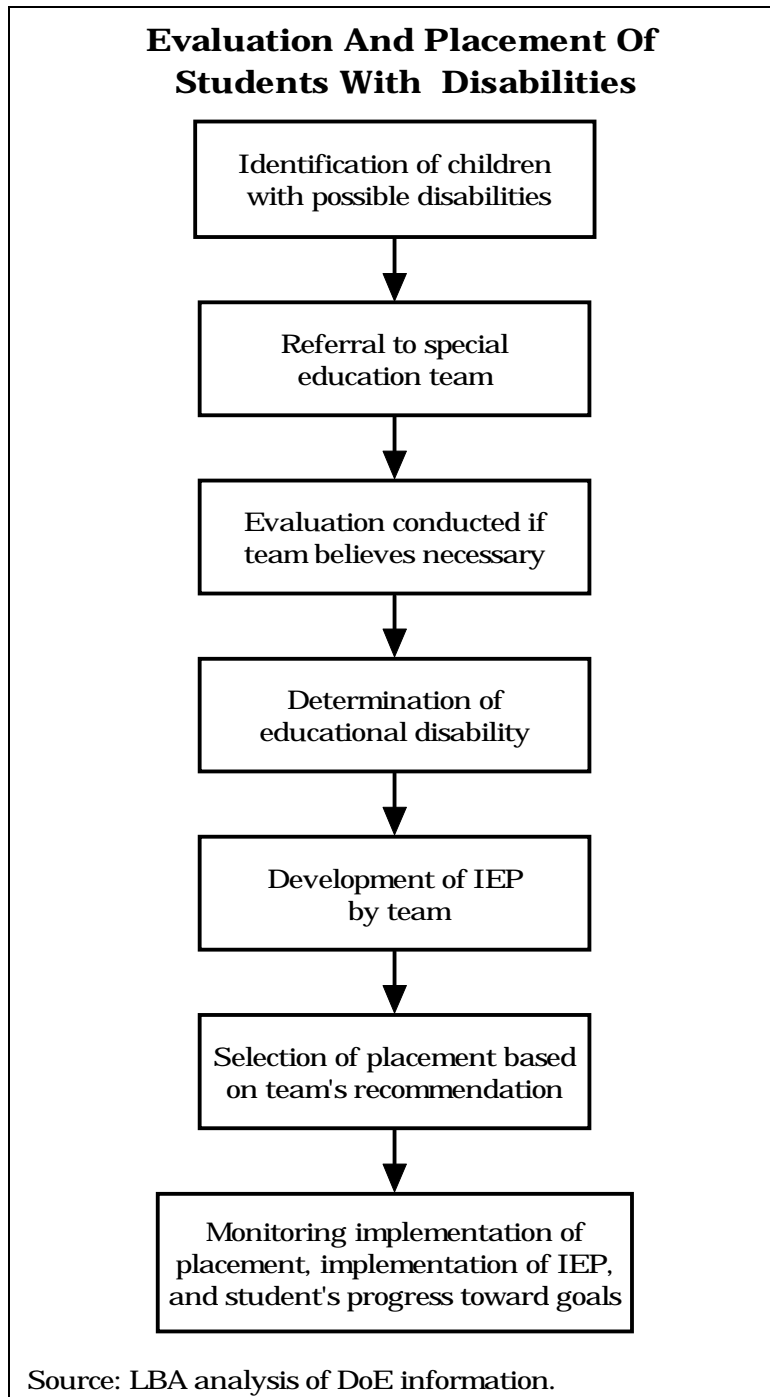
- a statement of the student's present level of educational performance;
- the extent to which the student will participate in a regular class or program;
- the expectations for the student when participating in a regular class or program;
- a statement of special education transportation, if required, and other educationally related services to be provided;
- the length of the school year and the school day required to implement the IEP; and

1. INTRODUCTION (Continued)

1.5 Administration Of Special Education (Continued)

- signatures of the parent, legal guardian, surrogate parent, or student, where appropriate, and representatives of the local school district stating approval of the provisions in the individualized education program.

Figure 4



1. INTRODUCTION (Continued)

1.5 Administration Of Special Education (Continued)

An IEP is updated annually and must be in effect by the beginning of each school year for placement of the student to occur. Placement of the student is based on the unique educational needs of the student as specified in the IEP, and must be in the least restrictive environment appropriate to those needs. A student with an educational disability shall be re-evaluated every three years or more frequently if the student's parent or teacher requests an evaluation.

At any point in the educational decision-making processes, safeguards (including complaints, due process hearings, mediation, neutral conference, and appeals procedures) are available to either the parents or the local school district. Additionally, the Department is required to be actively involved in monitoring the development and operation of local school district special education programs and services, and has the authority to enforce sanctions for regulatory violations or misconduct.

1.6 Federal, State, And Local Special Education Funding

The State has little control over local special education expenditures. The federal government has established IDEA legislation and the State closely parallels the federal legislation within State statutes and administrative rules. School districts are obligated to follow these regulations. Appropriate services for each student with an educational disability, pursuant to the standards set by the federal and state governments, are formally incorporated into the IEP. These IEP-required services drive costs which are paid by the school district. In New Hampshire, local school districts fund most school costs, including special education, through property taxes.

Table 1 demonstrates the changes in total amounts and funding sources of special education expenditures from fiscal years 1993 to 1998. (For greater detail, see Appendix B.)

Federal Funding

IDEA

According to P.L. 102-119, federal IDEA funding was meant to assist states and schools in paying for special education costs; it was not intended to fully fund these costs. At most, the federal government would provide per student funding up to 40 percent of the national average per pupil expenditure. However, the federally funded Center for Special Education Finance estimates federal funding of special education is currently between 8.5 to nine percent of the national average per pupil expenditure, and that federal funding has never exceeded 12.5 percent. During the audit period, at least 75 percent of grants to states went directly to schools (entitlement); 20 percent towards support services, direct services, monitoring, and compliance reviews (discretionary); and the remaining five percent toward the State's administration of the program (administrative).

1. INTRODUCTION (Continued)

1.6 Federal, State, And Local Special Education Funding (Continued)

Table 1

Changes In Special Education Funding
FY 1993 To 1998

Source Of Funding	Fiscal Year		Percent Change FY 1993-1998
	1993	1998	
Federal Funds			
IDEA	\$ 7,501,066	\$ 12,162,739	62%
Preschool	992,130	1,358,286	37%
SPED Training	36,167	57,768	60%
Sensory	992,821	0	-100%
Medicaid To Schools	559,028	10,216,779	1728%
Federal Total	\$ 10,081,212	\$ 23,795,572	136%
State Funds			
Catastrophic Aid ¹	\$ 7,741,707	\$ 12,988,599	68%
Statewide Special Ed	299,347	247,500	-17%
Regional Special Ed	1,737,709	311,111	-82%
Chapter 402	1,250,520	2,336,625	87%
Special Ed Basic Aid	8,118,312	9,237,569	14%
State Total	\$ 19,147,595	\$ 25,121,404	31%
Local Funds			
Local Funds	\$ 125,313,766	\$ 184,254,610	47%
Total	\$ 154,542,573	\$ 233,171,586	51%
Source: LBA Analysis of Single Audit Reports, Statements of Appropriation, and MS-25 data.			
¹ The 1998 expenditure includes \$199 thousand paid out in fiscal year 1999.			

Other Federal Grants

Preschool Grants provide funding to assist states in providing a free appropriate public education to preschool students with disabilities aged three through five years. At least 75 percent of the funds must be distributed to school districts.

Personnel Development and Parent Training Grants (SPED Training) provide funding to: 1) address identified shortages of special education teachers and related services personnel, 2) improve the quality and supply of special education teachers and related services personnel, and 3) provide parent training and information services.

1. INTRODUCTION (Continued)

1.6 Federal, State, And Local Special Education Funding (Continued)

Education of Handicapped Children In State Operated Or Supported Schools (Sensory Grants) provided funding to programs that supplement services to children: 1) who are educationally disabled and enrolled in State operated or State supported schools and programs, and 2) who are disabled, enrolled in school districts, and have transferred from a State school or program. Programs formally funded by this grant are currently supported by IDEA funds.

Medicaid To Schools

In 1988, changes in federal law allowed schools to seek partial reimbursement for some services under the federal Medical Assistance Program, Title XIX of the Social Security Act, also known as Medicaid. Two years later, New Hampshire enacted Chapter 272, which authorized the creation of a special Medicaid program to reimburse medically related services in a student's IEP. School districts that enroll as a Medicaid provider can receive federal Medicaid reimbursements for students who meet certain eligibility requirements, and whose parents consent to the application for Medicaid funds. Districts can receive reimbursement for 50 percent of necessary, covered services they provide to students. Services covered by Medicaid include medical evaluations, nursing evaluations, occupational therapy, physical therapy, and psychiatric evaluations. Medicaid to Schools is not strictly based on family income. Under the "Katie Beckett" option, very expensive services to disabled students still qualify so that their schools can participate in the Medicaid to Schools program, regardless of parental income. We noted that school districts can claim reimbursements from both Medicaid to Schools and catastrophic aid for the same services. (See Other Issues And Concerns for further discussion of this issue.)

State Funding

Catastrophic Aid

The State special education catastrophic aid program (RSA 186-C:18, III) reimburses school districts for the most expensive students with disabilities. When catastrophic aid is fully funded, the State reimburses the school districts for 80 percent of the costs per student over 3½ times the estimated State average expenditure per pupil and 100 percent of all costs over 10 times the State average expenditure per pupil. Reimbursements for catastrophic aid are made the year after districts incur the expenditures. Table 2 shows the threshold levels based on the State average expenditure per pupil for State fiscal years 1993-1998.

In fiscal year 1998, the State's liability under the catastrophic aid program was approximately \$13 million. The State reimbursed districts for 98.5 percent of the total that year, and made up the remaining 1.5 percent in fiscal year 1999. This funding partially offset special education costs incurred by districts during fiscal year 1997 for 1,012 (3.3 percent) of the State's 30,405 students with disabilities.

1. INTRODUCTION (Continued)

1.6 Federal, State, And Local Special Education Funding (Continued)

Table 2

Catastrophic Aid Thresholds

State Fiscal Year¹	Estimated State Average Expenditure Per Pupil (SAEPP)	3½ X SAEPP	10 X SAEPP	Schools' Maximum Liability²
1993	\$4,960	\$17,360	\$49,600	\$23,808
1994	\$5,018	\$17,563	\$50,180	\$24,086
1995	\$5,302	\$18,557	\$53,020	\$25,450
1996	\$5,436	\$19,026	\$54,360	\$26,093
1997	\$5,662	\$19,817	\$56,620	\$27,178
1998	\$5,801	\$20,304	\$58,010	\$27,845

Source: LBA analysis of DoE data.

¹ Year costs were incurred, State reimbursements are made the following fiscal year.

² According to RSA 186-C:18 III (b), the schools' maximum liability is calculated by adding 3½ X the SAEPP to 20 percent of the difference between 3½ X SAEPP and 10 X SAEPP (assuming the State fully funded catastrophic aid each year).

Special Education Basic Aid

The State has historically budgeted a certain level of funding for special education basic aid (RSA 186-C:18, II) which was disbursed through the foundation aid formula (RSA 198:29) also known as the Augenblick formula. Special education basic aid and foundation aid were distributed together based on a formula that took into account the property wealth of a school district, the income wealth of a district, and the tax effort of a district. In addition, the formula assigned weights to students based on their educational setting (see Observation No. 9). Because of these factors, not all school districts were eligible for foundation aid.

Districts were generally not aware that a portion of the foundation aid that some of them received was budgeted for special education. In fact, there was nothing requiring districts to use their special education basic aid within foundation aid for special education. In essence, special education basic aid was budgeted separately to show a maintenance of effort by the State for continued federal funding.

Other State Programs

Chapter 402 / Court Ordered Placements - The Department is partially liable for special education and educationally related services for court-ordered residential placements for: 1) delinquent children, 2) abused and neglected children, and 3) children in need of services. The Department of Health and Human Services, Division for Children, Youth, and Families is responsible for the residential costs. Districts are eligible for Chapter 402 aid when the cost per student exceeds three times the State average per pupil expenditure. Unlike catastrophic aid, which is reimbursed, Chapter 402 aid is a direct payment. Children placed by the court

1. INTRODUCTION (Continued)

1.6 Federal, State, And Local Special Education Funding (Continued)

in foster homes who receive special education and educationally related services in public schools are not eligible for 402 funding. However, the Department encourages districts to include these students in requests for reimbursement under the catastrophic aid program.

Statewide Special Education - State contracts to provide state-wide coordination of supplemental educational support and services for students with sensory impairments and to provide technical assistance services for these students to local schools.

Regional Special Education - State contracts for: 1) intensive short-term diagnostic and treatment program for students with severe emotional disabilities at Wediko Children's Services, and 2) residential and educational programs for students with serious emotional disturbance at the Spurwink School.

Local Funding

Annual school district financial information is collected on the Department's MS-25 form. This is the only source of information on special education spending by schools. Schools are required to report on total special education expenditures. However, it is well documented that special education figures from the MS-25 are inconsistent and subject to differing interpretations. Our 1991 performance audit report identified this weakness and recommended "the department establish procedures to provide for the collection and maintenance of relevant, reliable and adequate financial information on local school district special education services." The 1996 Special Education Task Force Report also recommended that the Department "review the financial reporting procedures used by the local school districts to ensure that reported special education costs are an accurate reflection of the district's expenses." It has been reported to us that the Department, with school input, has developed and will be implementing a new financial data collection form (known as the DOE-25) beginning in fiscal year 2000.

1.7 Characteristics Of The Catastrophic Aid Program

School districts report various special education data for all special education students, and additionally are required to report program cost information for all catastrophic aid students. Districts use the SPEDIS database to report this information to the Bureau of Special Education. We acquired SPEDIS catastrophic aid information, and analyzed it to better understand characteristics of the State's catastrophic aid population, including cost information, during the audit period. We questioned the reliability of SPEDIS data, especially student disability coding data (see Other Issues and Concerns). With the above caveats, we report our findings based on our analysis of SPEDIS and other available data.

Characteristics Of Population

Exhibit 2 compares the statewide number of catastrophic aid students to all special education students and the total student population. Catastrophic aid students represent a small but

1. INTRODUCTION (Continued)

1.7 Characteristics Of The Catastrophic Aid Program (Continued)

growing percentage of special education and total student populations. In fact, the 45 percent increase in the catastrophic aid population during the audit period is substantially higher than both the special education (17 percent) and the total student populations (12 percent).

Exhibit 2

**Comparisons Of NH Students: All, Special Education,
And Catastrophic Aid, 1993-1998**

<i>Student Population Figures</i>			
<u>School Year</u>	<u>All Students¹</u>	<u>Special Education Students²</u>	<u>Catastrophic Aid Students³</u>
1992-1993	199,198	25,802	748
1993-1994	204,011	26,844	787
1994-1995	208,827	28,058	834
1995-1996	214,682	29,437	938
1996-1997	219,771	30,405	1,012
1997-1998	<u>223,723</u>	<u>30,088</u>	<u>1,087</u>
Total	1,270,212	170,634	5,406
<i>Percent Increase Over Audit Period</i>			
	<u>All Students</u>	<u>Special Education Students</u>	<u>Catastrophic Aid Students</u>
1993-1998	12.31%	16.61%	45.32%
<i>Special Education And Catastrophic Aid Percentages</i>			
<u>School Year</u>	<u>Special Education Students as % of All Students</u>	<u>Catastrophic Aid Students as % of All Students</u>	<u>Catastrophic Aid Students as % of Special Education Students</u>
1992-1993	12.95%	0.38%	2.90%
1993-1994	13.16%	0.39%	2.93%
1994-1995	13.44%	0.40%	2.97%
1995-1996	13.71%	0.44%	3.19%
1996-1997	13.83%	0.46%	3.33%
1997-1998	13.45%	0.49%	3.61%

Source: LBA analysis of DoE data.

¹DoE Bureau of Information Services, based on fall enrollments.

²DoE Bureau of Special Education, yearly totals.

³LBA analysis of SPEDIS data.

1. INTRODUCTION (Continued)

1.7 Characteristics Of The Catastrophic Aid Program (Continued)

Exhibit 2 also shows that the number of catastrophic aid students enrolled during each year increased steadily over the audit period. According to interviewees and our survey of school administrative units, schools are seeing an increasing number of students with multiple disabilities, which may be a result of increased survival rates of infants with complex medical conditions.

Although for the audit period the number of catastrophic aid students enrolled per year totaled 5,406 students, further analysis revealed there were only 2,456 individual students represented in this population. Of these unique students, 72 percent (1,760) were male and 28 percent (696) were female. The total district reported costs of male and female catastrophic aid students were proportional to their numbers, 70 percent (\$126.6 million) and 30 percent (\$53.2 million), respectively. According to the U.S. Department of Education there is no clear reason why males appear disproportionately within the special education population. The prevalence of males is most evident in students with emotional disturbance and learning disabilities. Furthermore, because attention deficit disorder, or ADD, is more prevalent in males, schools may more readily identify learning disabled males than females.

SPEDIS Cost Data

Each special education student has a disability or multiple disabilities as well as learning needs. Each student receives an Individualized Education Program crafted to address the student's unique needs. Students are placed in programs within various facilities deemed appropriate to meet student learning needs. School districts are required to maintain documentation related to the IEP, as well as report certain student program placement information to the Bureau of Special Education via the SPEDIS database. Districts must also enter cost records for catastrophic aid students.

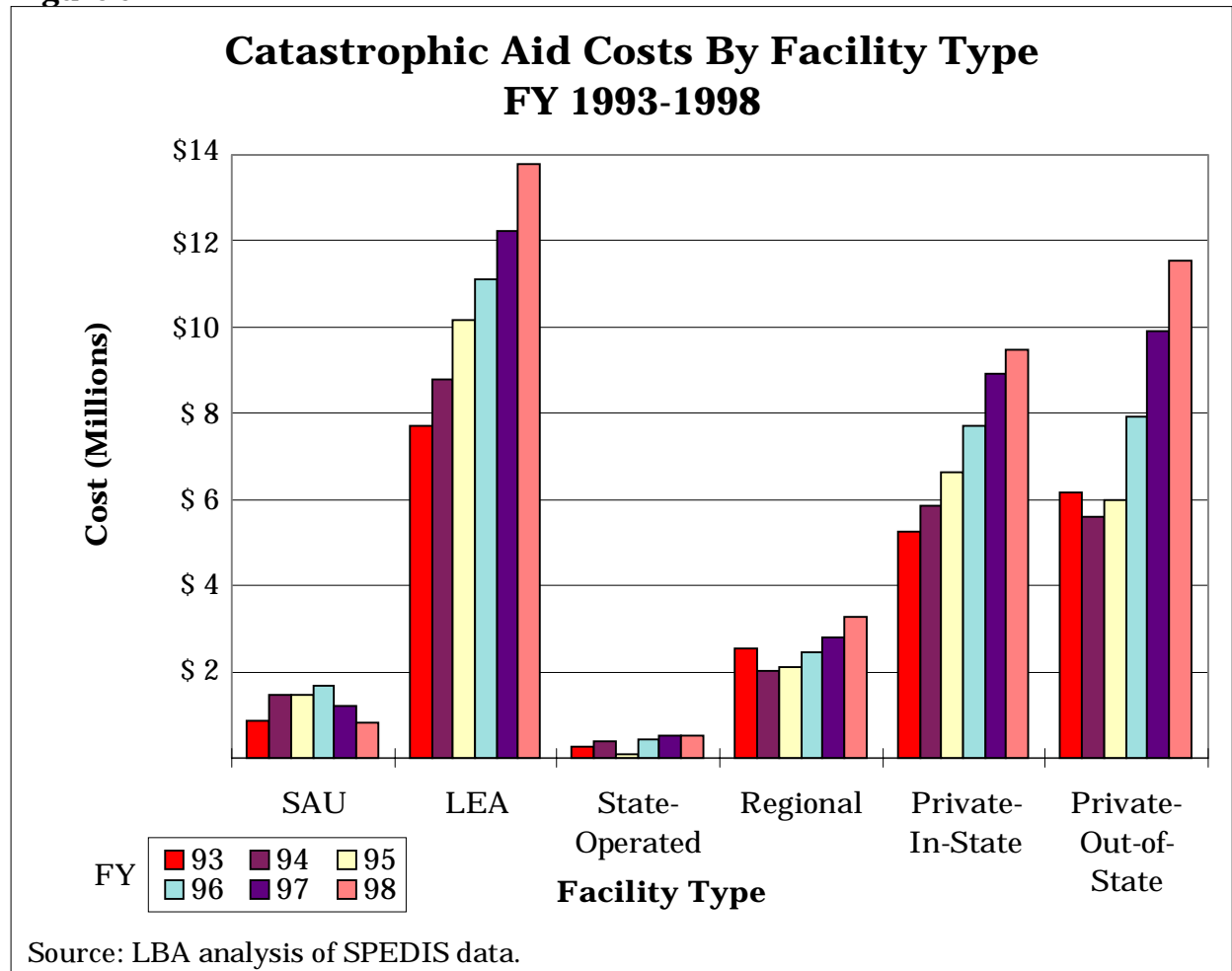
Figure 5 shows school district catastrophic aid costs by facility type for each year of the audit period. There are six facility types offering programs: local education agency (LEA), school administrative unit (SAU), state-operated, regional, private-in-state, and private out-of-state. LEAs are local public schools providing services in-house. SAU public school programs support single or multi-district needs within an SAU. State operated facilities include the Youth Development Center in Manchester, and the Youth Services Center in Concord. Regional facilities are school programs operated by a coordinating district or entity, to which other districts send students. Private in-state and private out-of-state facilities are private facilities that operate programs located in New Hampshire or in other states, respectively.

Note that most costs are associated with the LEAs, private out-of-state, and private in-state facility programs. For the most part, these three facility types showed increasing costs over the entire audit period. Further analysis of the increasing costs showed that all three facility types experienced increases in the number of student placements. While the average placement cost remained constant for LEAs, private in-state and out-of-state facilities experienced increases in their average cost per placement.

1. INTRODUCTION (Continued)

1.7 Characteristics Of The Catastrophic Aid Program (Continued)

Figure 5



School districts report via SPEDIS the facility type in which students are placed, as well as each student’s program environment. As previously mentioned, special education students are to be placed in the least restrictive environment possible. SPEDIS allows school districts to report a student’s placement within the following five environments:

- *Home Modified* - a student receives all or a portion of the special education program at home.
- *Individual Non-School* - typically a community-based program overseen by the local education agency for instruction not taking place in school.
- *Modified Regular* - students receive their services in a general education environment, with modifications. Students placed in a modified regular classroom may need support from the resource room.
- *Resource Room* - typically used to provide support services, such as related services, and may be utilized for a child placed in a modified regular program.

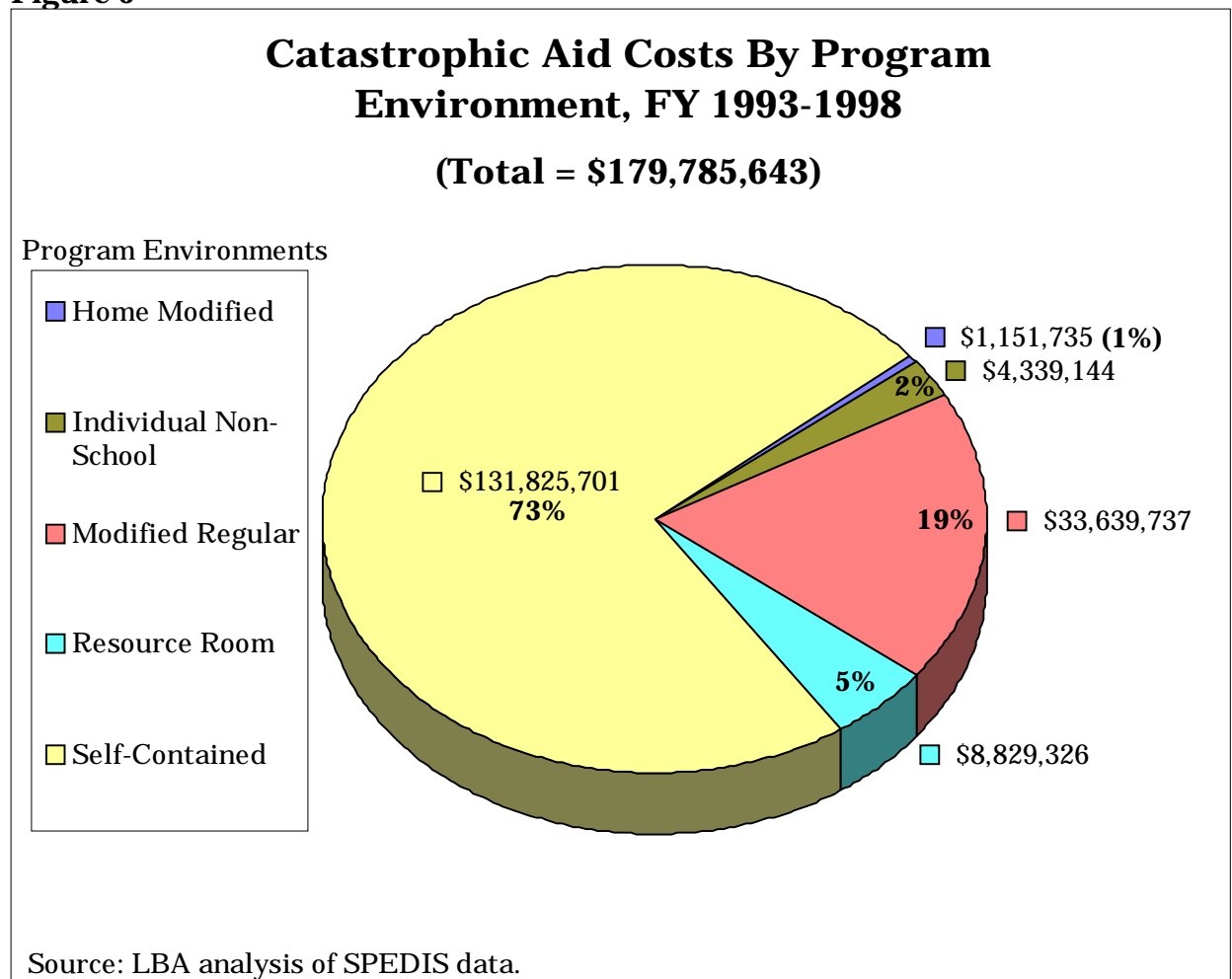
1. INTRODUCTION (Continued)

1.7 Characteristics Of The Catastrophic Aid Program (Continued)

- *Self-Contained* - a special education milieu in which students spend more than 50 percent of their day in a single environment.

Figure 6 shows district reported costs by student program environment over the entire audit period, fiscal years 1993-1998. The highest reported costs, 73 percent, were in the self-contained program environment. The modified regular program environment costs, at 19 percent, were a distant second.

Figure 6



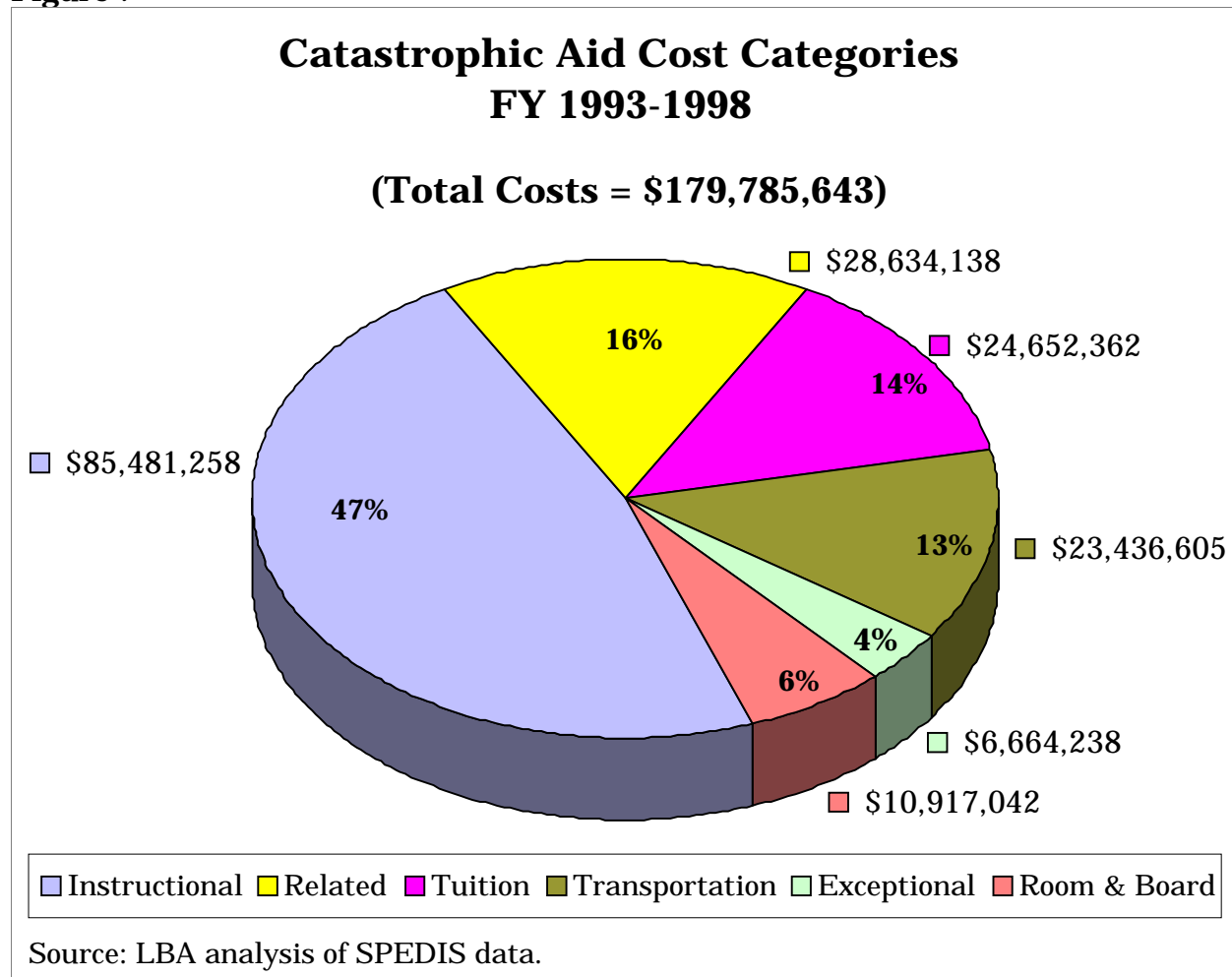
All school districts are required to report via SPEDIS, and maintain documentation supporting, applicable student program costs in six program cost categories. However, due to the Department's lack of administrative rules for catastrophic aid (see Observation No. 2), there are no clear definitions for these cost categories. We present the following working definitions of the six cost categories:

1. INTRODUCTION (Continued)

1.7 Characteristics Of The Catastrophic Aid Program (Continued)

- *Instructional* - incurred to provide special education instruction specifically designed to meet a student's unique needs.
- *Related* - incurred for services provided along with special instruction; they may include speech, occupational and physical therapy, counseling, tutors, and aides; the costs cannot be billed again if already contained within tuition costs.
- *Tuition* - incurred for special education instruction, room and board, physical therapy, occupational therapy, speech therapy, and counseling in out-of-state programs when separate instruction and room and board rates have not been established.
- *Transportation* - incurred to transport a child from the place where the child is boarded to the place of instruction; costs exceeding \$5,000 are subject to Bureau verification.
- *Exceptional* - incurred for services included in the student's IEP, but not included in the rates for instruction, room and board, tuition, related services, or transportation; costs exceeding \$1,000 are subject to Bureau verification.
- *Room and Board* - incurred for student lodging and food costs.

Figure 7

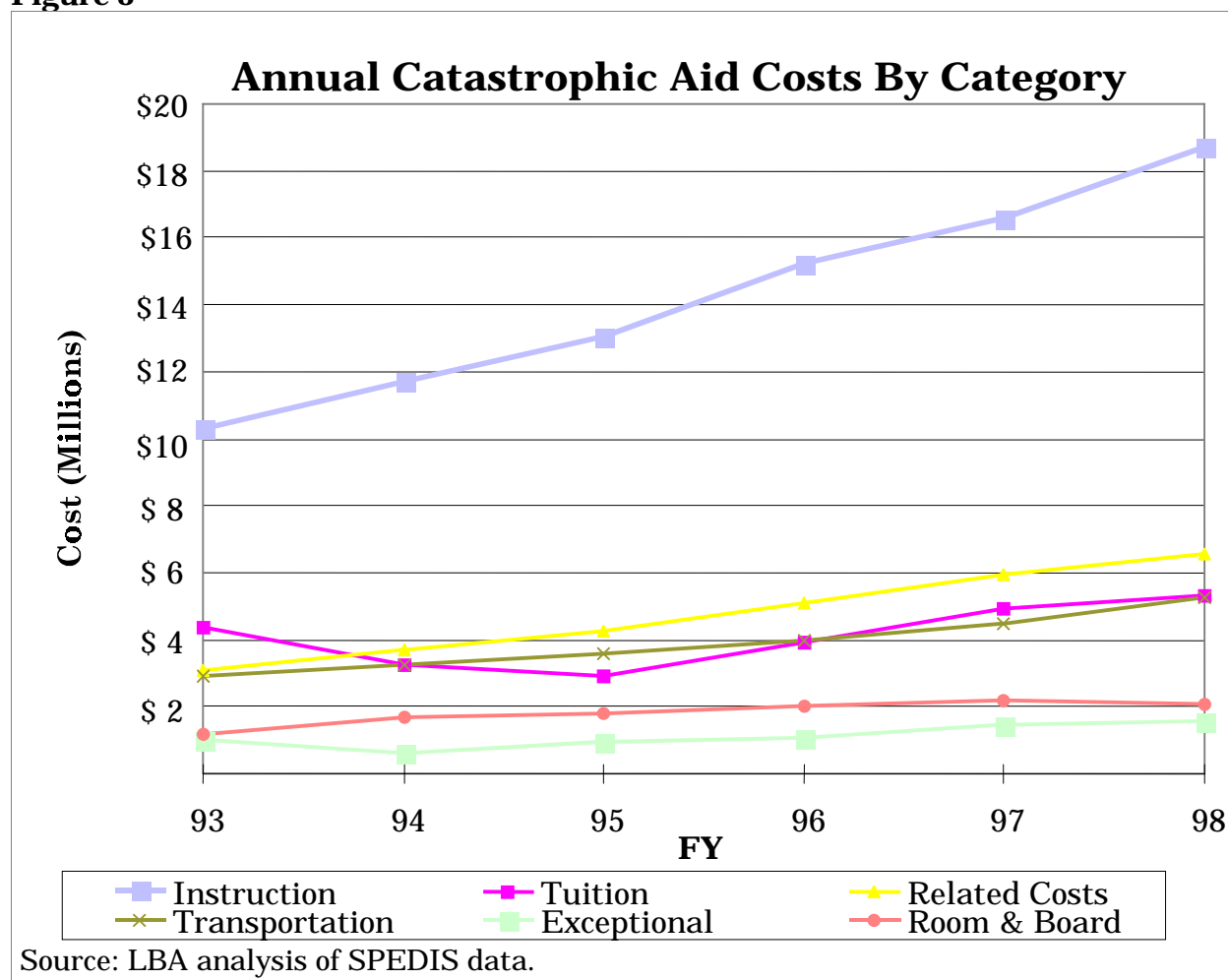


1. INTRODUCTION (Continued)

1.7 Characteristics Of The Catastrophic Aid Program (Continued)

Figure 7 shows the breakdown of the cost categories over the entire audit period, and reveals that 47 percent (\$85.5 million) of district reported catastrophic aid costs were instructional costs. Related costs were the second highest cost at 16 percent (\$28.6 million), while tuition accounted for 14 percent (\$24.7 million), and student transportation costs were 13 percent (\$23.4 million). Figure 8 compares the six cost categories by each fiscal year, and shows how instructional costs have increased during the audit period.

Figure 8



Further analysis revealed that \$66.2 million (77 percent) of the \$85.5 million in instructional costs were within the self-contained program environment costs. Additionally, the most substantial instructional cost increases were reflected within private-in-state, private-out-of-state, and LEA placements.

1. INTRODUCTION (Continued)

1.8 Significant Achievements

It is important to recognize that performance auditing by its nature is a critical process, designed to identify problems or weaknesses in past and existing practices and procedures. We mention here a number of successful and positive practices and programs that we observed and for which sufficient documentation was available.

New Hampshire's State Improvement Grant In Special Education. The Bureau completed a five-year State improvement plan in October of 1998. This collaborative effort involved the Department, other State agencies, local school districts, State and local education leaders, teachers, education specialists, State legislators, parents of students with disabilities, and other individuals and organizations interested in the improvement of educational outcomes for children and youth with disabilities. New Hampshire was one of 18 states that was awarded this federal grant and will be receiving a total of \$3 million over five years.

The grant is intended to provide assistance to:

- local school districts in their professional development activities to raise the capacity of schools to improve educational outcomes for students with disabilities;
- teacher training programs with their efforts to provide high quality teachers and other education professionals to New Hampshire schools;
- professional development providers to provide technical assistance to teacher training programs and local schools; and
- parents of children, youth with disabilities, and individuals with disabilities to become more involved in professional development.

New Hampshire Special Education Monitoring And Improvement Process. Unlike the old compliance-based monitoring process (which school districts may still opt for), the new process implemented in 1996 encourages school districts to improve their special education programs. The goal is to establish a collaborative process through which district and private facilities and the Department work together in a cooperative spirit to achieve better results for students. This model shifts the focus from simply identifying problems towards a continuous process of self-improvement.

In addition, we would like to mention other Bureau initiatives that we did not directly observe but were recognized by a federal review during our audit period. The 1994 U.S. Department of Education review of the implementation of Part B of IDEA identified a number of initiatives for commendation. According to the federal monitoring report, the following initiatives demonstrate the Bureau's leadership to ensure quality programs and better results for students with disabilities:

- Task Force for the Improvement of Secondary Special Education in New Hampshire,
- Institute on Disability at the University of New Hampshire,
- North Country Education Foundation,
- New Hampshire Educational Services for the Sensory Impaired, and
- Institute on Emotional Disabilities at Keene State College.

1. INTRODUCTION (Continued)

1.9 Report Outline

The remaining chapters of the report present our analysis of the Bureau of Special Education's management of the catastrophic aid program. Chapter 2 contains our observations covering staffing, rule making, compliance, information management, and the foundation aid formula. Chapter 3 contains other issues and concerns we identified during the audit. A short conclusion is followed by appendices that contain a letter from the Department of Education, detailed expenditures of special education funding, the results from our survey of school administrative units, and the status of prior audit findings.

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**STATE OF NEW HAMPSHIRE
CATASTROPHIC AID PROGRAM**

2. OBSERVATIONS

We found the Department to have insufficient management controls over special education programs. According to *Government Auditing Standards*, “Management controls, in the broadest sense, include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations.” The four categories of management controls are: 1) program operations, 2) validity and reliability of data, 3) compliance with laws and regulations, and 4) safeguarding resources. The weaknesses we identify in the following observations affect all four categories of management controls.

2.1 Staffing

While the Bureau has accomplished much with its available resources, more should be done to ensure the effective operation of special education programs throughout the State. We identified a number of areas where the Bureau was not fulfilling its duties as outlined in State statute. In addition, the Department acknowledges shortcomings in the services being provided for special education children. One reason for these weaknesses is that the Bureau is not adequately staffed.

Observation No. 1

***Inadequate Staffing At The Bureau Of
Special Education***

Bureau staff identified the two basic missions guiding its work are to ensure students with disabilities are educated

under the same standards as other students, and to ensure school districts are in compliance with federal and State regulations in providing services to these students. According to State law (RSA 186-C:3-a), duties include: 1) helping school districts to meet their responsibilities, 2) providing technical assistance and information to school districts, 3) administering federal and State funded programs for special education, 4) developing and analyzing information on issues and problems of importance and assist school districts in dealing with these issues, and 5) developing, implementing, and evaluating statewide special education policies, standards, and programs. The last duty is not compulsory because it is “subject to available funding.”

The Bureau has not successfully performed all of its statutory duties as demonstrated by certain management weaknesses. We found the Bureau is not sufficiently:

- providing assistance to school districts,
- reviewing catastrophic aid costs (see Observation No. 3), and
- overseeing the Special Education Information System (see Observation No. 7).

In addition, the Department has identified a number of deficiencies with the quality of special education services in the State. According to the Department’s State Improvement Plan, “New Hampshire’s children and youth with disabilities continue to experience poorer

2. OBSERVATIONS (Continued)

2.1 Staffing (Continued)

Observation No. 1: Inadequate Staffing At The Bureau Of Special Education (Continued)

school outcomes than their peers without disabilities.” Some of the reasons given which involve the Department include:

- the absence of collaborative short- and long-range strategic planning by all stakeholders;
- the absence of standards of practice to guide professional development and service delivery;
- inadequate knowledge and skills among practicing professionals and the absence of a comprehensive program of professional development to address their needs;
- inadequate data systems to measure student performance and a lack of knowledge at all levels about how to use student performance data to make programmatic and policy decisions;
- lack of coordination between personnel data systems and higher education programs;
- the existence of a variety of systemic barriers to the delivery of exemplary services; and
- lack of a coordinated system of dissemination and technical assistance to the school districts related to exemplary practices.

Staffing problems have decreased the Bureau’s ability to function effectively. While staff turnover is a normal occurrence and creates difficulties for any organization, the Bureau has been especially hard hit during the past year and a half. Starting in 1998, five of the 12 professional staff left the division including the division director and Bureau administrator. Bureau staff and 90 percent of the SAUs we surveyed reported that the Bureau is understaffed. However, we found the SAUs that responded to our survey were generally satisfied with the quality of services the Bureau provided.

According to Bureau staff, there are a number of negative effects caused by the staff problems:

- The Bureau’s ability to interact with school districts, parents, special education administrators, and teachers has been hampered. Not having this local contact increases the potential for unnecessary special education costs, decreases efficiency and effectiveness, and may result in poorly informed special education administrators. In the past, having more contact with parents and teachers allowed the Department to more closely monitor, guide, and assist special education programs in the schools.
- Remaining staff have been given more duties, resulting in staff constantly jumping from one priority to another. While the Bureau continues to perform numerous tasks, it has not been able to delve into particular issues and problems. One Bureau staff said the Bureau only has “the manpower to skim the surface of global issues.”
- The impression in the school districts is that the Department is generally not available to respond to informational requests in a timely fashion. This is supported by our survey of the SAUs which found SAUs want the Bureau to respond to their needs in a more timely manner.

2. OBSERVATIONS (Continued)

2.1 Staffing (Continued)

Observation No. 1: Inadequate Staffing At The Bureau Of Special Education (Continued)

- Review of catastrophic aid claims is limited. More staff could allow spot checks in the field to verify cost claims. It should be noted that the Bureau distributed \$56.4 million in catastrophic aid during the audit period.

RECOMMENDATION:

The Department needs to re-evaluate Bureau staffing to better manage special education activities throughout the State, and to improve its oversight of special education funding. If more positions are obtained for the Bureau, the Department should seek to delete the “subject to available funding” caveat found in RSA 186-C:3-a II.

Auditee Response:

We concur with the observation. We offer here some clarification and explanation to assist with development of further recommendations. Bureau staff and district personnel would agree that bureau staff are not able to fully meet the district’s needs for assistance. The State Improvement Plan cites areas of critical need for attention, action and programming. The award of a State Improvement Grant from the U.S. Department of Education Office for Special Education Programs should support the bureau’s efforts to increase the capacity of local districts in meeting the needs of students with disabilities. New Hampshire was one of only eighteen states awarded a State Improvement Grant. The grant activities include the hiring of staff for program design and implementation.

The departure of valued staff members is always difficult for an organization. The Bureau of Special Education has one administrator position, nine consultant positions, three technical support positions (SPEDIS clerk, grants/402 assistant, grants/402/program assistant) and five secretarial positions. The responsibilities for rate setting have been returned to the bureau and are administered by a consultant. Two consultant positions are currently vacant. The ability of the Department and the bureau to attract qualified applicants is limited. Similarly qualified professionals in the field are not attracted to positions which offer a starting salary of less than \$35,000. There have been at least two consultant and/or administrative vacancies in the bureau since August, 1998. Six consultants and other staff must absorb the work and responsibilities of the vacant positions.

The Bureau of Special Education, like all bureaus within the Department strives to be responsive to districts, to legislative requests, to public inquiries and requests for assistance, to federal requirements and to myriad expectations for the provision of services and technical assistance. These expectations increase almost daily as our communities, our state and our nation strengthen a mandate for quality information and program analysis. The expansion of

2. OBSERVATIONS (Continued)

2.1 Staffing (Continued)

Observation No. 1: Inadequate Staffing At The Bureau Of Special Education (Continued)

SPEDIS' capabilities and the expectations for oversight (see Observation No. 7) will possibly require a staffing model which departs from the current bureau organization.

The LBA Observation No. 1 recommends that "the Department needs to re-evaluate bureau staffing in order to provide better management of the special education activities throughout the state, and to improve its oversight of special education funding." We concur with this observation and strive to develop a staffing model which best responds to the Department's organizing priorities of service to the field, educational leadership, coordination of state and federal programs and the support of technology in education programs.

2.2 Rule Making

RSA 541-A:16 requires each agency to adopt administrative rules related to its organization, operations and practices, and formal and informal procedures. Additionally, RSA 186-C:18 V requires the State Board of Education adopt rules relative to school districts applying for catastrophic aid and identifying catastrophic aid costs. State agencies adopt administrative rules in order to communicate their policies, procedures, and practices binding on persons outside the agency. Rule making allows for public and legislative oversight of an agency's operation.

Well crafted administrative rules formalize and clearly communicate agency policies and procedures. Their necessary presence provides an agency and its external audience specific interaction guidelines. Lack of administrative rules can unnecessarily cloud or conceal agency policies and procedures, impede agency effectiveness, and negatively impact the agency's audience.

School districts statewide report catastrophic aid student cost information via SPEDIS to the Bureau of Special Education. Districts are required to enter claimed student costs in specific cost categories: tuition, instructional, room and board, related, transportation, and exceptional. Both Bureau and district personnel expressed uncertainty regarding what specific costs should and could be included in the catastrophic aid categories. However, there are no required administrative rules stipulating what type costs are appropriate for each cost category. Also, the Department is required by statute to prorate catastrophic aid reimbursement for districts who share a transfer student during the year; there are no agency administrative rules governing this proration.

Our examination of Department administrative rules showed that there are no agency administrative rules specifically governing the catastrophic aid program. Therefore, the agency is noncompliant.

2. OBSERVATIONS (Continued)

2.2 Rule Making (Continued)

Observation No. 2

Lack Of Administrative Rules

The Bureau of Special Education is responsible for administering the State's catastrophic aid program. During the six-year audit period over \$56.4 million in catastrophic aid was distributed to school districts across the State. However, the Department of Education has no administrative rules governing the catastrophic aid program as required by State statute.

The lack of administrative rules can affect proper catastrophic aid reimbursement to districts. A 1996 amendment (RSA 186-C:18 IX) states, "When a student for whom a district receives state aid for special education under this section transfers to another school district during the school year, both the district liability and the reimbursement under this section shall be prorated among such districts. This proration shall be based upon the number of school days that the student was a resident of each district." The 1996 amendment requires that the total combined school year special education costs for each transferring student be used in determining catastrophic aid reimbursement. The State reimburses each affected school district a prorated portion of their respective catastrophic aid costs. Prior to the 1996 amendment, each school district had to separately incur special education costs exceeding the threshold in order to receive catastrophic aid cost reimbursement. Although the Department is aware of the 1996 amendment, it has no written administrative rules governing transfer student proration. We found one transfer student whose catastrophic aid was not prorated, which resulted in the districts not receiving \$20,835 of reimbursable costs from the State.

Additionally, we have been informed that not all special education administrators know about the 1996 amendment allowing the proration of liability and reimbursement. Table 3 demonstrates the type of student school districts are overlooking.

Table 3

Hypothetical Case With A Catastrophic Aid Threshold Of \$20,000

	District A (90 days)	District B (90 days)	Total Costs
Special Education Costs For One Student	\$15,000	\$15,000	\$30,000
			Total State Aid
Traditional Method Of Reimbursement*	0	0	0
RSA 186-C:18 IX Reimbursement**	\$4,000	\$4,000	\$8,000
* Reimbursement = (District Costs – Threshold) X 80% (15,000 - 20,000) X 80% < 0			
** Reimbursement = (Total Costs – Threshold) X 80% (30,000 - 20,000) X 80% = 8,000			

2. OBSERVATIONS (Continued)

2.2 Rule Making (Continued)

Observation No. 2: Lack Of Administrative Rules (Continued)

The Department has not implemented administrative rules to identify pupils whose total costs exceed the threshold. As a result, school districts may be unaware of students who qualify for catastrophic aid; those and other districts may not be receiving full catastrophic aid reimbursements entitled to them under State law.

Without catastrophic aid administrative rules, the Department may be functioning without proper authority, as well as failing to inform school districts and the public of its policies and procedures.

RECOMMENDATION:

We recommend the Department develop and adopt comprehensive administrative rules detailing the catastrophic aid program in accordance with RSA 541-A:16 and RSA 186-C:18 V. Additionally, the State Board of Education, through the Department Commissioner, should develop administrative rules to implement RSA 186-C:18 IX regarding prorating catastrophic aid costs for transfer students and program SPEDIS to reflect these changes.

Auditee Response:

We concur with the observation. Bureau staff are currently working on revising the Standards and will detail the catastrophic aid program as suggested. We also concur that the Department of Education lacks administrative rules to implement a 1996 amendment (RSA 186-C:18 IX). The State Board of Education has not adopted administrative rules to implement RSA 186-C:18 IX. However, the Department of Education has a procedure for distributing funds under the provisions of RSA 186-C:18, State Aid. This state aid is referred to as catastrophic special education aid. Consistent with the recommendation of the Office of Legislative Budget Assistant Audit Division, the Department will immediately begin the process of drafting and numbering rules relative to prorating catastrophic special education aid. When this step is completed the Department will bring a proposed rule to the State Board of Education for approval and adoption. Further, since the Board of Education had not adopted rules pursuant to RSA 186-C:18:V, the Department in drafting and numbering a rule for prorating catastrophic special education aid will also draft and number rules for the distribution of catastrophic aid.

We concur with the observation that SPEDIS should be programmed to “reflect these changes” and can report that SPEDIS is capable of collecting cost data on all students identified as having educational disabilities. Since 1982, the SPEDIS system has been able to incorporate student costs records. The responsibility for data entry is at the district level. Cost information is typically collected for students who are potentially eligible for catastrophic aid as well as students whose costs are paid directly by the state under Chapter 402 (court ordered

2. OBSERVATIONS (Continued)

2.2 Rule Making (Continued)

Observation No. 2: Lack Of Administrative Rules (Continued)

placements.) SPEDIS will accept costs on all special education students; determination of eligibility for aid occurs after the data has been entered.

2.3 Compliance

We found a number of instances where the Department was not in compliance with State law and regulations. The Department has not:

- audited special education funding,
- sought Governor and Council approval for service contracts it has awarded,
- properly set program rates for non-approved facilities, and
- limited placements in non-approved in-state facilities.

As a result, the Bureau is not adequately safeguarding resources.

Observation No. 3

Insufficient Review Of Special Education Expenditures

School districts are required to enter special education child count information into SPEDIS, as well as student catastrophic aid information including program cost data. School districts are required to enter this information in a timely manner and maintain all supporting documentation.

Department Standards (Ed 1131.04) state that the Department's Office of Business Management shall audit all State and federal special education funds allocated to any public or private agency, with the caveat "within available resources." Also, Ed 1129.02 (b) requires the Department of Education to conduct a monitoring process of public and non-public programs "including but not limited to on-site visit(s) and examination of written documentation." The Standards require the Department to review fiscal components of schools, classes, or programs. However, no personnel within the Office of Business Management conduct such audits or fiscal reviews.

The Department has one internal audit position that reports to the commissioner. However, that position conducts limited reviews of programs receiving federal funds, and little fiscal review of special education schools, classes, or programs. Furthermore, although the Bureau contracts with an educational consortium for oversight and review of the Department's Special Education Monitoring and Review Process, this consortium does not conduct financial audits or fiscal reviews of special education related schools, classes, or programs. Bureau personnel reported the need for a special education audit function.

2. OBSERVATIONS (Continued)

2.3 Compliance (Continued)

Observation No. 3: Insufficient Review Of Special Education Expenditures (Continued)

Personnel reported the following funding and fiscally related issues with special education programs that we feel could be addressed with appropriate audit functions.

- As stated in Observation No. 5, the Department does not conduct rate setting for non-approved in-state facilities in accordance with Department administrative rules. For the 1997-1998 school year alone, approximately \$496,466 in program tuition and instructional cost catastrophic aid reimbursement was awarded to non-approved in-state facilities which were not subject to the necessary rate setting process.
- Bureau staffing shortages make review of reported district catastrophic aid expenses problematic. The Bureau examines yearly catastrophic aid expenses (1) in excess of \$1,000 per student for exceptional costs, and (2) in excess of \$5,000 per student for transportation costs. Costs in these categories that fall below the respective Bureau thresholds are not reviewed. Also, personnel from the Bureau reported the thresholds were arbitrarily set. After we expressed concern about this practice, Bureau personnel reported conducting a review of SPEDIS records, which indicated a number of districts entered exceptional cost claims for amounts slightly below the \$1,000 threshold. Personnel said the situation would be monitored and reported to the commissioner.
- While reviewing some late district requests for catastrophic aid reimbursement, by chance Bureau personnel noted district catastrophic aid reimbursement claims for costs that should not have been associated with certain types of placements. Bureau personnel reported districts should not apply for nor receive reimbursement for those costs. However, Bureau personnel also reported that the costs in question ordinarily are not reviewed. Thus, some districts are claiming reimbursement for costs to which they are not entitled, and the Bureau may be reimbursing districts for said costs due to lack of review.
- School districts could improperly ask for, and receive, exceptional cost reimbursement for non-exceptional costs, and instructional cost reimbursement for non-instructional costs. There are no controls in place at the Bureau to prevent reimbursement of such unallowable costs.
- Some school districts do not provide the Bureau with sufficient supporting documentation for students reported to be in special education programs. For school year 1997-1998, Bureau personnel reported 490 of 26,612 (1.8 percent) of special education student records were unverified, or in noncompliance, as of May 2, 1998.
- Some service providers' recruitment of students, special education services, charges for services, and billing practices were questioned by Bureau and school district personnel. For example, Bureau personnel reported some private, in-state schools attempt to recruit special education students by soliciting parents. Furthermore, Bureau personnel reported some private schools influence school districts to accept services. Additionally, personnel said that parents receive letters from private facilities stating that parents must accept certain services or their child will not be accepted into the respective facility. School personnel reported that some providers overcharged for services, and billed school

2. OBSERVATIONS (Continued)

2.3 Compliance (Continued)

Observation No. 3: Insufficient Review Of Special Education Expenditures (Continued)

districts for non-provided services or billed for services which the district was not responsible for paying. Provided and billed for services may not be required by a student's IEP, and may be ineligible for catastrophic aid reimbursement, yet still be reimbursed because a claim is submitted and not audited for correctness. Although the above practices are questioned, little Bureau follow-up investigation of these allegations occurs.

- Some districts forward cost documentation consisting of handwritten invoices that are difficult to follow and authenticate.
- The Bureau was unable to track if one school district that submitted late catastrophic aid claims was reimbursed.

Management is responsible for implementing control systems that ensure accountability. Auditing is a key control element. The Department dedicates insufficient resources to auditing special education related programs, and is not conducting required fiscal oversight. The Department conducts inadequate review of school district requests for, and required documentation related to, catastrophic aid cost reimbursement for special education programs. The potential exists for special education program service providers and school districts to receive State reimbursement for unallowable or unsubstantiated costs. The Department cannot assure that State catastrophic aid is only reimbursed for allowable program costs.

RECOMMENDATION:

The Department should develop and implement adequate controls to ensure that catastrophic aid expenditures for State special education programs are paid only for eligible services. If necessary, the Department should request additional staff to fulfill this function.

Auditee Response:

We concur with this observation. The Department has requested the hiring of a Business Administrator in the last two biennium budgets. These requests have been denied.

Observation No. 4

Projects Not Being Submitted For Governor And Council Approval

We found that a majority of projects controlled by the Bureau of Special Education did not receive Governor and Council (G&C) approval. State law requires the Department to receive G&C approval for certain contracts. However, the Department made a policy decision more than 25 years ago to exempt projects awarded to certain entities from the State contract approval process.

2. OBSERVATIONS (Continued)

2.3 Compliance (Continued)

Observation No. 4: Projects Not Being Submitted For Governor And Council Approval (Continued)

State law and G&C policy clearly require G&C approval for service contracts. According to RSA 4:15, "The expenditure of any moneys appropriated or otherwise provided to carry on the work of any department of the state government shall be subject to the approval of the governor, with the advice of the council, under such general regulations as the governor and council may prescribe with reference to all or any of such departments, for the purpose of securing the prudent and economical expenditures of the moneys appropriated." The G&C has set a \$5,000 threshold for non-personnel service contracts requiring approval.

Part B of IDEA provides that 20 percent of the federal grant may be retained to fund such activities as support services, direct services, and monitoring and compliance reviews. During State fiscal year 1998, 65 projects were awarded by the Bureau totaling over \$3.3 million using these discretionary funds. Sixteen of the 65 projects were \$5,000 or less, and therefore properly exempt from G&C approval. Only five of the 49 projects over \$5,000 were approved by G&C. The remaining 44 unapproved projects, worth over \$3 million, were awarded to individual school districts, education consortia, the University System, and the State's youth detention center. Among other things, these projects provide support for teacher training, the Department's monitoring effort, and unique programs for students. For example, two of the projects which bypassed G&C approval are contracts with educational consortia which provide: 1) on-site monitoring of special education programs, and 2) programming support for the special education database known as SPEDIS. In State fiscal year 1998, these projects cost \$169,865 and \$61,416, respectively.

We determined the Bureau of Special Education was following Department policy in not seeking G&C approval. According to the Department's Governor and Council policy manual, grants for projects to State agencies, local school districts, SAUs or consortia of these education entities, and the University System do not require G&C approval. All other grants must be submitted as contracts to G&C.

We question the authority the Department has in exempting certain projects from G&C approval. According to Department oral history, the practice of not seeking G&C approval for certain projects started in the 1970s with the development of the Form 2 system. The Form 2 system was implemented to improve the cash management of federal grants, including those related to special education. At that time, federal funds awarded to school districts stopped going before G&C. We have been informed this was done with the knowledge of the State Comptroller. Over time, the policy of not sending Form 2s to G&C was expanded to include projects awarded to the University System and education consortia. However, officials of the Department were unable to provide documentation that gives the Department the authority to circumvent G&C approval.

2. OBSERVATIONS (Continued)

2.3 Compliance (Continued)

Observation No. 4: Projects Not Being Submitted For Governor And Council Approval (Continued)

The Commissioner of Administrative Services, who is familiar with the Department's Form 2 system, reported that all contracts that could be competitively bid should go before Governor and Council and that there are no rules governing what types of contracts are exempt from G&C approval.

RECOMMENDATION:

The Department of Education should submit projects being funded by federal discretionary funds as contracts to the Governor and Council for approval.

Auditee Response:

We concur with the observation and submit that the practices followed by the Bureau of Special Education with regard to service contracts are consistent with Department of Education Policy. This observation has been presented to the Department's Cabinet for its consideration.

The Bureau of Special Education is reviewing its practices and is prepared to have all contracts competitively bid. We suggest that the requirements of issuing RFPs, reviewing these, and awarding contracts for all projects may require additional staffing.

Program Approval, Monitoring, And Rate Setting

The State Board of Education adopted rules found within the Standards (Chapter Ed 1100) to ensure that students with educational disabilities are provided with a free appropriate public education pursuant to federal regulations. The Department uses the Standards as the basis for approving programs of education that are maintained by school districts, private organizations, State institutions, and other non-district organizations for the benefit of students with educational disabilities, including home-based programs.

The Department approves public and non-public programs through a monitoring process including, but not limited to, on-site visit(s) and examination of written documentation for reviewing the following components:

- administrative staff, including certification and staff development;
- instructional staff, including certification and staff development;
- compliance with State statutes and State Board of Education rules;
- compliance with federal statutes; and
- examination of least restrictive environment practices.

2. OBSERVATIONS (Continued)

2.3 Compliance (Continued)

Programs serving five or less students are not subject to the monitoring and approval process. Bureau personnel reported that a threshold of five gives districts flexibility to make placement decisions.

All approved programs operated by school districts, private organizations, State institutions, and other non-district organizations are reviewed utilizing the New Hampshire special education program approval process, at least once every five years. Since the early 1990s, the Department has contracted with the Southeastern Regional Education Service Center (SERESC) for the oversight and administration of its Special Education Monitoring and Improvement Process.

Any private school, class, or program which has been approved by the Department as a provider of special education or educationally related services is subject to the rate setting process detailed in the Standards (Ed 1134). Rates for special education instruction, room and board, physical therapy, occupational therapy, speech therapy, and counseling are obtained from the Department. Public schools are not subject to Ed 1134.

Districts are permitted to apply to the Department for individual student placements at non-approved in-state facilities if they have determined that there are no approved in-state special education programs available to meet the individual student's need for special education and educationally related services.

Non-Approved In-State Facilities

When a special education student is placed at any non-approved in-state facility, the Department is responsible for: 1) approving individual student placements; 2) setting rates for the facility in accordance with procedures established in Ed 1134; and 3) ensuring that the maximum number of individual student placements approved by the Bureau special education team at any one non-approved facility does not exceed five.

These non-approved facilities are not subject to the Department's monitoring and approval process which examines program components such as staff certification and compliance with federal and State statutes. However, Bureau staff ensure there is adequate documentation demonstrating that the student will receive a free appropriate public education in the least restrictive environment. The Department refers to the process used to approve these individual placements as the Individual Program Approval (IPA) process. Once the placement has been approved, then a rate can be set for the facility.

2. OBSERVATIONS (Continued)

2.3 Compliance (Continued)

Observation No. 5

Rates Not Being Appropriately Set For Non-Approved In-State Facilities

According to staff, rates for non-approved in-state facilities through the IPA process are established through an agreement reached

between the school district and the facility. The Department inputs the agreed upon rate into SPEDIS. The only rate documentation the Department receives is in the form of contracts, bills, or letters stating the tuition rate from the school district.

The Standards (Ed 1129.04(e)), however, state, "Rates for non-approved in-state facilities shall be established in accordance with procedures established in Ed 1134." According to Ed 1134.02(a): "[i]n order to obtain a rate for special education instruction, room and board, physical therapy, occupational therapy, speech therapy and counseling from the Department, the agency shall complete a budget proposal and submit it to the Department." The budget proposal includes: cover sheet, personnel, assets and depreciation, program data, revenues, and expenses by line item.

During regular and extended school year 1997-1998 there were a total of 65 students placed through the IPA process in 40 non-approved facilities. Of these students, 27 received catastrophic aid reimbursement. The tuition and instructional costs for these 27 students that should have been subject to the rate setting process as detailed in the Standards (Ed 1134) totaled \$496,466. By allowing the school district and the non-approved facility to circumvent the rate setting process as detailed in Ed 1134, the Department is not following its own rules.

RECOMMENDATION:

The Department should set rates for non-approved in-state facilities according to its rules.

Auditee Response:

We concur with the observation. The bureau has recently hired a consultant who will assume the responsibilities for rate setting. In an effort to ensure standardized practice, this recommendation will be implemented immediately. The bureau will notify those non-approved facilities which currently serve students and will also notify districts of this policy.

Observation No. 6

Student Placements At Some Non-Approved Facilities Exceed Limit

When the placement of more than five students is approved at any one non-approved program, SPEDIS should notify

the individual responsible for entering the data that the program has exceeded the limit. At that time, another Bureau staff member is notified of the issue and decides whether or not to

2. OBSERVATIONS (Continued)

2.3 Compliance (Continued)

Observation No. 6: Student Placements At Some Non-Approved Facilities Exceed Limit (Continued)

override the regulatory limit. However, according to Bureau staff, the warning mechanism in SPEDIS was not continuously active throughout our audit period.

The Standards (Ed 1129.04(c)) state, "The maximum number of individual student placements the (New Hampshire Department of Education) Special Education Team shall approve at any one non-approved facility shall be 5." Furthermore, according to Ed 1129.04(d): "[n]on-approved facilities wishing to serve more than 5 students with educational disabilities shall apply for special education program approval." A limit of five student placements gives districts some flexibility when placing students. However, according to Bureau staff, any placement above five should be subject to the same requirements as approved facilities, such as curriculum, and staff certification and training requirements.

During school year 1997-1998, seven catastrophic aid students were placed concurrently through the IPA process at one in-state non-approved facility not subject to the approval process. When these students were approved, SPEDIS warned the staff responsible for inputting the data that they were about to input an additional student. However, the placements were approved by other staff. These seven students were eligible for catastrophic aid reimbursements totaling \$171,823. According to Bureau staff, other cases of placements exceeding the limit exist between extended and regular school years 1993-1998. By approving placements beyond five at any one non-approved facility the Department is not following its rules. Any placement exceeding five should not be eligible for catastrophic aid reimbursement.

RECOMMENDATION:

The Department should follow its rules when approving individual student placements at in-state non-approved facilities.

Auditee Response:

We concur with the observation. Bureau staff have discussed the need to have SPEDIS alert data entry personnel at the school district level when attempting to place a student in a program which has met its limit. Districts will also be advised to inquire through SPEDIS as to available spaces before determining a placement. Districts will be asked to advise the Courts should a placement be suggested in a facility that has reached its capacity to serve students with disabilities. The bureau will also advise non-approved facilities currently serving students of this policy.

2. OBSERVATIONS (Continued)

2.4 Information Management

New Hampshire special education student information is collected through and maintained within SPEDIS. Each local school district is responsible for accurately inputting special education student census information (used for Federal IDEA compliance reporting on over 20,000 students) into SPEDIS, as well as student catastrophic aid program cost information. Specified school and Bureau personnel may access the system for information aggregated in numerous ways, including standard reports. However, extensive computer program writing is necessary for generating specialized reports. Bureau personnel reported that it periodically conducts file reviews to ensure entered information is accurate. Student system information access is limited by design as well as through security measures including password protection.

SPEDIS was created for the Department of Education through the combined efforts of the current third party contractor and the University of New Hampshire's Research Computing Center (RCC). The SPEDIS software program is based on an obsolete database system housed at the RCC on a 17-year old computer. The system is accessed and information input by local schools through computer modem. Bureau personnel and others report that SPEDIS was slated to be converted to a Year 2000 compliant ORACLE database system no later than February 1999. Based on discussions with the Department, the conversion was ongoing in June 1999. The estimated conversion cost was approximately \$90,000. This ongoing conversion was to transition SPEDIS to a contemporary SQL (structured query language) database, WINDOWS-compliant platform. It was anticipated that the new system would substantially decrease system maintenance costs as well as programming time for custom reports. SPEDIS system user-friendliness, and processing and user-connectivity speeds were to increase substantially; however, users would require some ORACLE training. In addition, security for the new system will be enhanced.

Observation No. 7

SPEDIS Oversight Needs Improvement

The original purpose of SPEDIS was to efficiently provide a special education child count to the U.S. Department of Education in order to obtain the maximum amount of federal IDEA funding. In addition, SPEDIS developed into a cost collecting database for the State's catastrophic aid program. We found the Bureau of Special Education management conducts insufficient oversight of SPEDIS operations. This is primarily due to the Bureau's lack of:

- institutional knowledge about SPEDIS software,
- oversight over the contracted SPEDIS consultant and Bureau's SPEDIS clerk,
- written policies and procedures, and
- trained personnel.

We noted both the SPEDIS consultant and the former SPEDIS clerk of seven years were knowledgeable about SPEDIS and its operations, and seemed committed to maintaining accurate SPEDIS data and promoting efficient operations. We also noted the SPEDIS application is transitioning to an ORACLE database platform.

2. OBSERVATIONS (Continued)

2.4 Information Management (Continued)

Observation No. 7: SPEDIS Oversight Needs Improvement (Continued)

The Department lacks personnel knowledgeable in SPEDIS making proper management oversight of the system impossible. No personnel in the Bureau of Special Education, Bureau of Information Services and Educational Technology, or the Office of Technology Management have a working knowledge of SPEDIS. Outside the Bureau of Special Education, no personnel have working knowledge of special education federal reporting requirements and the catastrophic aid reimbursement process. Bureau of Special Education personnel reported being satisfied with the current contracted services, which they believed to be better than what the Bureau would receive from the Department.

Working knowledge of SPEDIS is almost exclusively maintained by a sole SPEDIS consultant, whose services to the Bureau are contracted for via a not-for-profit private consortium. The consultant was previously a Department employee for about two years. Bureau staff and University of New Hampshire Research Computing Center (RCC) personnel reported that the Bureau could not replace the SPEDIS consultant with personnel similarly proficient in the old SPEDIS software. Additionally we note:

- the Bureau receives SPEDIS hardware and software support from the RCC in Durham;
- SPEDIS data entry knowledge was maintained within the Bureau's SPEDIS clerk position, the Bureau's SPEDIS clerk of seven years left during our audit fieldwork;
- there is little SPEDIS cross-training of Bureau employees; and
- starting in 1998, the Bureau turned over five of 12 professional positions, including those of Division Director and Bureau Administrator, which further weakened Bureau knowledge of SPEDIS operations (see Observation No. 1 for a discussion of Bureau personnel issues).

The Bureau's SPEDIS computer operations are conducted generally by the SPEDIS consultant, RCC personnel, and the SPEDIS clerk. However, Bureau oversight of the SPEDIS consultant and the SPEDIS clerk is insufficient. For example:

- Calculation and distribution of State catastrophic aid is dependent on SPEDIS cost information supplied to the Department's Bureau of Information Services and Educational Technology from the SPEDIS consultant. The catastrophic aid information is used to (a) determine State catastrophic aid reimbursements to school districts, and (b) generate Department catastrophic aid annual reports. Bureau personnel reported increased scrutiny over some costs but they do not check the information supplied to the Bureau of Information Services and Educational Technology. Department personnel reported that the catastrophic aid information supplied by the SPEDIS consultant was not checked, and in one case information for one district was in error, resulting in an overpayment to the district. One knowledgeable Bureau employee reported having "no faith" in the accuracy of SPEDIS cost data. (See Observation No. 3.)
- The SPEDIS consultant and one Bureau of Special Education employee determine the appropriate level of SPEDIS access for users; the SPEDIS consultant makes the actual

2. OBSERVATIONS (Continued)

2.4 Information Management (Continued)

Observation No. 7: SPEDIS Oversight Needs Improvement (Continued)

user access changes to SPEDIS. However, Bureau personnel did not report verifying user access changes once they were completed by the SPEDIS consultant.

- Each SPEDIS user accesses SPEDIS via unique passwords; these passwords generally stay the same for each user. However, if SPEDIS passwords need changing, the requested changes first go to the SPEDIS clerk, who sends the password information up to the SPEDIS consultant. Again, the Bureau reported no oversight over these operations.
- The former SPEDIS clerk entered catastrophic aid cost and other information into SPEDIS, yet Bureau personnel were unsure if the clerk's SPEDIS data entries were reviewed.

The Bureau needs to develop written policies and procedures governing SPEDIS use and changes to database information, including management approval and review of data changes to the SPEDIS database.

- We analyzed SPEDIS cost information and compared it to Department reports and Bureau SPEDIS information. Some of our data analyses did not match SPEDIS Bureau data and Department report information. This was due to some erroneous cost data existing in the SPEDIS database, and it took numerous attempts to reconcile the data. Personnel agreed that diverse users should be able to access SPEDIS and derive similar cost information, and thought that written policies and procedures would further that process.
- Districts report student catastrophic aid costs into SPEDIS; the Bureau reimburses those costs via catastrophic aid. The Bureau only reviews certain claimed district costs. If the Bureau questions district-input costs, it asks the district to forward supporting invoice documentation to the Bureau, which can be a time consuming process. Unsupported cost information is disallowed. The SPEDIS consultant or the SPEDIS clerk input allowable cost information into the SPEDIS database, but Bureau management does not review the input changes. There are no policies or procedures governing the process.
- Personnel reported that non-approved SPEDIS student cost records were maintained in the SPEDIS database.

Sound management practices indicate that personnel within the Bureau should be knowledgeable of and oversee SPEDIS operations. Lack of Bureau management oversight over SPEDIS operations can contribute to inaccurate SPEDIS child count and catastrophic aid information residing in the database. Because this information is used to determine federal grants and catastrophic aid reimbursements to school districts, incorrect SPEDIS information can cause inaccurate funding to school districts and the Bureau. Lack of Bureau SPEDIS oversight can weaken SPEDIS' ability to be used as a management tool. Currently, the Bureau is at risk of not having any Bureau staff capable of operating SPEDIS if the contracted consultant becomes unavailable.

2. OBSERVATIONS (Continued)

2.4 Information Management (Continued)

Observation No. 7: SPEDIS Oversight Needs Improvement (Continued)

There has been discussion about bringing SPEDIS data, software, and hardware into the Department. It is unknown what specific hardware and maintenance support would be required, nor is it known what additional personnel would be required. We saw no evidence that the Bureau or the Department had done any cost-benefit or other analysis regarding the feasibility of bringing SPEDIS into the Bureau once the SPEDIS-ORACLE conversion was fully completed and debugged.

RECOMMENDATION:

The Bureau should develop:

- **policies and procedures detailing its oversight of SPEDIS operations and changes to SPEDIS database information;**
- **a plan on how it and school districts should be using SPEDIS as a management information system;**
- **in-house knowledge to oversee and eventually operate the SPEDIS system; and**
- **analyses of the pros and cons of continuing to house a fully converted and debugged system at the Research Computing Center compared to bringing the system in-house, including respective site cost effectiveness as well as necessary software, hardware, training, and personnel support.**

Auditee Response:

We concur with the observation. In order to best use the extensive capabilities of the “new” SPEDIS system, policies, procedures, plans, training and analysis are appropriate goals and activities for the bureau. Bureau staff and Department administrators recognize the limitations of the current structure and management of SPEDIS. In response to the increasing expectations for information gathering and data management, at the local, state and federal levels, it is a reasonable expectation of the bureau to be prepared to manage the personnel, hardware, software and applications. The development of SPEDIS and the external management of the system reflects the bureau’s financial and staffing capacities. The SPEDIS consultant (contracted through the North Country Education Foundation) and the RCC contract (University of New Hampshire) are funded programs through federal discretionary monies. Bringing these programs in-house will require the use of federal administrative dollars and/or state sources. We concur that bureau staff should be trained in the oversight and use of the SPEDIS system.

2. OBSERVATIONS (Continued)

2.4 Information Management (Continued)

Observation No. 8

Update The Legislature On The SPEDIS Conversion

Bureau of Special Education and other personnel acknowledge that the SPEDIS application used during the audit period is outdated and needs improvement. Issues with the SPEDIS system include:

- SPEDIS is not Year 2000 compliant;
- few school district users and Department staff use SPEDIS as a management tool;
- users feel the system is not “user friendly”;
- users have difficulty connecting, and maintaining connectivity, with the SPEDIS system;
- users cannot create custom reports;
- the main computer hardware is outdated, relatively expensive to maintain, and dependent on salvage parts to remain operational; and
- SPEDIS software is so outdated that no individuals within the Bureau, and few individuals external to the Bureau, are knowledgeable about the software.

In addition, SPEDIS required some program upgrading due to changes in federal special education data reporting requirements.

During the audit, the Bureau’s 17-plus year old SPEDIS software program was undergoing system and data conversion to a contemporary ORACLE database application. The conversion, slated for February 1999 completion, was not finished when our field work ceased in March 1999. The new SPEDIS application and related computer hardware were promised to be modern, economical, flexible, user friendly, and reliable. Judgment on whether the conversion remedies the prior system’s drawbacks awaits full application implementation and debugging.

The Bureau’s SPEDIS data, software, and most SPEDIS computer hardware are housed and maintained at the University of New Hampshire’s Research Computing Center (RCC) in Durham. The Bureau and the RCC believe the RCC provides substantial and proficient SPEDIS support. The RCC will continue to support SPEDIS once the conversion is complete.

RECOMMENDATION:

We recommend the Bureau report to the Legislature no later than February 2000, on the new SPEDIS application including its implementation status, cost, usage, improved user connectivity, and feasibility as a management tool.

Auditee Response:

We concur with the observation. The “new” SPEDIS system is on-line and being used by School district and DOE personnel. Bureau of Special Education staff are engaged with Department administrators and others in planning for the use of SPEDIS, given its new capabilities.

2. OBSERVATIONS (Continued)

2.5 Foundation Aid Formula

Historically the State budgeted a certain level of funding for special education basic aid (RSA 186-C:18, II) through the foundation aid formula (RSA 198:29) also known as the Augenblick formula. Special education basic aid and foundation aid were distributed based on a formula that took into account the property wealth of a school district, the income wealth of a district, and the tax effort of a district. In addition, the formula weighted students based on the type of education the student received. Because of these factors, not all school districts were eligible for foundation aid.

The Augenblick formula was based on the concept of weighted pupils. The weighting system was based on State average expenditures per pupil for eight educational programs, including five special education programs, and was set out in the statute. See Table 4 for a list of the programs.

Table 4

Weighted Pupils Under The Augenblick Formula

Type Of Program	Weight Assigned To Each Pupil
Regular Education Programs	
Regular Elementary	1.00
Regular High School	1.21
High School Vocational Education	2.01
Special Education Programs	
Mainstreamed	2.12
Self-Contained	2.57
Pre-School Day Placement	3.37
Out-Of-District Day Placement	7.08
Residential Placement	8.72
Source: RSA 198:28 IX.	

During our audit period, close to \$50 million of State special education basic aid was distributed through foundation aid by the Augenblick formula. The formula was designed to provide a way for the State to provide additional funds to more needy school districts. It should be noted that the special education portion of foundation aid did not have to be used for special education by the needy schools. In fact, districts received one check from the State with no explanation that a portion of this funding was earmarked in the State budget for special education. According to Bureau staff, the State needed to show the federal government that it was continuing to provide special education funds at a certain level.

2. OBSERVATIONS (Continued)

2.5 Foundation Aid Formula (Continued)

Observation No. 9

<i>Weighted Funding Formula Not Placement Neutral</i>
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In our 1991 performance audit of the Developmental Services System, we recommended the Department of Education request the Legislature change the definition of “weighted pupil” to provide more incentive for school districts to place students in the least restrictive environment. The formula used to calculate foundation aid may have created an incentive for districts that received foundation aid to place special education students in an out-of-district placement rather than provide services in-house. While we recognize that Chapter 17, Laws of 1999 repealed the Augenblick formula, we note that this issue was cited in 1991 and was not addressed by the Department. This formula was used by the Department to calculate foundation aid during our audit.

Our observation is more pertinent today than in 1991. The formula used to calculate foundation aid was not placement neutral. This posed a problem for the State under the IDEA Amendments of 1997. The amendments required the State to either change the formula or explain why the formula did not encourage the placement of students with disabilities in more restrictive environments. Our observation in 1991 stated, “The foundation aid formula by virtue of its weighting system provides a potential disincentive for local school districts to place educationally handicapped students in a less restrictive environment because the formula assigns the highest factor of 8.72 to a residential placement and a lower factor of 2.12 to a mainstreamed student.” While we found no evidence of districts making placement decisions based on possible increases in foundation aid now or back in 1991, the possibility existed for some districts that received foundation aid to consider it in placement decisions.

RECOMMENDATION:

The Legislature and Department should ensure State funding formulas are placement neutral in practice under the IDEA Amendments of 1997.

Auditee Response:

We concur with the observation. According to 34 CFR 300.130 (b) (final regulations to IDEA 1997): (1) If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting where a child is served, the funding mechanism may not result in placements that violate the requirements of paragraph (a) of this section. (2) If the State does not have policies and procedures to ensure compliance with paragraph (b) (1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

Department staff, including the Commissioner, have provided related information guidance to lawmakers upon request and in efforts to inform policy development.

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STATE OF NEW HAMPSHIRE CATASTROPHIC AID PROGRAM

3. OTHER ISSUES AND CONCERNS

In this section we present issues and concerns we encountered during our audit which were not developed into formal observations yet we consider noteworthy. The Department and the Legislature may consider these issues and concerns deserving of action or further study. In some cases we make suggestions for actions; in other cases we simply identify and report on the issue.

Quality Of Department Data

We found some of the special education data to be of questionable quality, thus reinforcing one of the legislative concerns that prompted this audit. Other issues with special education data are the result of databases continuously being updated. We identified the following weaknesses:

- There are problems with the district reported special education costs on the MS-25 form. In 1991 we identified this weakness in our performance audit of the Developmental Services System. Department and school business officials have been developing a new form and standards to collect special education information that should be in place by State fiscal year 2000.
- We found that the Department was not reviewing special education data from the MS-25 form. This resulted in the Department overstating 1997 statewide special education costs by about \$14 million. The original, erroneous total was given to the LBA and the Legislature. The Department subsequently revised its incorrect data.
- The Bureau and school officials told us coding data used in SPEDIS is subjective. A student with disabilities may be coded differently in different schools. It can be challenging to identify a primary code for a multiple disabled student. Other coding discrepancies result from stigmas associated with certain codes. For example, parents and special education teachers may code a student as “specific learning disabled” instead of “mentally retarded” or “seriously emotionally disturbed.”
- Bureau staff question how catastrophic aid costs are being categorized by schools. For example, there are no rules that define what can be claimed as an instructional cost for catastrophic aid reimbursement.
- The complexity of SPEDIS made it difficult to retrieve specific or tailored information. There is only one contracted consultant who can generate ad-hoc reports from SPEDIS, thereby limiting the flexibility the Bureau has to use its data. We were able to work with the consultant to obtain a database of catastrophic data and track down questionable records. The consultant developed SPEDIS and his expertise is unquestionable. However, no one at the Bureau or Department can generate an ad-hoc report.

We suggest the Department make additional efforts to improve the quality of its data.

3. OTHER ISSUES AND CONCERNS (Continued)

Comparing State And Federal Standards

We identified a number of examples where State regulations appear to exceed federal requirements. We surveyed school administrative units and interviewed numerous individuals in the field of special education to help identify State regulations that exceed federal requirements. There has been concern that State requirements may be resulting in districts and the State incurring additional expenses. Bureau personnel reported that the State has exceeded federal requirements, however, over the years, changes in IDEA have moved the federal requirements closer to New Hampshire's requirements. Some of the differences identified below are the result of the State attempting to quantify and clarify the more ambiguous federal language.

- Administrative rule Ed 1109.01 (n) requires that parents must consent to any IEP. Federal regulation requires parental consent for only the initial IEP, subsequent IEPs only require that the parents are notified. The Department agrees that there is no specific federal regulation requiring parent approval of an IEP. However, it believes that "obtaining a parent signature at the conclusion of the IEP process is clearly just good business practice."
- Ed 1125.05 requires that a school initiate a due process hearing if parents refuse to give their consent to an IEP that the school district believes is in the best interest of the student. Federal interpretation of federal regulations indicates that schools are not forced to initiate a due process hearing for the initial evaluation and placement. According to the Department, "While there are procedural rights available to districts and parents, the law establishes a substantive right of the student to receive a free appropriate public education, and the public agency is required to advocate for the student when appropriate."
- Ed 1109.04 (a) requires a ten-day written notice to parents of any IEP meeting. Federal law requires notice be given "early enough to ensure that they have an opportunity to attend." However, whether 10 days is "early enough" and if only a written notice is sufficient are debatable points.
- New Hampshire requires the multidisciplinary group that evaluates the student to include a teacher certified in the area of suspected disability (Ed 1107.03 (a)), whereas, the federal regulations require at least one teacher or specialist with knowledge in the area of suspected disability.
- According to federal regulation, placement decisions are made by the IEP team, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. State rule Ed 1115.03 specifically lists who shall attend.

We suggest the Bureau strictly follow RSA 186-C:3-a that requires them to "ensure that the regulation and monitoring of school district activities shall not exceed what is necessary for compliance with [state] and federal law regarding the education of students with educational disabilities" when they update their administrative rules.

3. OTHER ISSUES AND CONCERNS (Continued)

Due Process

Sources repeatedly informed us that parental threats of taking school districts to due process is one factor increasing special education costs. Parents and districts can go to due process to resolve issues such as whether or not the child has a disability, and what is an appropriate IEP. According to our survey of School Administrative Units (SAUs), two-thirds of the SAUs made costly compromises in developing or implementing an IEP to avoid due process. Of those, 46 percent indicated that it was less costly to compromise than to go through due process. Our interviews with school officials, Department officials, and other specialists in the field further support this finding.

In some cases districts decide that it is cost beneficial for them to compromise rather than pay the costs of a due process hearing. Districts perform cost-benefit analyses by considering factors such as: the impact of the parents' decision on the child, the law, the district's general teaching philosophy, and review of other cases to see if a precedent has been set. In addition, districts evaluate how procedurally tight their case is; school districts violating procedures are likely to lose due process hearings. Due process is costly in terms of staff time and the emotional drain it places on all those involved. Special education cases can generate enormous legal expenses. If a district loses a due process hearing, it is responsible for paying the parents' legal fees and other administrative costs.

It should be noted that although many of the Department and school officials we spoke with have at least one example, in their opinion, of a parent abusing the special education process resulting in seemingly unnecessary costs, most say these are the exception. Most IEPs are not challenged by parents.

We noted that the Department also offers mediation and neutral conferences as alternative dispute resolutions to due process. Mediation is a voluntary, confidential process guided by a trained mediator who helps the parties reach a mutually acceptable solution to their dispute. According to the SAUs responding to our survey question, 58 percent responded that they routinely seek mediation before resorting to due process. A neutral conference also is a voluntary, confidential process presided over by a trained professional who listens to both sides of a dispute and makes a recommendation which both sides may either adopt or refuse. According to the Department, neutral conferences are rarely used.

Medicaid And Catastrophic Aid Reimbursements

School districts are eligible to be reimbursed for the same service by both catastrophic aid and Medicaid. This raises the concern that a district may be reimbursed for more than its share of special education student costs. At our request, the State Department of Health and Human Services identified three students whose school districts received a total of \$7,660 in Medicaid reimbursement that were in excess of the schools' liability under catastrophic aid (see Table 2 on page 20 for schools' maximum liability).

3. OTHER ISSUES AND CONCERNS (Continued)

An argument could be made that Medicaid reimbursements should be subtracted from the student cost records before catastrophic aid is calculated. However, this could be difficult to implement. Schools are not mandated to seek Medicaid reimbursements and they incur administrative costs in order to claim Medicaid reimbursements.

Special Education Monitoring And Improvement Process

On two different occasions, LBA staff accompanied the review teams run by the Southeastern Regional Education Service Center during their two day on-site review process. It was noted that members of the review teams had to rush through the review process. Additional time would have given the team members the opportunity to conduct a more thorough review and the flexibility to deal with unanticipated problems. However, it was also noted that the majority of team members work in the special education field for other districts, and it would be difficult for them to commit more than two days of their time. In fact, some team members were not available for the full two days.

Public Academies

During the course of the audit we experienced difficulty in determining how the Department should treat Coe-Brown Northwood and Pinkerton Academies. For example, private approved institutions are subject to rate setting, while the public academies are not. These non-district, private schools function as public high schools for certain towns; however, we found no clear definition of public academy in administrative rules.

We suggest that the Department define public academy and clearly state how they should be treated within its administrative rules.

STATE OF NEW HAMPSHIRE CATASTROPHIC AID PROGRAM

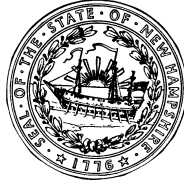
4. CONCLUSION

We have identified a number of weaknesses with the Bureau of Special Education's management of the catastrophic aid program. The Bureau has operated the program without writing the statutorily required administrative rules, thereby putting State resources at risk. We identified Bureau and Department activities that were not in compliance with State law, including a long held Department practice of not submitting certain service contracts for Governor and Council approval. We determined that inadequate staffing of the Bureau has been a contributing factor in many of the weaknesses. However, we note that SAUs were generally satisfied with the quality of assistance the Bureau provided. The new version of SPEDIS should provide opportunities for the Bureau to improve its oversight of the catastrophic aid program.

Our analysis of 1) catastrophic aid data, 2) survey of school administrative units, and 3) interviews with Bureau staff, school officials, and specialists in the field of special education identified some of the reasons catastrophic aid costs are increasing. These include: increasing costs of transportation, use of one-on-one aides, use of out-of-district placements, and a growing population of students with severe disabilities. We note that there are problems with the quality of some of the special education data. In addition, we caution readers that by definition, catastrophic aid students are the most expensive students with disabilities, our analysis should not be projected onto the population of all special education students.

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Elizabeth M. Twomey
COMMISSIONER
Tel. 603-271-3144



**STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street, Concord, N.H. 03301
FAX 603-271-1953
Citizens Services Line 1-800-339-9900**

June 21, 1999

**Ms. Catherine A. Provencher, CPA
Director of Audits
Office of the Legislative Budget Assistant – Audit Division
State House – Room 102
Concord, NH 03301**

Dear Ms. Provencher,

The Department of Education appreciates this opportunity to respond to the Performance Audit Report. We have offered responses to the observations in the text of the report and now wish to further describe our efforts to align the work of the Bureau of Special Education with the recommendations made by the audit team. It is our intention to address all areas cited in the report.

The Bureau of Special Education's responsibilities for rate setting, for the management and distribution of catastrophic aid funds, and for the management of the Special Education Information System (SPEDIS) have been highlighted in the Performance Audit Report and have received the Department's immediate attention. The function of rate setting has been assumed by a Bureau consultant who will also process requests for catastrophic aid. A second consultant will be assigned to work in the processing of catastrophic aid. A preliminary decision has been made to develop a fiscal review procedure which will be part of the Special Education Monitoring and Improvement Process for program approval. Based, in part, on the recommendations in the Performance Audit Report, we have decided to reclassify a consultant position which is anticipated in the FY 2000,2001 budget and will seek to hire a Systems Development Specialist who will manage the functions and data management of our SPEDIS system.

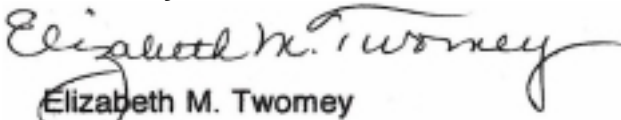
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In the matter of the use of the Form 2 system for the processing of contracts for projects and services funded through federal IDEA funds, the Bureau of Special Education is implementing a transition process for FY 2000 in which the award of all project contracts will follow a process involving competitive bidding and submission to the Governor and Council for approval. This transition will be completed and a new process will be in place for FY 2001.

As recommended by the audit team in its report, it is the intention of the Bureau of Special Education, with the support of the Department, to review the management of special education activities throughout the state and to improve its oversight of special education funding. The information provided in the report is most helpful in the assignment of resources. We appreciate the auditors' understanding that the Bureau is not sufficiently staffed to meet its statutory responsibility. We will, however, endeavor to address the areas of concern.

Finally, we wish to express our appreciation of the professional efforts and sound work of the audit team. The team members' professional courtesy and their thorough and thoughtful approach to gaining a deep understanding of the work of special education is to be commended.

Sincerely,


Elizabeth M. Twomey
Commissioner

APPENDIX B

Detailed Expenditures In Special Education Funding FY 1993-1998

Detailed Expenditures In Special Education Funding, FY 1993-1998

Source Of Funding	Fiscal Year						Total
	1993	1994	1995	1996	1997	1998	
Federal Funds							
<i>IDEA</i>							
Entitlement	\$ 5,625,800	\$ 5,972,606	\$ 6,160,898	\$ 7,527,865	\$ 7,986,879	\$ 9,122,054	\$ 42,396,102
Discretionary	1,425,266	1,540,869	1,603,633	2,007,431	2,129,834	2,432,548	11,139,581
Administrative	450,000	450,000	450,000	501,857	532,459	608,137	2,992,453
IDEA Total	7,501,066	7,963,475	8,214,531	10,037,153	10,649,172	12,162,739	56,528,136
<i>Preschool</i>							
Entitlement	744,098	743,207	809,049	1,061,423	1,046,748	1,018,715	5,423,240
Discretionary	198,426	198,188	215,746	283,046	279,133	271,657	1,446,196
Administrative	49,606	49,547	53,937	70,761	69,783	67,914	361,548
Preschool Total	992,130	990,942	1,078,732	1,415,230	1,395,664	1,358,286	7,230,984
<i>SPED Training</i>	36,167	124,921	180,351	156,011	184,971	57,768	740,189
<i>Sensory</i>	992,821	868,204	736,570	397,809	0	0	2,995,404
<i>Medicaid To Schools</i>	559,028	831,789	2,421,388	3,848,212	5,418,797	10,216,779	23,295,993
Federal Total	\$ 10,081,212	\$ 10,779,331	\$ 12,631,572	\$ 15,854,415	\$ 17,648,604	\$ 23,795,572	\$ 90,790,706
State Funds							
Catastrophic Aid ¹	\$ 7,741,707	\$ 8,000,000	\$ 8,000,000	\$ 8,600,000	\$ 11,229,324	\$ 12,988,599	\$ 56,559,630
Statewide Special Ed	299,347	325,000	275,000	300,000	275,000	247,500	1,721,847
Regional Special Ed	1,737,709	1,600,198	1,570,202	1,110,505	1,000,000	311,111	7,329,725
Chapter 402	1,250,520	1,774,632	2,171,085	2,801,092	1,336,450	2,336,625	11,670,404
Special Ed Basic Aid	8,118,312	8,118,312	8,118,312	8,118,312	8,118,312	9,237,569	49,829,129
State Total	\$ 19,147,595	\$ 19,818,142	\$ 20,134,599	\$ 20,929,909	\$ 21,959,086	\$ 25,121,404	\$ 127,110,735
Local Funds							
Local Funds	\$ 125,313,766	\$ 131,613,454	\$ 147,590,915	\$ 157,424,411	\$ 176,930,529	\$ 184,254,610	\$ 923,127,685
Total	\$ 154,542,573	\$ 162,210,927	\$ 180,357,086	\$ 194,208,735	\$ 216,538,219	\$ 233,171,586	\$ 1,141,029,126

Source: LBA Analysis of Single Audit Reports, Statements of Appropriation, and MS-25 data.

¹ The 1997 expenditure includes \$2.6 million paid out in fiscal year 1998. The 1998 expenditure includes \$199 thousand paid out in fiscal year 1999.

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APPENDIX C

Survey Of School Administrative Units

NOTES:

1. **Responses are in bold.**
 2. **We did not include every single response to the open-ended questions. We only included responses if three or more SAUs had the same or similar response and if they totaled 10 percent or more.**
 3. **Totals may not add up to 100 percent due to rounding and to the fact that any one respondent may have given multiple responses to the open-ended question.**
 4. **We sent surveys to 72 school administrative units. We received 55 responses (76.4 percent) to the survey, however, some respondents did not answer every question.**
-

1. Can you provide any specific examples of New Hampshire State law(s) exceeding federal minimum requirements for special education in general?

Responses = 50

Yes 15 (30.0%) No 35 (70.0%)

If **yes**, give specific example(s), citing the specific State law(s).

Responses = 22 (Includes comments made by SAUs either reporting “No” above, or only responding to Part II.)

- **7 (31.8%) Parental consent required for any IEP and any placement**
- **5 (22.7%) Services are provided for students aged 3-21**
- **4 (18.2%) Parents are entitled to a 10-day advance written notice of IEP meetings**
- **3 (13.6%) Implication that districts should take parents to due process when parents fail to appeal or agree with district’s proposal**
- **3 (13.6%) Recommend LBA auditors contact a specific attorney in the field**
- **3 (13.6%) Requirement that a certified specialist, rather than a general special educator, be part of any team evaluating learning disabled students**

2. In your opinion, what are the primary factors increasing special education costs at your SAU?

Responses = 55

- **15 (27.3%) Increase in out-of-district placements**
- **14 (25.5%) Increase in special education students with complex needs**
- **14 (25.5%) Increase in court-ordered placements**
- **11 (20.0%) Increase in associated costs (i.e., related services, transportation, aides)**
- **8 (14.5%) Increase in special education population**
- **8 (14.5%) Increase in students with costly needs transferring into district**
- **7 (12.7%) Increase in one-on-one special education aides**
- **7 (12.7%) Increase in students with emotional, behavioral problems**
- **6 (10.9%) Poor parenting (i.e., drug/alcohol abuse, neglect)**

APPENDIX C - Survey Of School Administrative Units (Continued)

3. Between State fiscal years 1993 and 1998, catastrophic aid funding increased by 81 percent from \$8 million to \$14.5 million. In your opinion, what are the primary reasons for this increase?¹

Responses = 52

- 14 (26.9%) Increase in the cost and number of out-of-district placements
- 11 (21.2%) Increase in costly multi-disabled students
- 9 (17.3%) General cost increases (placements, services, transportation)
- 7 (13.5%) Increase in special education population
- 6 (11.5%) Increase in court-ordered placements

4. What factors lead to out-of-district placements at your SAU?

Responses = 54

- 28 (51.9%) Court-ordered placements
- 22 (40.7%) Students with severe emotional/behavioral issues
- 20 (37.0%) Children with needs that cannot be met within the district (i.e., low incidence needs, severe disability)
- 10 (18.5%) Issues related to due process (i.e., potential costs, parental pressure)
- 8 (14.8%) Inability to provide services in-house (i.e., lack of resources, space, funding)

5. In your opinion, is there anything the State can do to reduce your SAU's out-of-district placements?

Responses = 51

Yes 41 (80.4%) No 10 (19.6%)

If **yes**, please explain.

Responses = 42 (Includes one comment made by an SAU responding "No" above.)

- 16 (38.1%) Provide resources for developing programs in-district
- 11 (26.2%) Assist districts with training
- 6 (14.3%) Increase funding for special education
- 5 (11.9%) Increase and improve upon foster care options

6. In your opinion, is the State's Bureau of Special Education adequately staffed?

Responses = 51

Yes 5 (9.8%) No 46 (90.2%)

If **no**, in what area(s) does the Bureau lack staffing?

Responses = 47 (Includes one comment made by an SAU responding "Yes" above.)

- 18 (38.3%) Staff to respond to SAUs' needs
- 15 (31.9%) Providing timely assistance to SAUs
- 8 (17.0%) Training for district personnel
- 6 (12.8%) Experienced staff knowledgeable about special education
- 5 (10.6%) Bureau director

¹ Note: Actual expenditures increased from \$7.7 million to \$13 million.

APPENDIX C - Survey Of School Administrative Units (Continued)

7. How would you rate the assistance your SAU received from the Bureau of Special Education regarding the following issues?

(Circle one response for each issue.)

N = Did not request assistance with this issue
1 = Excellent
2 = Good
3 = Fair
4 = Poor
5 = No Opinion

	N	1	2	3	4	5
a. Application process for catastrophic aid Responses = 52	16 31%	12 23%	13 25%	8 15%	1 2%	2 4%
b. Determining allowable tuition costs Responses = 52	16 31%	9 17%	15 29%	8 15%	1 2%	3 6%
c. Determining allowable instruction costs Responses = 52	19 37%	8 15%	14 27%	9 17%	1 2%	1 2%
d. Determining allowable room and board costs Responses = 52	22 42%	5 10%	13 25%	8 15%	2 4%	2 4%
e. Determining allowable related service costs Responses = 52	16 31%	8 15%	12 23%	10 19%	5 10%	1 2%
f. Determining allowable exceptional costs Responses = 51	15 29%	9 18%	11 22%	9 18%	4 8%	3 6%
g. Determining allowable transportation costs Responses = 52	17 33%	8 15%	14 27%	9 17%	2 4%	2 4%
h. SPEDIS Responses = 52	2 4%	21 40%	17 33%	9 17%	3 6%	0 0%
i. Guidance with State laws Responses = 52	5 10%	12 23%	13 25%	14 27%	8 15%	0 0%
j. Guidance with federal laws Responses = 52	9 17%	9 17%	12 23%	9 17%	13 25%	0 0%
k. Other: Various reasons given, no consensus. Responses = 7						

8. During your last on-site review by the Southeastern Regional Education Services Center, did your SAU participate in the traditional monitoring and review process or the new year-long process?

Responses = 53

Traditional monitoring and review process **40 (75.5%)**

New year-long process **13 (24.5%)**

APPENDIX C - Survey Of School Administrative Units (Continued)

9. Please read the following statements about the monitoring and review process and choose the response that best reflects your SAU's experiences during your last on-site review.

(Circle one response for each statement.)

1 = Strongly Agree
2 = Agree
3 = Undecided
4 = Disagree
5 = Strongly Disagree
6 = No Basis to Judge

Note: The following table is inclusive of both the traditional and the new monitoring processes.

	1	2	3	4	5	6
a. The process placed an excessive administrative burden on my SAU. Responses = 53	4 8%	15 28%	5 9%	20 38%	5 9%	4 8%
b. The individuals evaluating the programs were qualified. Responses = 53	13 25%	29 55%	2 4%	4 8%	0 0%	5 9%
c. The process was fair. Responses = 53	14 26%	30 57%	3 6%	1 2%	1 2%	4 8%
d. The process was constructive. Responses = 53	13 25%	27 51%	4 8%	4 8%	1 2%	4 8%

10. What improvements, if any, can be made to the monitoring process chosen by your SAU?

Responses = 36

New Process:

No consensus reached.

Traditional Process:

- **7 (19.4%) Should focus more on student outcomes, less on compliance and paperwork**
- **4 (11.1%) Will be participating in the new process next time**

11. Has your SAU been to due process?

Responses = 55

Yes **31 (56.4%)** No (skip to question 13) **24 (43.6%)**

If **yes**, on average, how much does a due process hearing cost your SAU?

Responses = 22

(Responses varied from an average high of \$50,000 to a low of \$2,500. When ranges were given, took the average of the range.)

- **7 (31.8%) between \$1 - \$10,000**
- **6 (27.3%) between \$10,001 - \$20,000**

APPENDIX C - Survey Of School Administrative Units (Continued)

- 5 (22.7%) between \$20,001 - \$30,000
- 1 (4.6%) between \$30,001 - \$40,000
- 2 (9.1%) between \$40,001 - \$50,000
- 2 (9.1%) between \$50,001 - \$60,000

Note: Four of the twenty-two respondents reported that when going to due process, they are only responsible to pay a deductible. SAUs that belong to New Hampshire School Boards Insurance Trust pay a \$2,500 deductible. This deductible does not cover costs such as lost work, time, substitute teachers, or the time it takes to prepare.

12. What was the highest costing due process hearing for your SAU?

Responses = 20

(Responses varied from a high of \$250,000 to a low of \$5,000)

- 7 (35.0%) between \$1 - \$25,000
- 5 (25.0%) between \$25,001-\$50,000
- 1 (5.0%) between \$50,001-\$75,000
- 3 (15.0%) between \$75,001-\$100,000
- 3 (15.0%) between \$100,001-\$125,000
- 0 (0%) between \$125,001-\$150,000
- 0 (0%) between \$150,001-\$175,000
- 0 (0%) between \$175,001-\$200,000
- 0 (0%) between \$200,001-\$225,000
- 1 (5.0%) between \$225,001-\$250,000

13. Has your SAU made costly compromises in developing or implementing an IEP to avoid due process?

Responses = 55

Yes 37 (67.3%) No (skip to question 15) 18 (32.7%)

If **yes**, explain why.

Responses = 37

- 17 (45.9%) Cheaper to compromise than to go through due process (cost-benefit issues)
- 5 (13.5%) Hearing officers are biased

14. How often has your SAU made costly compromises in developing or implementing an IEP to avoid due process?

Responses = 42

Rarely	15 (35.7%)
Sometimes	16 (38.1%)
Half the time	2 (4.8%)
Most of the time	9 (21.4%)
Always	0 (0%)

Over 26 percent of the SAUs which responded made costly compromises in developing or implementing an IEP to avoid due process either half or most of the time.

APPENDIX C - Survey Of School Administrative Units (Continued)

15. Based on your SAU's experiences with due process procedures, hearing officers, and mediation, how would you rate the following statements:

(Circle one response for each statement.)

1 = Strongly Agree
2 = Agree
3 = Undecided
4 = Disagree
5 = Strongly Disagree
6 = No Basis to Judge

Due Process Procedures

	1	2	3	4	5	6
a. Due process hearings are conducted impartially. Responses = 47	3 6%	19 40%	5 11%	2 4%	3 6%	15 32%
b. The Department of Education regulations governing due process procedures are fair. Responses = 48	3 6%	20 42%	6 13%	1 2%	3 6%	15 31%

If you have concerns with due process, please explain.

Responses = 11

No consensus reached.

Due Process Hearing Officers

	1	2	3	4	5	6
c. Hearing officers resolve disputes fairly. Responses = 47	4 9%	14 30%	9 19%	2 4%	3 6%	15 32%
d. Hearing officers treat all parties with respect. Responses = 48	11 23%	19 40%	2 4%	0 0%	1 2%	15 31%
e. Hearing officers' rulings are based on what is in the interest of the special education student. Responses = 45	4 9%	11 24%	8 18%	5 11%	0 0%	17 38%
f. Hearing officers' rulings are based on strict application of federal and State statute and regulations. Responses = 48	2 4%	11 23%	8 17%	8 17%	3 6%	16 33%
g. Hearing officers exhibit a thorough understanding of special education issues. Responses = 48	3 6%	9 19%	8 17%	11 23%	2 4%	15 31%

If you have concerns with hearing officers, please explain.

Responses = 8

- **5 (62.5%) Hearing officers lack a thorough understanding of special education or the law**
- **3 (37.5%) Doubt basis upon which hearing officers make decisions**

APPENDIX C - Survey Of School Administrative Units (Continued)

(Circle one response for each statement.)

1 = Strongly Agree
2 = Agree
3 = Undecided
4 = Disagree
5 = Strongly Disagree
6 = No Basis to Judge

Mediation

	1	2	3	4	5	6
h. Mediators resolve disputes fairly. Responses = 48	6 13%	22 46%	4 8%	3 6%	0 0%	13 27%
i. From their initial request to their resolution, disputes are resolved within a reasonable time frame. Responses = 49	9 18%	19 39%	2 4%	3 6%	0 0%	16 33%
j. Mediators exhibit a thorough understanding of special education issues. Responses = 49	5 10%	16 33%	6 12%	7 14%	2 4%	13 27%
k. My SAU routinely seeks mediation before resorting to due process. Responses = 46	13 28%	14 30%	3 7%	3 7%	1 2%	12 26%
l. Mediation procedures are impartial. Responses = 48	9 19%	20 42%	3 6%	2 4%	1 2%	13 27%

If you have concerns with mediation, please explain.

Responses = 18

- **3 (16.7%) The quality and skill of mediators varies**
- **3 (16.7%) Mediation focuses on compromising, with no regard for who is legally right**

16. Please explain why due process hearings take longer than the 45 day requirement.

Responses = 28

- **14 (50.0%) Scheduling conflicts**
- **7 (25.0%) Volume of work required**
- **4 (14.3%) Lengthy hearings**
- **3 (10.7%) Requests for postponement**
- **3 (10.7%) Attorney maneuvering**
- **3 (10.7%) Trial-like procedures that require extensive preparation**

APPENDIX C - Survey Of School Administrative Units (Continued)

17. What concerns, if any, do you have with the current rate setting process for State-approved special education programs run by private facilities?

Responses = 51

I have no concerns. **22 (43.1%)**

I have the following concerns: **29 (56.9%)**

Responses = 29

- **8 (27.6%) Rates are high**
- **6 (20.7%) Rates are not set in a timely manner**
- **3 (10.3%) Rates do not always reflect actual costs**

18. State regulations allow each non-approved in-state facility to provide services for a maximum of five special education student placements per year. Should the State:

Responses = 50

Keep the number of placements at any one non-approved facility at five. **14 (28.0%)**

Increase the number of placements at any one non-approved facility. **7 (14.0%)**

Decrease the number of placements at any one non-approved facility. **0 (0.0%)**

Eliminate all placements at non-approved facilities. **12 (24.0%)**

No opinion. **17 (34.0%)**

Please explain.

Responses = 24

Keep:

No consensus reached

Increase:

- **3 (12.5%) If pupils are making progress, and there are guidelines**

Eliminate:

- **7 (29.2%) General lack of standards (i.e., monitoring, approval, accountability, assessment)**

19. Please use this space to add any other comments you feel might be valuable for the purposes of our audit:

Responses = 12

No consensus reached.

APPENDIX D

Current Status Of Prior Audit Findings

The following is a summary of the status of the observations related to the Department of Education's Bureau of Special Education (No. 3 through No. 13) found in the 1991 audit report of the State of New Hampshire Developmental Services System. A copy of the prior audit can be obtained from the Office of Legislative Budget Assistant, Audit Division, 107 North Main Street, State House Room 102, Concord, NH 03301-4906.

<u>Prior LBA Observations</u>	<u>Status</u>		
3. Placement In Least Restrictive Environment	●	●	○
4. Potential Foundation Aid Formula Disincentive (See Current Observation No. 9)	○	○	○
5. Lack Of Procedures To Ensure Programs In Prisons	●	●	○
6. Lack Of Comprehensive Plan For Special Education	●	●	○
7. Inaccuracy Of Special Education Information Reported On Form MS-25	●	○	○
8. SPEDIS Constraints (See Observation No. 7)	●	○	○
9. Insufficient Audit Efforts Of Local School Districts (See Current Observation No. 3)	○	○	○
10. Lack Of Coordination In Instructional Services	●	○	○
11. Lack Of Research And Demonstration Unit	●	●	●
12. Complexity Of Dispute Resolution Mechanisms	○	○	○
13. Program Approval, Monitoring And Enforcement Of Special Education Programs	●	●	●

<u>Status Key</u>				<u>Frequency</u>
Fully Resolved	●	●	●	2
Substantially Resolved	●	●	○	3
Partially Resolved	●	○	○	3
Unresolved	○	○	○	<u>3</u>
				11

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**PERFORMANCE AUDITS
ISSUED BY
OFFICE OF LEGISLATIVE BUDGET ASSISTANT**

<u>TITLE OF REPORT</u>	<u>DATE</u>
<u>Department of Administrative Services, Division of Plant and Property Management, State Procurement and Property Management Services</u>	June 1990
<u>Developmental Services System</u>	April 1991
<u>Prison Expansion</u>	April 1992
<u>Workers' Compensation Program for State Employees</u>	January 1993
<u>Child Settlement Program</u>	March 1993
<u>Property and Casualty Loss Control Program</u>	November 1993
<u>State Liquor Commission</u>	July 1994
<u>Managed Care Programs for Workers' Compensation</u>	November 1995
<u>Multiple DWI Offender Program</u>	December 1995
<u>Child Support Services</u>	December 1995
<u>Job Opportunities and Basic Skills Training Program</u>	May 1997
<u>Economic Development Programs</u>	October 1997
<u>Health Services Planning and Review Board</u>	January 1998
<u>Marine Patrol Bureau Staffing</u>	March 1998
<u>Juvenile Justice Organization</u>	November 1998
<u>Year 2000 Computing Crisis – Special Report</u>	March 1999

Copies of the above reports may be received by request from:

State of New Hampshire
Office of Legislative Budget Assistant
107 North Main Street, Room 102
Concord, New Hampshire 03301-4906
(603) 271-2785

For summaries of audit reports, visit our web site at: www.state.nh.us/lba