

Approved: March 21, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Barbara Lawrence at 1:30 p.m. on January 25, 1996 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Ben Barrett, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Jennifer Bishop, Committee Secretary

Conferees appearing before the committee: none

Others attending: See attached list

Ben Barrett provided documentation on Federal and State Special Education Laws and selected provisions (Attachment 1).

Senator Emert asked if the state was providing services for special education kids not enrolled in public schools. Ben Barrett answered yes, that the services have to be available to them.

Dale Dennis presented information to the committee regarding special education funding. Mr. Dennis provided three different kinds of charts. The first chart provided a breakdown of the special education expenditures for all special education children, including gifted, for FY 1992 through FY 1996. The information provided included total expenditures, federal aid, state aid, contracts with state institutions, local resources, and percent of resources. In addition, shown are the transfers which school districts made to their special education fund during those years. When special education was mandated by the federal government, federal funds were supposed to be approximately 40 percent, however, the mandate has only been funded at approximately the 7 percent level. The second chart provided an explanation of federal funds and the amount per child each school district receives for students enrolled in grades one through twelve (6 years of age through completion of program or age 21) and the amount per child each district receives for students enrolled in preschool (ages 3 to 5). The third chart provides a breakdown of the headcount enrollment for the past five years and the percentage of special education students, gifted students, and total exceptional students are of the total enrollment (Attachment 2).

A chart was also provided on the estimated Special Education excess costs for FY 1997 (Attachment 3).

Further discussion was held with the committee.

The meeting adjourned at 2:32 p.m.

The next meeting is scheduled for January 30, 1996.

SENATE EDUCATION COMMITTEE GUEST LIST

DATE: January 25, 1996

NAME	REPRESENTING
Josie Torres	Families Together, Inc.
Shery Deil O	KAPS
Su Chae	KNEA
Mark Tallman	KASB
Mildred Mitchell	St. Bd. of Ed.
Merle Hice	KACC
Craig Grant	KNEA

MEMORANDUM

Kansas Legislative Research Department

300 S.W. 10th Avenue
Room 545-N – Statehouse
Topeka, Kansas 66612-1504
Telephone (913) 296-3181 FAX (913) 296-3824

Revised: January 12, 1996

Re: Federal and State Special Education Laws -- Selected Provisions

Special Education -- Selected Legal Provisions and Cost-Related Issues

This memorandum has been prepared to acquaint the reader with some of the main provisions of the principal federal laws that require special education services to be provided to children with disabilities and counterpart provisions of the Kansas law. This is not a complete explanation of either the federal or state law. An effort has been made to include topics or issues that contribute significantly to the cost of special education services.

In general, the state law is compatible with the requirements of federal law. Some of the "gaps" between the two are filled by State Board of Education rules and regulations. Probably the most significant differences between the federal and state requirements are:

1. The state law mandates services for gifted children while the federal law addresses only children with disabilities.
2. The federal law does not require local education agency due process hearings, but does accommodate them. However, state level hearings are required. The Kansas law establishes both local education agency hearings and state level hearing reviews.
3. Special state level funding for special education services is totally a state prerogative. However, state funding is subject to maintenance of effort and nonsupplanting requirements.

SENATE EDUCATION
1-25-96
ATTACHMENT 1

**SUMMARY OF SELECTED KEY REQUIREMENTS OF THE FEDERAL INDIVIDUALS WITH
DISABILITIES EDUCATION ACT (IDEA), THE REHABILITATION ACT,
AND THE AMERICANS WITH DISABILITIES ACT AND RELATED
REQUIREMENTS OF THE KANSAS SPECIAL EDUCATION
FOR EXCEPTIONAL CHILDREN ACT**

IDEA -- Federal Law

Kansas Law

PURPOSE

The purpose of the law is to assure that all children with disabilities have available to them (within specified periods of time) a free appropriate public education which emphasizes special education and related services designed to:

- meet the unique needs of such children,
- assure the protection of the rights of children with disabilities and their parents or guardians,
- assist states and localities to provide for the education of all children with disabilities, and
- assess and assure the effectiveness of efforts to educate children with disabilities.

Previously, the Education of the Handicapped Act (1975) addressed children who are "handicapped." The 1990 amendments to the federal law, popularly known as the Individuals With Disabilities Act (IDEA), included adoption of the current descriptor, i.e., "children with disabilities."

The purpose of the law is to provide for educational opportunities which will contribute to the development of each exceptional child in the state in accord with his or her abilities or capacities. The term "exceptional children" includes children who are gifted, as that term is defined in the State Plan for Special Education.

Programs for gifted children are not addressed and, therefore, not required by the federal law.

FREE APPROPRIATE PUBLIC EDUCATION

Free appropriate public education means special education and related services which:

The *Kansas Constitution* prohibits the charging of tuition to persons who are required by law to attend public schools. Compulsory school

IDEA -- Federal Law

- are provided at public expense, under public supervision and direction, and without charge;
- meet the standards of the state educational agency, including the requirements of the federal law;
- include an appropriate preschool, elementary school, or secondary school education in the state; and
- are provided in conformity with the individualized educational program (IEP) required by federal law.

Kansas Law

attendance requirements are the same for children who are gifted as they are for regular education students. However, the compulsory attendance requirements for children with disabilities cover a broader age spectrum than applies to the nonhandicapped (discussed below).

Special education services provided by school districts must meet the standards and criteria set by the State Board of Education. These include screening, identification, IEP development, procedural due process, and other elements necessary for Kansas to comply with federal law.

The school district in which the child resides must provide necessary special education services. However, these services may be provided in a variety of ways, not only in terms of varying delivery models within a district, but through cooperative arrangements or contracts with other agencies, public and private.

Children who reside in a school district but who attend a nonpublic school also are entitled to special education services provided by the school district. While some diagnostic services may be provided at the nonpublic school site, therapies must occur at some religiously neutral site. A child who attends a nonpublic school and who receives special education services provided by a school district is treated as being enrolled in the school district for purposes of receiving special education services.

However, if the child is placed in a Department of Social and Rehabilitation Services (SRS) institution (Topeka, Osawatomie, Larned, Parsons, and Winfield State Hospitals, Rainbow Mental Health Facility, Kansas Neurological Institute, and state youth centers operated by the Secretary of SRS), the state institution must provide the special education services. These services must meet State Board of Education's standards.

SPECIAL EDUCATION AND RELATED SERVICES

“Special education” is defined as specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals, in institutions, and in other settings. (The federal law specifically states that this requirement includes instruction in physical education.)

“Related services” means transportation and such developmental, corrective, and other supportive services (including speech pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services, including rehabilitation counseling and medical services, except that such medical services are for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education. It also includes the early identification and assessment of disabling conditions in children.

Note: See Attachment 1 for definition of various “related services” items.

Note: See Attachment 2 for discussion of “assistive technology devices and services.” This term and the definition thereof is included in the federal law. “Assistive technology devices and services,” while not incorporated within the listing of “related services” under the federal law nonetheless may be required to be provided in accord with meeting the special education needs of children with disabilities. Kansas State Board of Education rules and regulations do include “assistive technology devices and services” as “related services” for purposes of the Kansas program.

“Special education services” is defined as programs for which specialized training, instruction, programming techniques, facilities, and equipment may be needed for the education of exceptional children.

As mentioned previously, programs for gifted children are not required by the federal law. This is a state mandate only. However, service requirements for the gifted parallel those for children with disabilities.

The statute does not use the term “related services,” but State Board of Education regulations do. The term is defined as meaning services required to assist an exceptional child to benefit from special education. Related services include art therapy, assistive technology devices and services, audiology services, counseling services, dance movement therapy, early identification services, medical services for diagnostic or evaluation purposes, medical treatment, music therapy, occupational therapy, parent counseling and training, physical therapy, school psychological services, rehabilitation counseling services, recreation, school health services, school social work services, special education administration and supervision, special music (adaptive music) education, speech and language services, and transportation.

4-1

CHILDREN WITH DISABILITIES

The term "children with disabilities" includes mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments, including blindness; serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; specific learning disabilities; and other health impairments.

Note: The term "children with specific learning disabilities" is further defined by law. That definition is included in Attachment 3.

For children ages 3-5, the term "children with disabilities" may, at the state's discretion, include children in need of special education and related services who are experiencing developmental delays (as defined by the state and as measured by appropriate diagnostic instruments and procedures) in the area of physical, cognitive, communication, social or emotional, or adaptive development. (In accord with State Board of Education rules and regulations, Kansas has opted to provide these services.)

Note: See Attachment 3 for federal definitions of children with disabilities categories.

The Kansas term "exceptional children" includes children who are gifted as well as those with disabilities. The statute describes exceptional children as school age children who differ in physical, mental, social, emotional, or educational characteristics to the extent that special education services are necessary to enable them to receive educational benefits in accordance with their abilities or capacities.

State regulations further identify categories of disabling conditions that are included within the meaning of the term "exceptional children." The term means children who have autism, mental retardation, specific learning disabilities, hearing impairments, language impairments, speech impairments, behavior disorders, physical impairments, other health impairments, severe multiple disabilities, deaf-blindness, traumatic brain injury, visual impairments, children eligible for early childhood special education services, or children who are gifted.

The regulation then distinguishes between "exceptional children" and "children with disabilities" by specifying that "children with disabilities" means all exceptional children except those identified as gifted.

Note: See "Age Range for Special Education Services" (below).

AGE RANGE FOR SPECIAL EDUCATION SERVICES

A free appropriate public education must be available to all children with disabilities between ages 3 and 21. However, this requirement does not apply with respect to children ages 3-5 and 18-21 if the requirement is inconsistent with law, practices, and court orders in the state.

Basically, the Kansas compulsory attendance law applies at ages 7-16. However, insofar as this law applies to exceptional children (other than gifted), the compulsory attendance age range, referred to as "school age," is

1-5

IDEA -- Federal Law

Another provision of the law sets as a criterion for a state's eligibility for federal preschool grants that the state provide special education services for children with disabilities who are ages 3 to 5.

Other provisions of the law promote both early intervention programs for children from the time of birth and educational and other programs for youth as they exit from the public school system.

Kansas Law

age 3 to and including the school year in which the child with disabilities completes the local curriculum or reaches age 21, whichever occurs first.

A school district must continue to provide special education and related services for the balance of the school year to a person with a disability who reaches age 21, even though the person no longer is required to attend school.

State Board of Education rules and regulations require that gifted services be made available to children at the age the district provides educational services to nonexceptional children (age five -- kindergarten) through age 21 or completion of the local curriculum, whichever occurs first, but such children are not required to attend school at that time. They are covered in the general compulsory attendance provision.

These special education services age ranges are fixed by State Board of Education rules and regulations in accord with explicit statutory authority for the Board to do so.

For younger children -- those under age 6 -- eligibility for early childhood special education services can be based on developmental delays. Such delays would include a child who is at least 1.5 standard deviations below the mean on a standardized diagnostic instrument in one or more of the following areas: cognitive, adaptive behavior, communication, motor, or socio-emotional development; or who requires special education and related services when test results are unreliable or inconclusive; or who has a diagnosed condition that has a high probability of resulting in the need for special education and related services. The need for these special education services may not be based on environment, economic disadvantage, or cultural differences.

Note: Relative to state funding for special education services, the law permits school districts to provide special education services to children regardless of age. When they do so pursuant to state-approved programs, they are entitled to receive state special education categorical aid. For purposes of the school finance law, preschool children who are at least three years old but who are not old enough to attend kindergarten and who are receiving special education

1-10

services are counted in the district's enrollment at 0.5 full-time equivalent pupil.

INDIVIDUALIZED EDUCATION PROGRAM

The "individualized education program" (IEP) is a written statement for each child with a disability. The IEP is developed in a meeting attended by a representative of the local educational agency, the teacher, the parent (or guardian) of the child, and, whenever appropriate, the child. The IEP must include:

- a statement of the present levels of educational performance of the child;
- a statement of annual goals, including short-term instructional objectives;
- a statement of the specific educational services to be provided to the child and the extent to which the child will be able to participate in regular educational programs;
- a statement of needed transition services for students -- beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting;
- the projected date for initiation and anticipated duration of services; and
- appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

This concept is not mentioned specifically in the Kansas statutes. It is contained in the State Board of Education's rules and regulations and, thus, is an integral part of the Kansas special education program.

Inasmuch as the Kansas law mandates services for gifted children, the IEP concept also is applied to them.

1-1

LEAST RESTRICTIVE ENVIRONMENT

A state must establish procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

This concept is not specifically identified in the Kansas statutes. It is, however, implemented through State Board of Education regulations designed to meet the federal requirement.

STATE RESPONSIBILITY

The state education agency is responsible for carrying out the special education program requirements of the federal law.

All educational programs for children with disabilities are under the general supervision of persons responsible for educational programs for children with disabilities in the state educational agency and must meet the standards of the state educational agency.

These responsibilities principally are carried out by local school districts and by the various special education cooperative arrangements. In the event that these agencies fail to meet the requirements of the federal law, it becomes the state's responsibility to secure the needed services.

(The law notes that the placement of this responsibility with the state agency does not limit the responsibility of noneducational agencies to provide or pay for some or all costs of free appropriate public education to children with disabilities.)

School districts and specified SRS institutions are made responsible for providing special education services to exceptional children, as defined by law. School districts are afforded several options for providing services, including providing the services at the school; in the home, hospital, or other facility; through contract with another school district; through cooperative agreements with one or more other school districts; or through contracts with an accredited nonprofit corporation or any public or private institution within or without the state which has proper special education services for exceptional children.

Special education services provided by school districts must meet State Board of Education standards and requirements and school district contractual arrangements operate in accord with State Board of Education approval.

DUE PROCESS

The law contains extensive due process protections which are designed to ensure that children with disabilities have appropriate access to special education services.

A. Protections. The law provides the following protections for a child with a disability:

- an opportunity for the parent or guardian of a child with a disability to (1) examine all relevant records concerning identification, evaluation, and educational placement of the child and the provision of free appropriate public education of the child, and (2) obtain an independent educational evaluation of the child;
- procedures to protect a child's rights when the child's parent or guardian is not known or is unavailable or when the child is a ward of the state, including assignment of an individual (not an employee of the state educational agency, local educational agency, or other unit involved in the education or care of the child) to act as a surrogate parent or guardian;
- written prior notice to the parent or guardian whenever the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of free appropriate public education to the child;
- procedures to assure that the notice (above) fully informs the parent or guardian in such person's native language (unless it clearly is not feasible to do so); and
- the opportunity to present complaints concerning matters of identification, evaluation, or educational placement of the child or the free appropriate public education of the child.

In general, Kansas statutory due process procedures have been tailored to meet the due process requirements contained in the federal law.

A. Protections. A child or the child's lawful custodian has the right of a hearing before the child is:

- excluded, reassigned, or transferred from regular classes on the grounds that the child is exceptional and cannot materially benefit from the regular program; or
- placed in, transferred to or from, or denied placement in special education services.

When such an action is proposed, written notice must be provided which:

- describes the proposed action,
- informs the lawful custodian of the right to consent to or object to the proposed placement action within 30 days of receipt of notice and receive a hearing on the matter,
- informs the custodian of any free or low-cost legal or other relevant services available in the area, and
- is written in the principal language of the custodian (or is communicated in some other manner as may be necessary).

Hearings and reviews are to be provided at no cost to the child or the child's lawful custodian. The local level hearing is paid for by the local agency.

b-1

IDEA -- Federal Law

Whenever a complaint is received from a parent or guardian (as described above), the parent or guardian must be given opportunity for an impartial due process hearing conducted by a state educational agency or by the local agency, as determined by state law. If the hearing is conducted by a local agency, the parent or guardian is entitled to appeal the result of the hearing to the state education agency for review. An employee of the agency involved in the child's care may not conduct the hearing.

B. Hearing Levels. If the hearing is conducted by the local education agency, a party aggrieved by the findings and decision may appeal to the state educational agency to conduct an impartial review of the hearing. The officer who conducts the review must make an independent decision upon completion of the review.

The results of administrative hearings may be appealed to a state court of competent jurisdiction or to a U.S. district court. The court:

- receives the records of the administrative hearing;
- hears additional evidence at the request of a party;
- bases its decision on the preponderance of the evidence; and
- grants the relief it deems appropriate.

(A court may award reasonable attorneys' fees as part of the costs to the parents or guardian of the child with a disability who is the prevailing party.)

Kansas Law

B. Hearing Levels. The due process procedure includes a hearing at the school district level to be decided by a hearing officer and, upon appeal, a review of the hearing at the state level conducted by a reviewing officer designated by the State Board of Education.

The local level hearing must be held not later than 30 days from the date of the hearing request. The child and the custodian are to be notified in writing of the time and place of the hearing at least five days before the hearing. The hearing officer must render a decision within ten days after conclusion of the hearing.

The decision of the hearing officer may be appealed to the Commissioner of Education not later than ten days after receipt of the local agency hearing result. The local hearing and decision are then reviewed by a reviewing officer appointed by the State Board not later than 20 days after the notice of appeal is filed. The reviewing officer:

- examines the record of the hearing;
- determines if hearing procedures were in accord with the requirements of due process;
- affords the parties an opportunity for oral or written argument, or both;
- seeks additional evidence, if necessary;
- renders a decision on the appeal not later than five days after completion of the review; and

C. Administrative Due Process Hearing Rights. For purposes of administrative due process hearings, the following rights are specified:

- to be advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- to present evidence and confront, cross-examine, and compel the attendance of witnesses;
- to receive a written or electronic verbatim record of the hearing; and
- to receive written findings of fact and decisions (decisions made available to the state advisory committee required under another section of the law).

- sends written notice of the decision on the appeal to the parties.

The statute provides that any action of a reviewing officer is subject to review in accord with the act for judicial review and civil enforcement of agency actions.

C. Administrative Due Process Hearing Rights. The law specifies the following rights that are to be afforded the parties in a due process hearing:

- to have counsel or an advisor of choice present and to receive advice therefrom;
- for the child and the custodian to be present at the hearing;
- to hear and read the full report of the testimony of witnesses responsible for recommending the proposed action and that of any other material witness;
- to confront and cross-examine witnesses;
- to present witnesses in person or testimony by affidavit, including expert medical, psychological, or educational testimony;
- for the child or custodian to testify and give reasons for opposition to the proposed action;
- to prohibit presentation of evidence at the hearing that has not been disclosed to the other party at least five days prior to the hearing;
- to an orderly hearing;
- to a fair and impartial decision based on substantial evidence; and

111

D. Status of Child During the Due Process Procedure. Unless the parent or guardian and educational agency mutually agree, the child remains in the current educational placement during the time the due process procedure is occurring. If there is an application for admission of the child to a public school, the child will be placed in the public school program until proceedings are completed.

If the child is determined to have brought a weapon to school (as "weapon" is defined under the Gun-Free Schools Act of 1994), the child may be placed in an interim alternative education setting for not more than 45 days. An IEP team determines the nature of the alternative education setting.

- to a record of the hearing by mechanical or electronic recording or by a court reporter.

D. Status of Child During the Due Process Procedure. No child placement action is to be taken or changed during the hearing and review process without the child's custodian's written consent.

STATE PLANS

The key for determining state compliance with the federal law is the preparation and maintenance of a state plan for special education services. The plan must:

- include policies and procedures to ensure that federal funds are spent in accord with the requirements of federal law;
- ensure that funding received under certain other federal programs will be utilized only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities;
- describe a personnel development system consistent with requirements of the federal law, including a description of activities to ensure an adequate supply of qualified special education and related services

A state plan is required. The plan, which is drawn from federal law, state statutes, and state rules and regulations, at the minimum, addresses the requirements of the federal law.

The State Board is required by statute to adopt rules and regulations necessary to implement and give effect to the State Plan. These rules and regulations must include the following:

- provisions for establishment, maintenance, and supervision of special education services in school districts and state institutions;
- prescribed courses of study and curricula necessary to meet requirements for approval of special education services;

1-12

IDEA -- Federal Law

- personnel and a description of the activities of the state to ensure that special education personnel are appropriately and adequately prepared;
- assure that provision has been made for children with disabilities who are attending private elementary and secondary schools or facilities to receive special education services assistance, and that such services are provided at no cost to the parents when the children have been referred to such a facility by the state or by a local education agency as a means of meeting the special education services requirement;
 - include procedures to assure that the state will seek to recover federal funds spent on children determined to be erroneously classified;
 - ensure that the control of funding under the program and property derived from it reside with a public agency;
 - provide for the collection of information and production of reports as required by the Secretary of Education and for keeping records necessary for verifying reports and disbursement of federal funds;
 - provide reasonable notice and the opportunity for a hearing before taking final action on a local agency's funding application;
 - assure that federal funds will not be commingled with state funds and that federal funds will supplement and not supplant other funds;
 - provide federal funds fiscal accounting reporting consistent with federal requirements;
 - conduct evaluation of programs (annually at the minimum) for effectiveness in meeting the educational needs of children with disabilities;
 - provide for a state advisory panel composed of individuals involved in or concerned with the education of children with disabilities to advise the state educational agency on the unmet needs of children with disabilities within the state, comment on rules and regulations proposed

Kansas Law

- criteria for screening, diagnosis, and certification of exceptional children;
- definitions of various categories of exceptionality;
- implementation dates of special education services for various categories of exceptionality;
- standards for special education services to be received by each of the several categories of exceptional children;
- standards on requirements for qualifications of persons as hearing officers;
- selection of hearing officers when the Secretary of SRS is responsible for conducting a hearing; and
- selection, qualification, and training of education advocates.

The rules and regulations adopted by the State Board to give effect to the State Plan must be incorporated by reference in the State Plan.

1-13

IDEA -- Federal Law

Kansas Law

by the state agency and on fund distribution procedures, and assist in developing and reporting special education data and evaluations;

- set forth policies and procedures for interagency agreements between the state educational agency and other state and local agencies to define the financial responsibilities of such agencies and resolve interagency disputes;
- set out policies and procedures concerning standards to ensure that personnel are appropriately and adequately prepared and trained;
- assure smooth transition for children in an early intervention program for infants and toddlers to preschool programs; and
- assure that local education agencies submit applications to the state education agency for funding that meet federal requirements.

(Many of these local agency requirements include assurances that, in essence, affirm that all aspects of the federal law are being properly addressed.)

THE REHABILITATION ACT AND AMERICANS WITH DISABILITIES ACT -- FEDERAL LAWS

Access to Public Programs and Services -- Other Federal Laws

A provision of the federal Rehabilitation Act (29 U.S.C.A. §§ 794) states that no person with a disability shall, solely because of the disability, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance. Among others, this Act applies to state and local governments, including local education agencies.

7-1-1

A provision of the Americans With Disabilities Act defines the term "qualified person with a disability," as a person with a disability "who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." Another provision prohibits a qualified individual with a disability from being excluded from participation in or being denied the benefits of services, programs, or activities of a public entity or be subjected to discrimination by the entity (42 U.S.C.A. §§ 12131, 12132).

Both acts provide for use of enforcement provisions that are found in the Rehabilitation Act and the Title VI of Civil Rights Act of 1964. Among other things, the enforcement mechanism provides for the award of attorney's fees to the prevailing party.

1-15

ATTACHMENT 1

RELATED SERVICES*

The regulation specifies that the term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

The terms used in this definition are defined as follows:

- *Audiology* includes:
 - Identification of children with hearing loss;
 - Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
 - Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;
 - Creation and administration of programs for prevention of hearing loss;
 - Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and
 - Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- *Early identification* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- *Medical services* means services provided by a licensed physician to determine a child's medically related disability which results in the child's need for special education and related services.
- *Occupational therapy* includes:

*Source: 34 CFR § 300.16, July 1, 1995.

- Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
- Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
- Preventing, through early intervention, initial or further impairment or loss of function.
- *Parent counseling and training* means assisting parents in understanding the special needs of their child and providing parents with information about child development.
- *Physical therapy* means services provided by a qualified physical therapist.
- *Psychological services* include:
 - Administering psychological and educational tests, and other assessment procedures;
 - Interpreting assessment results;
 - Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.
 - Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
 - Planning and managing a program of psychological services, including psychological counseling for children and parents.
- *Recreation includes:*
 - Assessment of leisure function;
 - Therapeutic recreation services;
 - Recreation programs in schools and community agencies; and
 - Leisure education.
- *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students

with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

- *School health services* means services provided by a qualified school nurse or other qualified person.
- *Social work services in schools* include:
 - Preparing a social or developmental history of a child with a disability;
 - Group and individual counseling with the child and family;
 - Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and
 - Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.
- *Speech pathology* includes:
 - Identification of children with speech or language disorders;
 - Diagnosis and appraisal of specific speech or language disorders;
 - Referral or medical or other professional attention necessary for the habilitation of speech or language disorders;
 - Provisions of speech and language services for the habilitation or prevention of communicative impairments; and
 - Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- *Transportation* includes:
 - Travel to and from school and between schools,
 - Travel in and around school buildings, and
 - Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

EXCERPT FROM CFR

Comment. With respect to related services, the Senate Report states:

The Committee bill provides a definition of *related services*, making clear that all such related services may not be required to each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions. (Senate Report No. 94-168, page 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual states. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon state standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

ASSISTIVE TECHNOLOGY DEVICES AND SERVICES*

These definitions of assistive technology devices and services were added to the law in 1990. The statutes does not explicitly list assistive technology devices or services as *related services*. Presumably, the new provisions are directed toward broadening services provided to children with disabilities in the school setting.

An *assistive technology device* is an item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

An *assistive technology service* is a service that directly assists a person with a disability in the selection, acquisition, or use of an assistive technology device. These services include the evaluation of the needs of a person with a disability, including a functional evaluation of the person in the person's customary environment; providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for persons with disabilities or their families; and training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of persons with disabilities.

* Source: 20 U.S.C.A. §1401 (a) (25) and (26).

CHILDREN WITH DISABILITIES*

As used in this regulation, the term *children with disabilities* means those children evaluated in accordance with §§ 300.530-300.534 as being mentally retarded, hearing impaired (including deafness), speech or language impaired, visually impaired (including blindness), seriously emotionally disturbed, orthopedically impaired, autistic, traumatic brain injured, other health impaired, deaf-blind, and multiply disabled who because of those impairments need special education and related services.

The terms used in this definition are defined as follows:

- *Autism* means a developmental disability significantly affecting verbal and nonverbal communications and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance (as defined herein).
- *Deaf-Blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
- *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.
- *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
- *Mental retardation* means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.
- *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

*Source: 34 CFR § 300.7, July 1, 1995.

- *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (*e.g.*, clubfoot, absence of some member, *etc.*), impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis, *etc.*), and impairments from other causes (*e.g.*, cerebral palsy, amputations, and fractures or burns that cause contractures).
- *Other health impairment* means having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes that adversely affects a child's educational performance.
- *Serious emotional disturbance* is defined as follows:
 - The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance --
 - An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - Inappropriate types of behavior or feelings under normal circumstances;
 - A general pervasive mood of unhappiness or depression; or
 - A tendency to develop physical symptoms or fears associated with personal or school term problems.
 - The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have a serious emotional disturbance.
- *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

- *Speech or language impairment* means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child's educational performance.
- *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.
- *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Kansas State Board of Education

120 S.E. 10th Avenue, Topeka, Kansas 66612-1182

January 23, 1996

TO: Senate Education Committee

FROM: Dale M. Dennis, Interim
Commissioner of Education

SUBJECT: Special Education Financial Data

We appreciate the opportunity of sharing the following information concerning special education funding.

SPECIAL EDUCATION EXPENDITURES AND REVENUE

This chart provides a breakdown of the special education expenditures for all special education children, including gifted, for Fiscal Year 1992 through Fiscal Year 1996 (estimate). Information provided includes total expenditures, federal aid, state aid, contracts with state institutions, local resources, and percent of resources. In addition, we have shown the transfers which school districts have made to their special education fund during these years.

As many of you are aware, when special education was mandated by the federal government, federal funds were supposed to be approximately 40 percent; however, the mandate has only been funded at approximately the 7 percent level.

EXPLANATION OF FEDERAL FUNDS

This chart provides an explanation of federal funds and the amount per child each school district receives for students enrolled in grades one through twelve (6 years of age through completion of program or age 21) and the amount per child each district receives for students enrolled in preschool (ages 3 to 5).

As you will notice, we have broken down the total amounts by administration, special projects, and pass through funds.

HEADCOUNT ENROLLMENT

This chart provides a breakdown of the headcount enrollment for the past five years and the percentage of special education students, gifted students, and total exceptional students are of the total enrollment.

Dale M. Dennis
Deputy/Assistant Commissioner
Division of Fiscal Services and Quality Control
(913) 296-3871
Fax No. (913) 296-7933

SENATE EDUCATION
1-25-96
ATTACHMENT 2

Special Education Expenditures & Revenue

1991-92 through 1995-96

	1991-92	Percent of each Revenue	1992-93	Percent of each Revenue	1993-94	Percent of each Revenue	1994-95	Percent of each Revenue	1995-96 ¹	Percent of each Revenue
Total Special Educ. Expenditures	\$250,528,682		\$281,213,997		\$305,736,171		\$325,608,815		\$343,098,257	
State Categorical Aid	- 121,077,544	48.3	- 149,025,559	53.0	- 149,025,642	48.8	- 177,289,077	54.5	- 185,816,131	54.1
Contracts with State Institutions	- 4,788,000	1.9	- 4,800,000	1.7	- 5,000,000	1.6	- 5,000,000	1.5	- 5,000,000	1.5
Federal IV-B Funds minus administration	- 18,992,687	7.6	- 20,362,546	7.2	- 21,157,190	6.9	- 21,561,743	6.6	- 24,317,809	7.1
Miscellaneous Revenue ²	- 8,559,150	3.4	- 5,783,117	2.1	- 8,248,998	2.7	- 9,464,550	2.9	- 11,453,766	3.3
Local Revenue (Transfers)	\$ 97,111,301	38.8	\$101,242,775	36.0	\$122,304,341	40.0	\$112,293,445	34.5	\$116,510,551	34.0
Actual Transfers (GF and SGF)	\$ 93,437,441		\$101,060,931		\$102,037,880		\$120,342,951		\$115,431,623	

¹ Estimated

² Includes interest on idle funds and other local revenue.

2-2

VI-B Funding Allocation

FY92-FY96

(Administration, Special Projects, Pass Through)

Federal funds are generated based on the number of students in the State receiving special education and related services and reported on the December 1 child count. Basic grant funds are provided to serve students ages 3-21. Additional funds are allocated to support the additional requirements for preschool students ages 3-5. The purpose of this grant is: (a) to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs; (b) to ensure that the rights of children with disabilities and their parents are protected; (c) to assist States and localities to provide for the education of all children with disabilities; and (d) to assess and ensure the effectiveness of efforts to educate those children.

Administration* Up to 5% of the federal allocation may be used to support state level staff which provide technical assistance and support to LEAs.

Special projects** Up to 20% may be used to support the state in meeting all state and federal requirements. Kansas activities include a state-level competitive grant program to LEAs to support innovative practices for the improvement of special education services. Funds are allowed for carrying out monitoring visits to LEAs to assure compliance with state and federal requirements, statewide staff development activities to improve skills in providing special education services to children and families, and the development and dissemination of resources to support service delivery.

Pass through *** Federal law requires that at least 75% of the total grant award must flow through to local education agencies based on the number of students receiving special education services. The amount remaining after the administration (5%) and the special project funds (up to 20%) are deducted, is divided by the total number of students with disabilities receiving special education to determine a per child amount.

<u>Admin*</u>	<u>Special Projects**</u>	<u>Pass Through***</u>	<u>TOTAL</u>
FY96 \$1,237,808 (5%)	\$3,373,480 (13%) (2,899,837 grants to LEAs)	\$20,944,329 (82%) (\$350 per child) (\$600 preschool child)	\$25,555,617
FY95 \$ 1,134,828 (5%)	3,373,573 (15%) (2,732,614 grants to LEAs)	18,188,170 (80%) (\$330 per child) (\$575 preschool child)	22,696,571
FY94 \$ 1,113,535 (5%)	3,718,239 (17%) (2,681,147 grants to LEAs)	17,438,951 (78%) (\$320 per child) (\$585 preschool child)	22,270,725
FY93 \$ 1,071,712 (5%)	3,830,327 (18%) (2,286,661 grants to LEAs)	16,532,219 (77%) (\$315 per child) (\$600 preschool child)	21,434,258
FY92 \$ 999,615 (5%)	3,854,447 (20%) (2,488,058 grants to LEAs)	15,138,240 (75%) (\$305 per child) (\$375 preschool child)	19,992,302

STATE TOTALS FOR FISCAL YEARS BY USD

	FY 91 December 89	FY 92 December 90	FY 93 December 91	FY 94 December 92	FY 95 December 93	FY 96* December 94
Head Count Enrl	430864	437034	445390	448911	453361	460905
Sp. Ed.Head Count	40881	42543	44237	45994	47489	51665*
Gifted Head Count	13000	13171	13410	14052	14052	14466
Total Exceptional Children	53881	55714	57647	60046	61541	66131
% Sp.Ed.	9.48	9.73	9.93	10.24	10.47	11.20
% Gifted	3.01	3.01	3.01	3.13	3.09	3.13
% Except	12.49	12.74	12.94	13.37	13.56	14.33

*Beginning with Fiscal Year (FY) 96, all students who had previously been served under Chapter 1 of ESEA for students with disabilities have been incorporated into Part B of IDEA.

1-9

ESTIMATED SPECIAL EDUCATION EXCESS COSTS—FY 1997

FY 1995 ACTUAL EXPENDITURES **325,608,815**

FY 1996 ESTIMATE

FY 1995 Actual			325,608,815
Percent Inc. (based on teachers' salaries)	2.75%		8,954,242
Added Teachers No./Amt.	200	42,676	8,535,200
EST. TOTAL FY 1996 EXPENDITURES			343,098,257

FY 1997 PROJECTION—SPECIAL EDUCATION EXPENDITURES AND EXCESS COSTS BASED ON CURRENT LAW

Est. FY 1996 Costs			343,098,257
Percent Inc. (based on teachers' salaries)	2.25%		7,719,711
Added Tchrs. No./Amt.	200	43,636	8,727,242
PROJECTED FY 1997 TOTAL EXPENDITURES			359,545,210

EXCESS COST COMPUTATION

Projected Expenditures			359,545,210
Less: Avg. Per Pupil Cost of Regular Ed. (\$4,693)*			
times 20,578 FTE Special Ed. Pupils			
(except SRS residents):			96,572,554
Less: Fed. Aid from State Dept. of Ed.			23,000,000
Less: SRS Contribution			5,000,000
FY 1997 EXCESS COST—100 PERCENT			234,972,656

**EXHIBIT:
ESTIMATED EXCESS COST FUNDING FY 1997**

Percent of Excess Cost	Amount (THOUSANDS)	Inc . Over FY 1996 (a) (THOUSANDS)	Teach. Unit Amount (b)
@100 Percent	234,973	49,157	24,755
@95 Percent	223,224	37,408	23,329
@90 Percent	211,475	25,659	21,903
@85 Percent	199,727	13,911	20,478
@80 Percent	187,978	2,162	19,052
@75 Percent	176,229	(9,587)	17,626
@70 Percent	164,481	(21,335)	16,200
@65 Percent	152,732	(33,084)	14,774

* Computed as follows: est. unweighted FTE in projection year, plus est. current year low enrollment, correlation, new facilities, and declining enrollment weights times BSAPP and plus the projection year Local Option Budget. This sum is divided by the projection year unweighted FTE enrollment.

- (a) Actual FY 1996 appropriation: 185,816,131
 - (b) For FY 1997, this amount is computed by dividing the amount of the approp. remaining after amounts for "catastrophic" state aid and transportation reimbursements have been paid by the number of FTE teaching units.
- Amounts are in thousands:
- | | |
|--------------------------------|---------|
| Est. Catastrophic State Aid: | 1,500 |
| Est. Transportation Reimb.: | 29,502 |
| Est. Actual FTE Teaching Units | 8,239.5 |

Prepared by: Legislative Research Department, Division of Financial Services--State Department of Education and Division of Budget.
November 13, 1995

NOTE: KSDE 11/13 EST. OF CURRENT FY 1996 EXCESS COST FUNDING—83.2%.

SENATE EDUCATION
1-25-96
ATTACHMENT 3