

Approved: 2-13-97
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 28, 1997 in Room 519-S of the Capitol.

All members were present.

Committee staff present: Ben Barrett, Director, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Mark Tallman, Kansas Association of School Boards

Others attending: See attached list

Mark Tallman, Kansas Association of School Boards, appeared before the committee with a request for a bill introduction that would allow a non-renewal date of August 1st for persons who have taken family/medical leave on May 1st or prior to that calendar year.

Representative Empson made a motion to have the request introduced as a committee bill. Representative Shore seconded the motion. The motion carried.

Ben Barrett, Director, Legislative Research Department, appeared before the committee and gave a briefing on special education. In the early 1970's the federal court made it clear that schools owed students the equal protection of law without discrimination on the basis of disability. (Attachment 1)

In 1972, in *Mills v. Board of Education*, seven children with a variety of mental and behavioral disabilities brought suit against the District of Columbia public schools, which had refused to enroll some students because of budget constraints. The U.S. District Court ruled that school districts are constitutionally prohibited from deciding that they had inadequate resources to serve children with disabilities because the equal protection clause of the Fourteen Amendment would not allow the burden of insufficient funding to fall more heavily on children with disabilities than on other children. Children with disabilities had an equal right to public education offered in a form that was meaningful for them, and when the school considered a change in their status the children were entitled to full procedural protection, including notice of proposed changes, access to school records, a right to be heard and to be represented by legal counsel at hearings to determine changes in individual programs, and regularly scheduled status reviews. All of these protections were eventually incorporated into Public Law 94-142, enacted in 1975 and known as Individuals with Disabilities Act (IDEA).

Although IDEA requires that all students with disabilities receive a free, appropriate public education and provides a funding mechanism to help with the costs of offering the programs, states are not required to participate in IDEA. In *Smith v. Robinson*, the Supreme Court explained that IDEA is a "comprehensive scheme set up by Congress to aid the states in complying with the constitutional obligations to provide education for children with disabilities," not a legislatively created mandate to serve children. While the federal government can provide up to 40% of the funding for providing special education services, they usually fund in the range of 7%.

"Special Education" is defined by the federal government as a program that is specially designed, at no cost to the 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, other settings and related services. The State of Kansas defines "Special Education Services" as programs for which specialized training, instruction, programming techniques, facilities, and equipment may be needed for the education of exceptional children. The statute does not use the term "related services," but the State Board of Education regulations do.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION, Room 519-S Statehouse, at 3:30 p.m. on January 28, 1997.

The legislature each year appropriates a sum of money for special education services. Before the main distribution is made the following amounts are taken from the top:

80% of travel allowances paid to special teachers

80% of travel expenses for exceptional children

80% of expenses incurred for the maintenance of an exceptional child at some place other than the child's residence, not to exceed \$600 per child, per year

An amount per full-time equivalent (FTE) special teacher based on a diversion of the amount of the state appropriation remaining after subtracting the entitlements in the above by the number of FTE special teachers. For this purpose, one full-time paraprofessional is counted as .4 FTE special teacher.

The committee meeting adjourned at 5:00 p.m. The next meeting is scheduled for January 29, 1997.

HOUSE EDUCATION COMMITTEE GUEST LIST

DATE: January 28, 97

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NAME	REPRESENTING
<i>[Signature]</i> Doug Bowman	K Dept of Ed KS Interagency Coord. Council
Jane Rhys	KS Council on Dev. Disabilities
Bob Witzman	KASEA
<i>[Signature]</i> Kle Goodie	KASEA
Bennie Koch	Wichita Area Chamber
Ken Bahr	Hays USD #489
Josie Torres	Families Together
Craig Grant	KNEA
<i>[Signature]</i> Ann Miller	<i>[Signature]</i>
Joe Chase	KNEA
Jacque Oakes	SDE
David Thomason	SRS
Bob Harder	MPS
<i>Katie Sparks</i>	<i>DOB</i>
Mark Callinan	IASD
Juan Briggs	Topeka Ind. Living Resource Ctr.
<i>[Signature]</i> Liz Hill	INTERN
<i>[Signature]</i> Lynn Egan	Intern

Patrick A Teric & Central Policy Research Fd
of KS

September 24, 1996

To: Special Committee on School Finance

Re: Special Education — Selected Information on the Special Education
Services Mandate and Special Education Funding Issues

The information included in the memorandum is excerpted from three recently published articles, all of which are contained in the document: *The Future of Children: Special Education for Students with Disabilities*, David and Lucille Packard Foundation, Vol. 6, No. 1, Spring 1996.

The following material is focused on key elements of the legal basis for the requirement of public education to provide special education services, various special education funding issues, and current trends in special education funding.

Legal Basis for Special Education Services Requirements *

Litigation Determining Constitutional Rights to Education, 1971-1973

In the span of a few years (1971 through 1973), the federal courts made it clear that schools owed students the equal protection of the law without discrimination on the basis of disability, just as the Supreme Court had ruled in *Brown v. Board of Education* in regard to race. The due process clause of the Fourteenth Amendment was interpreted to give parents specific rights to prior notice, to discuss changes in a child's education plan before they occurred, and to appeal decisions made by school districts. Two critical cases laying out these rights were *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* and *Mills v. Board of Education*.

The 1971 case of *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* contested a state law that specifically allowed public schools to deny services to children "who have not attained a mental age of five years" at the time they ordinarily would enroll in first grade. Under a consent decree, the state agreed to provide full access to a free public education to children with mental retardation up to age 21. That case also established the standard of appropriateness — that is, that each child be offered an

* From: "The Legislative and Litigation History of Special Education," Edward W. Martin, Reed Martin, and Donna L. Ferman. The excerpted material, for the most part, is directly quoted. A copy of the entire article will be made available upon request.

House Education
1-28-97
Attachment 1

education appropriate to his or her learning capacities — and established a clear preference for the least restrictive placement for each child.

In the following year, in *Mills v. Board of Education*, seven children between the ages of eight and 16 with a variety of mental and behavioral disabilities brought suit against the District of Columbia public schools, which had refused to enroll some students and expelled others, solely on the basis of their disability. The school district admitted that an estimated 12,340 children with disabilities within the district's boundaries would not be served during the 1971-72 school year because of budget constraints. The U.S. District Court ruled that school districts were constitutionally prohibited from deciding that they had inadequate resources to serve children with disabilities because the equal protection clause of the Fourteenth Amendment would not allow the burden of insufficient funding to fall more heavily on children with disabilities than on other children.

The ruling in *Mills* was far-reaching. Children with disabilities had an equal right to public education offered in a form that was meaningful for them, and when the school considered a change in their status (including suspension, expulsion, reassignment, or transfers out of regular public school classes), the children were entitled to full procedural protections, including notice of proposed changes, access to school records, a right to be heard and to be represented by legal counsel at hearings to determine changes in individual programs, and regularly scheduled status reviews. All of these protections were eventually incorporated into Public Law 94-142 — enacted in 1975 and now known as the Individuals with Disabilities Act (IDEA).

Nondiscrimination — the Rehabilitation Act and the Americans with Disabilities Act

In 1973, Public Law 93-112, the Rehabilitation Act, at Section 504, provided that any recipient of federal financial assistance (including state and local educational agencies) must end discrimination in the offering of its services to persons with disabilities. Section 504 of the Rehabilitation Act, however, included no funding and no monitoring, and so was virtually ignored by local and state educational agencies for 20 years. Although parents had the right to bring suit under Section 504 as early as 1973, most preferred to pursue the administrative remedies available under Public Law 94-142.

In 1990, Congress passed the Americans with Disabilities Act (ADA), which expanded the rights of people with disabilities by outlawing discriminatory practices in employment, public accommodations, transportation, and telecommunications.

Educational Grant Program — the Education for All Handicapped Children Act

1975 Public Law 94-142, the Education for All Handicapped Children Act (since 1990 known as IDEA), requires that all students with disabilities receive a free, appropriate public education and provides a funding mechanism to help with the costs of offering the programs.

States are not required to participate in IDEA. In the case of *Smith v. Robinson*, the Supreme Court explained that IDEA is "a comprehensive scheme set up by Congress to aid the

states in complying with the constitutional obligations to provide public education for children with disabilities," not a legislatively created mandate to serve children.

IDEA authorizes funding in accordance with a formula, a key variable of which is the average per pupil expenditure for nondisabled students. The Act authorized Congress to appropriate a sum equal to 5 percent of this average per pupil expenditure in 1977, 10 percent in 1978, 20 percent in 1979, and 40 percent by 1980. Though the Act authorized funding according to this formula, the actual dollars must come through the appropriations process. In the case of Public Law 94-142, appropriations have never approached the authorization level. This funding remains at 10 percent or less today. (The figure most commonly cited seems to be 8 percent.)

Appropriate Education and the Individualized Education Program

Although Congress specified that the education provided a child must be appropriate to the need, interpreting this standard has proved difficult because of the diversity of the special education population. Neither the statutory language of IDEA, the regulations interpreting IDEA, nor court cases interpreting the law specify in detail what constitutes an appropriate education for the entire special needs population. Instead, court cases have laid out broad principles to be applied to individual circumstances.

In general, the standard for judging appropriateness is whether the child's educational program is:

- related to the child's learning capacity;
- specially designed for the child's unique needs and not merely what is offered to others; and
- reasonably calculated to confer educational benefit.

However, the entitlement is not open-ended: the child is not entitled to every service that could conceivably offer a benefit.

The requirements of appropriateness were interpreted by the Supreme Court in *Board of Education v. Rowley*. Amy, a profoundly deaf six-year-old girl, had an IQ of 122, and her parents were concerned that Amy's "energy and eagerness" were not spent in achievement but rather were used to compensate for her disability. The Court held that the total package of services furnished to Amy (which included an hour of tutoring each day from a certified teacher of the deaf and three hours of speech therapy each week) was reasonably calculated to enable her to benefit from her education. The law does not require that the Individualized Education Program (IEP) be designed to obtain the maximum possible benefit to the child; that is, the child is not entitled to every service that could conceivably confer a benefit. Rather, the Court concluded that "the basic floor of opportunity provided by [IDEA] consists of access to specialized instruction and related services that are individually designed to provide educational benefits to the handicapped child." The Court noted that IDEA "leaves to the states the responsibility for developing and executing educational programs for handicapped children" within the broad requirements of the law.

Other cases have established that the school district must consider more than just narrowly defined educational needs of the child. Socialization and mental health are legitimate and, in some cases, required goals to include in the IEP.

Conclusion

The due process and equal protection clauses of the Fourteenth Amendment protect the educational rights of children with disabilities. State law cannot override this constitutional protection. Some state laws spell out additional specific rights of children with disabilities, and some federal antidiscrimination laws, such as the ADA and Section 504 of the Rehabilitation Act, also provide important protections. However, for the purposes of understanding the obligations incumbent upon school districts, most of the law guiding current programs is spelled out in IDEA and in cases interpreting IDEA.

Special Education Financing*

Levels and Sources of Funding

Special education services are supported by a combination of local, state, and federal funds. While expenditures for special education services in the United States are known to be large, exact current expenditures are unknown. One estimate is \$31.8 billion, or 12 percent of 1995-96 expenditures for K-12 public education nationally. No more precise estimates of current national expenditures are available because the states were last required to report these amounts for the 1987-88 school year and because the last independent national special education cost study was based on 1985-86 data.

How Funds Are Used

The most recent and reliable assessment of special education expenditures, with a nationally representative sample, used 1985-86 data. It showed that, on average, expenditures for students receiving special education services were 2.3 times as great as for general education students. However, expenditures vary considerably by type of disability and the nature of the services provided.

State and Local Shares of Funding

All 50 states have provisions in their public education funding formulas that acknowledge the cost of educating special education students. In each instance, they are designed to provide

* From "Financing Special Education," Thomas B. Parrish and Jay G. Chambers. The excerpted material, for the most part, is quoted directly. A copy of the entire article will be made available upon request.

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for some share of the excess cost associated with special education. State categorical funding formulas for special education encompass a wide variety of approaches, including the following:

- reimbursing a fixed percentage of actual special education expenditures (11 states);
- pupil "weighting" systems in which special education students generate a fixed multiple of the general education pupil allocation, such as two times as much (18 states);
- systems that fund specific special education resources such as teachers (11 states); and
- fixed dollar grants per student (ten states).

The following table contains summary material indicating the type of special education funding program currently in effect among the states and whether funding system reform recently has occurred or currently is under consideration.

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TABLE
SPECIAL EDUCATION FINANCE REFORM IN THE STATES

State	Current Funding Formula	Basis of Allocation	State Special Education Dollars for Target Population Only	Implemented Reform within Last Five Years	Considering Major Reform
Alabama	Flat Grant	Special Education Enrollment	✓	✓	✓
Alaska	Pupil Weights	Type of Placement			✓
Arizona	Pupil Weights	Disabling Condition			✓
Arkansas ^a	Pupil Weights	Type of Placement	✓		✓
California	Resource-Based	Classroom Unit	✓		✓
Colorado	Flat Grant	Special Education Enrollment	✓	✓	
Connecticut	Percent Reimbursement	Actual Expenditures			✓
Delaware	Resource-Based	Classroom Unit	✓		✓
Florida	Pupil Weights	Disabling Condition			✓
Georgia	Pupil Weights	Disabling Condition	For 90% of Funds		✓
Hawaii	Pupil Weights	Placement and Condition			
Idaho	Percent Reimbursement	Actual Expenditures		✓	
Illinois	Resource-Based	Allowable Costs	✓	✓	✓
Indiana	Pupil Weights	Disabling Condition			✓
Iowa	Pupil Weights	Type of Placement			✓
KANSAS	Resource-Based	Number of Special Education Staff	✓		
Kentucky	Pupil Weights	Disabling Condition		✓	
Louisiana	Percent Reimbursement	Actual Expenditures	✓	✓	✓
Maine	Percent Reimbursement	Allowable Costs	✓		✓
Maryland	Flat Grant	Special Education Enrollment			✓
Massachusetts	Flat Grant	Total District Enrollment		✓	
Michigan	Percent Reimbursement	Allowable Costs	✓		✓
Minnesota	Percent Reimbursement	Actual Expenditures	✓		✓
Mississippi	Resource-Based	Number of Special Education Staff			✓
Missouri	Resource-Based	Number of Special Education Staff	✓		✓
Montana	Flat Grant	Total District Enrollment		✓	
Nebraska	Percent Reimbursement	Allowable Costs	✓		✓
Nevada	Resource-Based	Classroom Unit	✓		
New Hampshire	Pupil Weights	Type of Placement			✓

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State	Current Funding Formula	Basis of Allocation	State Special Education Dollars for Target Population Only	Implemented Reform within Last Five Years	Considering Major Reform
New Jersey	Pupil Weights	Placement and Condition			✓
New Mexico	Pupil Weights	Services Received			✓
New York	Pupil Weights	Type of Placement			✓
North Carolina	Flat Grant	Special Education Enrollment	✓		✓
North Dakota	Flat Grant	Total District Enrollment		✓	
Ohio	Resource-Based	Classroom Unit			✓
Oklahoma	Pupil Weights	Disabling Condition			✓
Oregon	Pupil Weights	Special Education Enrollment		✓	
Pennsylvania	Flat Grant	Total District Enrollment	✓	✓	
Rhode Island	Percent Reimbursement	Actual Expenditures			✓
South Carolina	Pupil Weights	Disabling Condition	For 85% of Funds		✓
South Dakota	Percent Reimbursement	Allowable Costs	✓	✓	✓
Tennessee	Resource-Based	Classroom Unit			✓
Texas	Pupil Weights	Type of Placement	✓	✓	
Utah ^a	Pupil Weights	Type of Placement	✓	✓	
Vermont ^b	Flat Grant	Total District Enrollment		✓	
Virginia	Resource-Based	Classroom Unit			
Washington	Resource-Based	Classroom Unit	✓		✓
West Virginia	Flat Grant	Special Education Enrollment	✓		
Wisconsin	Percent Reimbursement	Allowable Costs	✓		
Wyoming	Percent Reimbursement	Actual Expenditures			✓

TABLE KEY

Pupil Weights: Two or more categories of student-based funding for special programs, expressed as a multiple of regular education aid.

Resource-Based: Funding based on allocation of specific education resources (for example, teachers or classroom units). Classroom units are derived from prescribed staff-student ratios by disabling condition or type of placement.

Flat Grant: A fixed funding amount per student or per unit.

a) Formula amounts now frozen and are based on allocations in prior years.

b) Vermont's special education funding formula also contains a substantial percent reimbursement component.

SOURCE: Chambers, J. G., Parrish, T. B., Hikido, C. S., and Duenas, I. *Comprehensive Study for the Commonwealth of Massachusetts*. Final report. Palo Alto, California: Center for Special Education Finance, American Institutes of Research, November 8, 1995.

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Census-Based Funding

The most common currently discussed proposal for special education fiscal reform is **census-based** funding. Over the past few years, at least six states have adopted state special education funding systems that are primarily, or exclusively, based on total district enrollments (that is, census based), rather than on special education child counts.

Movement Toward Census-Based Funding at the State Level. Greater emphasis on local flexibility is a common characteristic of state reform efforts. Census-based funding generally offers the most flexibility to local school districts in their use of special education funds.

In some states, reform has resulted in a reduction in the rate of identification of special education students. This has been accomplished through innovations in local practice such as allocating resources for prereferral services and utilizing special education resources in regular education classrooms.

Generally, reform states feel that this reduction in the count of special education students is a change for the better and express concern that current federal policies run counter to their efforts. Because the IDEA allocation is based on the number of students identified for special education services (up to 12 percent), states that are serving special needs students outside the special education system are losing federal funds as their counts of identified students drop.

Movement Toward Census-Based Funding at the Federal Level. Reformers argue that the federal government should adopt a census-based approach to Part B funding. This proposal was included in the U.S. Department of Education's recommendations to Congress in relation to IDEA reauthorization proceedings. However, although this proposal is strongly supported by some states and some professional organizations, other states and organizations refused to embrace it.

Arguments For Census-Based Funding

- **Working Outside Special Education Is Less Costly.** The special education assessment and referral process is costly, and studies show that, in many instances, the tests and methods for classifying students provide little information that is useful in planning instructional programs for these students.
- **Some Students May Be Better Served Outside Special Education.** Special education programs as they traditionally have been designed tend to isolate students in more segregated placements (for example, pull-out programs or special classes). Labeling students tends to stigmatize them for the remainder of their schooling experiences and perhaps throughout their lives. Once students are placed in special education, they tend to stay in the program.

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- **Overidentification Is Now the Major Issue.** Before the passage of Public Law 94-142, large segments of the special education population were being underidentified and underserved. Now, however, states are reporting that **overidentification**, rather than **underidentification**, is their major concern.
- **Procedural Safeguards Would Remain in Place.** Movement to a census-based funding system would not jeopardize any of the procedural safeguards under IDEA. In addition, all students with disabilities would continue to be protected under Section 504 of the Rehabilitation Act and by ADA, whether they are labeled as special education students or not.

Arguments Against Census-Based Funding

- **Census-Based Federal or State Funding Would Not Be Equitable to States or School Districts with Higher Identification Rates.** Identification rates of students eligible for special education vary widely across jurisdictions. States and districts might exhibit higher percentages of special education students because of real differences in the characteristics of students that lead to disabilities. Even where student populations are comparable, states and districts may have been especially proactive in setting up programs for special needs students — census-based funding would penalize those very districts that have been most responsive to the call to identify and serve all special education students.
- **Procedural Safeguards Cannot Be Maintained if Students Are Not Identified as Having Special Needs.** Advocates argue census-based funding would create fiscal incentives to underidentify students with disabilities or to provide few services, abridging their right to a free and appropriate education.
- **Students with Disabilities Would Be Underserved.** Advocates for students with disabilities have long argued that, when categorical funding restrictions are removed, resources tend to be reallocated "to benefit the whole classroom," rather than to meet unusual individual needs.
- **A Retreat from the Traditional Federal Role of Fostering and Promoting Special Education Services Would Occur.** The federal role in special education has been one of leadership for, and protection of, students with disabilities. A census-based federal funding system would send a message to states and communities that the federal government is backing away from this position.
- **Fiscal Accountability Would Be Jeopardized.** Because funds would not be earmarked for the exclusive use of disabled students, a census-based funding system would reduce assurances of fiscal accountability at a time when such controls are seen as increasingly important by taxpayers.

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- **Current Levels of Special Education Funding Would Be Threatened.** Current levels of funding for special education services may well diminish when funds can no longer be attributed to specific special education students with legal entitlement.

Census-Based Funding — Poverty Adjustment. The census-based funding approach assumes equal incidence of students requiring special education services across jurisdictions. In contrast, the current IDEA funding formula (based on the number of identified students) and some state funding formulas are predicated on the notion that some jurisdictions serve greater numbers of special education students than others and, therefore, should receive larger allocations of federal special education aid.

It is clear that identification rates vary substantially (for example, Massachusetts has a rate more than twice that of Washington, D.C., or Hawaii), but it is unknown to what extent this reflects true differences in need. That is, there may be a marked difference between true need and the rate of identification. While the concept of allowing for varying needs in the funding formula is compelling, the number of students identified may be as much a matter of school officials' choice as of student need. If the number of identified special education students is a poor measure of true need and if such a system creates incentives for increased identification, what alternative measures might be adopted?

The most prominent suggestion appears to be that special education funding should be adjusted to reflect variations in poverty rates across jurisdictions. Substantial evidence suggests that sustained and intensive poverty results in conditions (for example, poor health and nutritional care, as well as high levels of drug and alcohol abuse for expectant mothers) that lead to larger proportions of the school-age population needing special education services. (This line of reasoning does not suggest that poverty equals disability for individual children.) What has been suggested is that special education funding could be census-based with an adjustment for variations in poverty. Such an adjustment might be equally useful at the federal and state levels.

Conclusion

The growth in special education populations and costs, along with competing demands for limited resources, has led to widespread efforts to reform special education finance. New approaches, like census-based funding, offer added flexibility to local decision makers, but the effectiveness of alternative services delivered in the general education classroom are as yet unproven.

In this era of scarce resources, increased demand for services, and heightened scrutiny of education, concepts of accountability are more important than ever. As more states, and perhaps the federal government, relax traditional accountability measures to allow for more flexibility and freedom in the use of special education funds, what will replace them? Even advocates who support enhanced flexibility in the use of special education funds express concerns about replacing traditional accountability measures with simple trust.

At the same time, traditional accountability mechanisms have been more concerned with the legal use of funds than with whether they are being used well. If accountability systems

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are devised and implemented that can clearly measure the extent to which the children for whom these dollars are intended are making educational progress, then the linkage between special education eligibility, student counts, and funding would certainly be less important. The development of such results-based accountability systems may well be one of the most critical components in the movement to revise special education finance policies.

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ATTACHMENT I

Criteria for Evaluating State Special Education Funding Formulas

Understandability

The funding system and its underlying policy objectives can be easily understood by all concerned parties (legislators, legislative staff, state department personnel, local administrators, and advocates).

The concepts underlying the formula and the procedures to implement it are straightforward and "avoid unnecessary complexity."

Equity

Student equity: Dollars are distributed to ensure comparable program quality regardless of district assignment.

Wealth equity: Availability of overall funding is not correlated with local wealth.

District-to-district fairness: All districts receive comparable resources for comparable students.

Adequacy

Funding is sufficient for all districts to provide appropriate programs for special education students.

Predictability

Local education agencies know allocations in time to plan for local services.

The system produces predictable demands for state funding.

State education agencies and local education agencies can count on stable funding across years.

Flexibility

Local agencies are given latitude to deal with unique local conditions in an appropriate and cost-effective manner.

Changes that affect programs and costs can be incorporated into the funding system with minimum disruption.

Local agencies are given maximum latitude in use of resources in exchange for outcome accountability.

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Identification Neutrality

The number of students identified as eligible for special education is not the only, or primary, basis for determining the amount of special education funding to be received.

Students do not have to be labeled to receive services.

Reasonable Reporting Burden

Costs to maintain the funding system are minimized at both local and state levels.

Data requirements, record keeping, and reporting are kept at a reasonable level.

Fiscal Accountability

Conventional accounting procedures are followed to assure that special education funds are spent in an authorized manner.

Procedures are included to contain excessive or inappropriate special education costs.

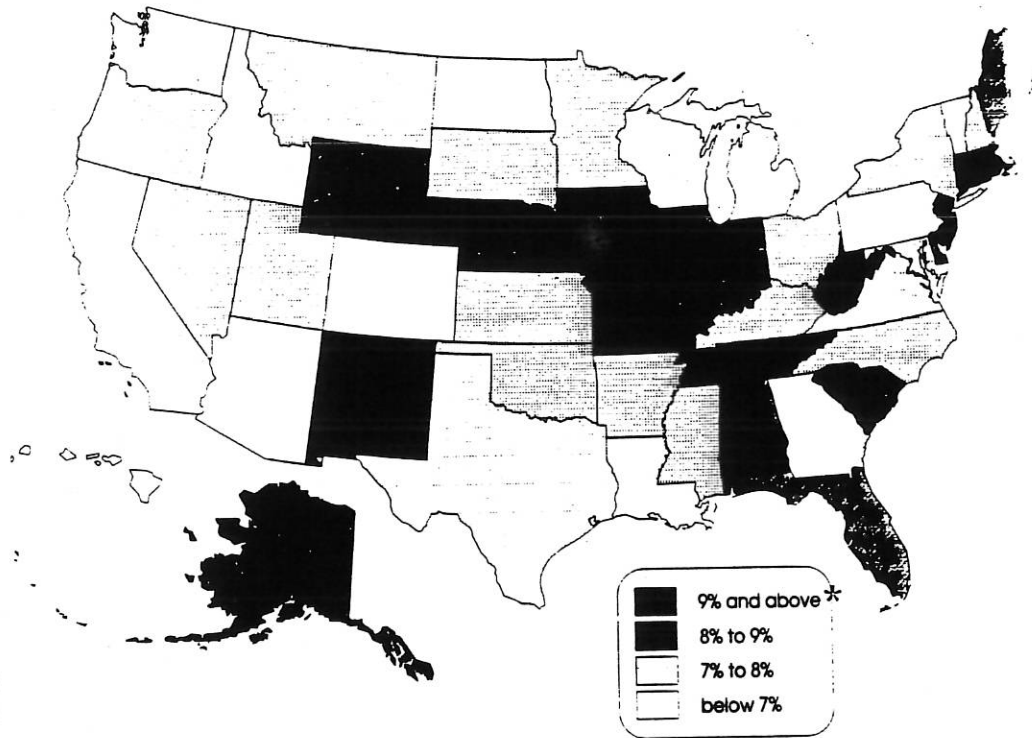
Cost-Based

Funding received by districts for the provision of special education programs is linked to the costs they face in providing these programs.

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ATTACHMENT II

Percentage of Children Participating in Federally Funded Special Education Programs, 1993-94 School Year



* 9% and above: Alaska, Connecticut, Massachusetts, New Jersey, Rhode Island, and West Virginia.

This map shows the percentage of children from age three to 21 who were served in special education programs with funding from the Individuals with Disabilities Education Act, Part B, and children from birth to age 21 served under Chapter 1 of the Elementary and Secondary Education Act.

- Nearly 8 percent of children up to age 21 received special education services nationwide in 1993-94, but there is significant variation among the states in the proportion of children who are in special education.
- Massachusetts had the highest proportion of children receiving services, with 11 percent of children enrolled in special education. Hawaii had the lowest rate, with 5 percent of children in special education.

SOURCE: Office of Special Education Programs, *Implementation of the Individuals with Disabilities Education Act: Seventeenth Annual Report to Congress*. Washington, D.C.: U.S. Department of Education, November 1995, Table AA12. Excerpted from "Children in Special Education," Eugene M. Lewit and Linda Schrumann Baker.

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Revised: September 24, 1996

To: Special Committee on Education
From: Ben F. Barrett, Associate Director
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.

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**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.

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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.

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T-1**FREE APPROPRIATE PUBLIC EDUCATION**

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

- 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.

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

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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.

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.

Basically, the Kansas compulsory attendance law applies at ages 7-16 (7-18, beginning July 1, 1997 -- subject to certain exceptions). However, insofar as this law applies to exceptional children (other than gifted), the compulsory attendance age range, referred to as "school age," is 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.

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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).

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- appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

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.

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 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

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.

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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.)

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

1-24
1-23**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.

Whenever a complaint is received from a parent or guardian (as scribed above), the parent or guardian must be given opportunity for an

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.

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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.

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 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;

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;
- 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;

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- 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 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.

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- 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.

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(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.

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.

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).

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

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
- 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.

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.

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

- ***Occupational therapy*** includes:
 - 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

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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.

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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.

- *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.

January 20, 1997

SPECIAL EDUCATION FUNDING FORMULA

Categorical State Aid Program*

State categorical aid is provided each year to school districts on the following basis:

1. 80 percent of travel allowances paid to special teachers;
2. 80 percent of travel expenses for exceptional children;
3. 80 percent of expenses incurred for the maintenance of an exceptional child at some place other than the child's residence, not to exceed \$600 per child per year; and
4. an amount per full-time equivalent (FTE) special teacher based on a division of the amount of the state appropriation remaining after subtracting the entitlements in 1-3 (above) by the number of FTE special teachers. For this purpose, one full-time paraprofessional is counted as .4 FTE special teacher. Special teachers in excess of the number of such teachers necessary to comply with the ratio of special teachers to exceptional children authorized by the State Board of Education for the school district may not be counted for aid purposes.

No distribution may be made based upon special teachers who are employed by a district and who, pursuant to a contract, perform teaching duties at the youth centers at Atchison, Beloit, and Topeka. (Beginning July 1, 1997, these institutions are known as "juvenile correctional facilities.")

The aid formula contained in the substantive law, on occasion, has been modified by appropriation action. In FYs 1976 through 1984, the Legislature placed a proviso in the line item appropriation for special education services aid for each eligible teaching unit. For FY 1985, FY 1986, and FY 1987, rather than limiting the individual teaching unit distribution, a proviso was included which limited the total amount that could be distributed for teaching unit aid. For FY 1984 only, the appropriation for special education services aid was separated into two line items -- one for special education services aid (teaching unit) and one for special

*The State Board of Education is not granted authority to reimburse school districts for travel allowance paid to special education teachers to attend meetings, inservice workshops, special institutes, and other professional meetings. Attorney General Opinion No. 81-13

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education transportation aid (for transportation of teachers and children and for maintenance of a child away from home). For FYs 1988 through 1997, a proviso prohibited special education aid distributions for homebound or hospitalized instruction unless the child also was included in one or more other areas of exceptionality. For FYs 1995 through 1997, a proviso stated that any balance in the school district's special education fund from the preceding fiscal year in excess of 20 percent of the district's estimated expenditures in the current fiscal year from the special education fund is deducted from the school district's current fiscal year special education entitlement.

(K.S.A. 72-978 and selected appropriation acts.)

Catastrophic State Aid Program

Beginning with the 1994-95 school year, a school district which has provided special education services to an exceptional child who uniquely or so severely differs from other exceptional children in physical, mental, social, emotional, or educational characteristics that the costs attributable to the provision of special education services exceed \$25,000 for the year is eligible for a grant of state moneys in an amount equal to 75 percent of the portion of the costs incurred by the district in the provision of special education services for the child in excess of \$25,000.

These grants are paid as a first claim on the special education services state categorical aid appropriation.

(K.S.A. 1994 Supp. 72-983. See also 1994 Senate Sub. for H.B. 2538, Sec. 19, 1995 S.B. 70, Sec. 2, and 1996 S.B. 95, Sec. 119.)

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ESTIMATED SPECIAL EDUCATION EXCESS COSTS--FY 1998

FY 1996 ACTUAL EXPENDITURES	345,533,124
FY 1997 ESTIMATE	
FY 1996 Actual	345,533,124
Percent Inc. (based on teachers' salaries)	2.25% 7,774,495
Added Teachers No./Amt.	200 43,159 8,631,800
EST. TOTAL FY 1997 EXPENDITURES	361,939,419

FY 1998 PROJECTION--SPECIAL EDUCATION EXPENDITURES AND EXCESS COSTS BASED ON CURRENT LAW

Est. FY 1997 Costs	361,939,419
Percent Inc. (based on teachers' salaries)	2.00% 7,238,788
Added Tchrs. No./Amt.	200 44,022 8,804,400
PROJECTED FY 1998 TOTAL EXPENDITURES	377,982,607

EXCESS COST COMPUTATION

Projected Expenditures	377,982,607
Less: Avg. Per Pupil Cost of Regular Ed. (\$4,765)* times 20,676 FTE Special Ed. Pupils (except SRS residents):	98,521,140
Less: Fed. Aid from State Dept. of Ed.	25,000,000
Less: SRS Contribution	3,400,000
FY 1998 EXCESS COST--100 PERCENT	251,061,467

**EXHIBIT:
ESTIMATED EXCESS COST FUNDING FY 1998**

Percent of Excess Cost	Amount (THOUSANDS)	Inc . Over FY 1997 (a) (THOUSANDS)	Teach. Unit Amount (b)
@100 Percent	251,061	60,546	25,831
@95 Percent	238,508	47,993	24,369
@90 Percent	225,955	35,440	22,907
@85 Percent	213,402	22,887	21,445
@80 Percent	200,849	10,334	19,983
@75 Percent	188,296	(2,219)	18,521
@70 Percent	175,743	(14,773)	17,059
@65 Percent	163,190	(27,326)	15,597

* 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 1997 appropriation: 190,515,583
- (b) For FY 1998, 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.:	27,774
Est. Actual FTE Teaching Units	8,586.0

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

November 14, 1996

NOTE: KSDE 11/14 EST. OF CURRENT FY 1997 EXCESS COST FUNDING--79.7%.

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SELECTED INFORMATION ON SPECIAL EDUCATION EXPENDITURES—FY 1983-FY 1997 (EST.)

Fiscal Year	Total Expenditures for Special Education	% Change From Prior Year	Special Education Excess Costs (100%)	% Change From Prior Year	Special Education Categorical Aid	% Change From Prior Year	Categorical Aid as a Percentage of Excess Cost	Teaching Units	% Change From Prior Year	Amount Per Teacher	% Change From Prior Year	Headcount Enrollment	% Change From Prior Year
1983	\$ 118,784,000	--	\$ 63,716,211	--	\$ 57,439,914	--	90.1%	5,149	--	\$ 9,580	--	54,296	--
1984	129,361,000	8.9%	69,522,826	9.1%	62,661,714	9.1%	90.1	5,360	4.1%	10,135	5.8%	53,615	(1.3)%
1985	143,097,000	10.6	78,282,078	12.6	70,417,874	12.4	90.0	5,493	2.5	11,210	10.6	52,650	(1.8)
1986	162,035,000	13.2	93,404,914	19.3	76,383,844	8.5	81.8	5,726	4.2	11,855	5.8	52,784	0.3
1987	166,925,502	3.0	94,006,804	0.6	76,442,840	0.1	81.3	5,759	0.6	11,298	(4.7)	54,263	2.8
1988	173,278,283	3.8	99,797,258	6.2	89,784,784	17.5	89.9	5,457*	(5.2)	14,450	27.9	55,222	1.8
1989	192,198,945	10.9	108,142,582	8.4	101,259,838	12.8	93.6	5,753	5.4	15,440	6.9	55,972	1.4
1990	214,650,002	11.7	119,625,856	10.6	113,643,059	12.2	95.0	6,132	6.6	16,200	4.9	56,599	1.1
1991	239,320,588	11.5	151,260,932	26.5	125,562,021	10.5	83.0	6,463	5.4	16,945	4.6	58,458	3.3
1992	250,528,682	4.7	157,438,559	4.1	121,077,544	(3.6)	76.9	6,568	1.6	15,800	(6.8)	59,923	2.5
1993	281,213,997	12.3	174,839,997	11.1	149,025,559	23.1	85.2	7,069	7.6	18,250	15.5	62,187	3.8
1994	305,736,171	8.7	190,235,671	8.8	149,025,642	0.0	78.3	7,424	5.0	17,400	(4.7)	63,612	2.3
1995	325,608,815	6.7	212,115,483	14.3	177,289,077	19.0	83.6	7,839	5.6	19,675	13.1	66,132	4.0
1996	343,098,257	5.4	223,369,943	5.3	185,815,281	4.7	83.2	8,186	4.4	19,825	0.8	67,613	2.5
1997 (est.)	359,545,168	4.8	234,972,656	5.2	190,515,583	2.5	81.1	8,239	0.6	19,360	(2.3)	69,170	2.0

* Paraprofessionals were counted as 0.5 FTE teaching unit through FY 1987 and as 0.4 FTE teaching unit beginning in FY 1988.

Kansas State Board of Education

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

September 24, 1996

TO: Special Committee on School Finance

FROM: State Board of Education and
Legislative Research Department

SUBJECT: Special Education

Attached you will find a table which provides the number of special education teachers and paraprofessionals that have been employed by Kansas unified school districts since the 1989-90 school year. We have also included the number of special education teachers eligible for state aid during that same period of time.

As you will recall, the number of paraprofessionals is multiplied times .4 and added to the number of teachers in computing the number of special education teachers eligible for state aid. A bar graph of this data is attached.

We have also provided a listing of the number of professionals and paraprofessionals by area of exceptionality for the same school years along with a bar graph comparing the data.

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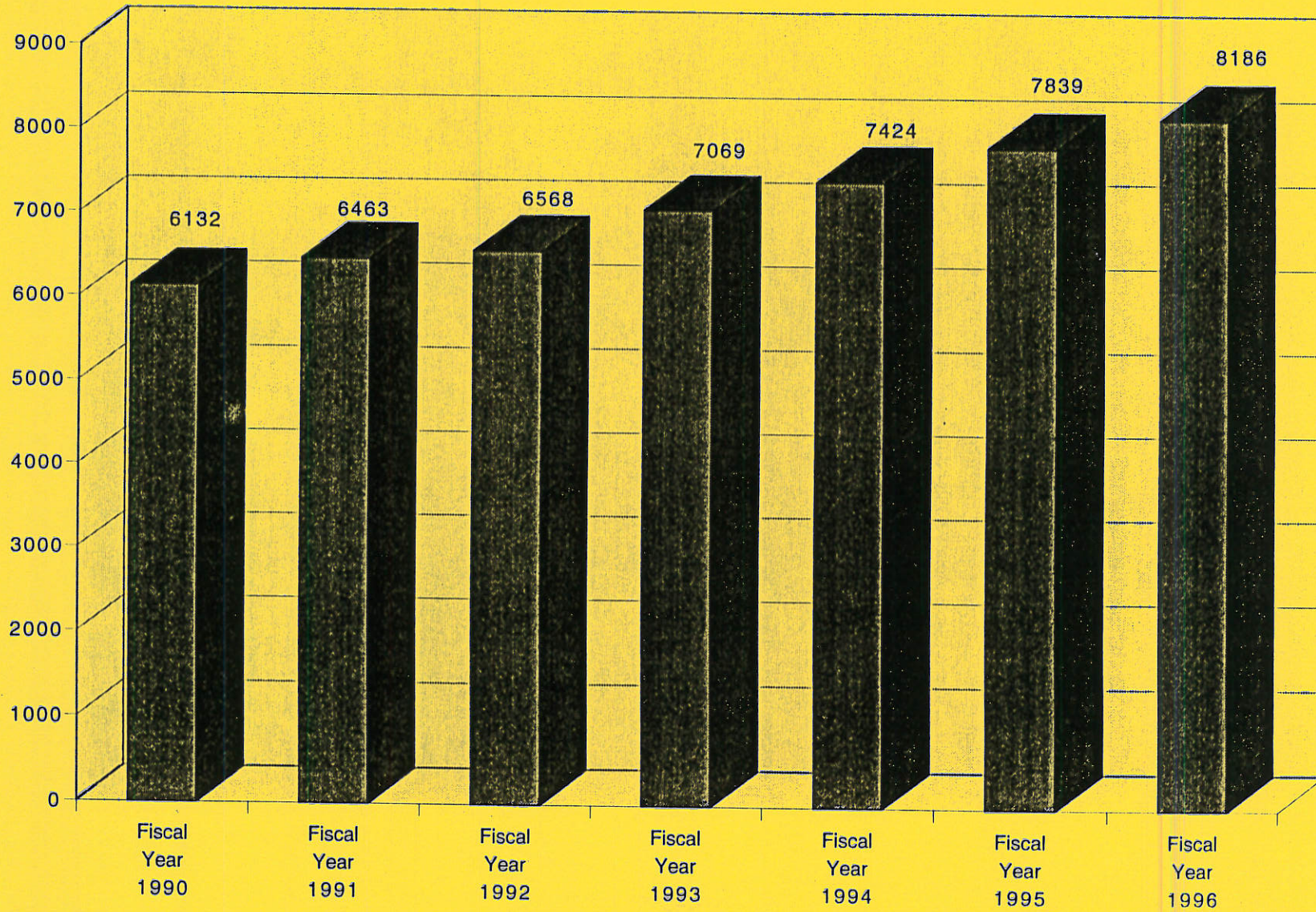
NUMBER OF SPECIAL EDUCATION TEACHERS

	<u>Professionals</u>	<u>Percent Increase</u>	<u>Paraprofessionals</u>	<u>Percent Increase</u>	<u>No. of Spec.* Teachers for State Aid</u>	<u>Percent Increase</u>
1989-90	4,815.02		3,294.72		6,132	
1990-91	5,038.99	4.7	3,560.46	8.1	6,463	5.4
1991-92	5,089.36	1.0	3,697.94	3.9	6,568	1.6
1992-93	5,322.06	4.6	4,368.61	18.1	7,069	7.6
1993-94	5,480.31	3.0	4,859.32	11.2	7,424	5.0
1994-95	5,678.37	3.6	5,399.62	11.1	7,839	5.6
1995-96	5,832.44	2.7	5,884.18	9.0	8,186	4.4
Percent Increase 1989-90 to 1995-96		21.1		78.6		33.5

*These numbers have been rounded and paraprofessionals have been computed at .4 in accordance with statutes.

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Kansas Total Special Education Teachers for State Aid Reimbursement



Kansas Total Compensated FTE by Area

AREA	Fiscal Year 1990		Fiscal Year 1991	
	Professional	Paraprofessional	Professional	Paraprofessional
01 EDUCABLE MENTAL RETARDATION	285.2	241.09	282.5	236.03
02 TRAINABLE MENTAL RETARDATION	137.3	202.42	132.6	181.94
03 EARLY CHILDHOOD	167.07	215.42	199.19	267.61
04 NURSE	44.48	3.5	51.3	6.25
05 LEARNING DISABILITY	794.89	442.26	782.21	440.41
06 HEARING IMPAIRED	71.6	115.37	73.15	130.29
07 PHYSICALLY IMPAIRED	12.7	18.5	11.35	16.7
08 GIFTED	390.86	99.06	409.56	100.01
09 BEHAVIOR DISORDER	456.84	391.8	476.79	430.91
10 VISUALLY IMPAIRED	26.37	30.48	27.93	31.74
11 SEVER MULTIPLE DISABILITIES	91.6	198.86	90	205.52
12 AUDIOLOGY	18.87	16.98	17.86	17.4
14 ADAPTIVE PE	33.24	21.98	35.85	21.53
15 PSYCHOLOGY	342.51	25.85	368.1	27.28
16 SOCIAL WORK	149.35	24.2	176.77	21.6
17 SPEECH/LANGUAGE	474.83	161.03	490.36	166.94
18 SEIMC	28.33	65.74	28.75	59.44
19 SPECIAL ED ADMINISTRATION	99.61	11.83	102.91	11.32
20 HOMEBOUND	10.99	1	7.22	0
22 COUNSELOR	22.34	2.7	23.12	1.9
23 OCCUPATIONAL THERAPY	67.22	31.72	75.15	40
24 PHYSICAL THERAPY	43.89	52.42	44.66	49.78
25 INTERRELATED LD/EMR	220.63	139.18	215.66	158.87
26 INTERRELATED LD/BD	117.6	124.69	134.2	149.17
27 INTERRELATED LD/EMR/BD	300.19	312.9	310.25	340.6
28 INTERRELATED EMR/TMR	55.5	72.19	60.6	81.79
29 INTERRELATED TMR/SMD	23.7	45.54	33.9	68.55
30 INTERRELATED-OTHER	40.5	59.49	80.7	103.8
31 VOCATIONAL SPECIAL NEEDS	44.23	34.35	45.12	40.77
32 ART THERAPY	2.67	2.37	2.67	1
33 DANCE/MOVEMENT THERAPY	0	0	0	0
34 MUSIC THERAPY EDUCATION	14.53	2	15.32	2
35 RECREATION THERAPY	1	0	1	1
36 WORK STUDY/VOCATIONAL	32.6	28.56	31.2	36
37 SUPERVISOR	52.3	15.6	55.9	16.3
38 DIAGNOSTIC TEACHER	20.74	4.4	20.11	13.76
39 INTERRELATED BD/EMR	0	0	0	0
40 ASSISTIVE TECHNOLOGY	0	0	0	0
41 PROGRAM EVALUATION	0	0	0	0
42 PERSONNEL DEVELOPMENT	0	0	0	0
43 INTEGRATION SPECIALIST	0	0	0	0
44 TRANSITION SERVICES	0	0	0	0
45 REHABILITATION COUNSELING	0	0	0	0
46 ORIENTATION/MOBILITY SPEC	0	0	0	0
48 INFANT/TODDLER	0	0	0	0
49 EDUCATIONAL INTERPRETER	0	0	0	0
SUMMER SCHOOL	101.33	79.24	108.31	82.25
NON-PUBLIC EQUIVALENCY	17.41		16.72	
TOTAL FTE	4815.02	3294.72	5038.99	3560.46

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Kansas Total Compensated FTE by Area

AREA	Fiscal Year 1992		Fiscal Year 1993	
	Professional	Paraprofessional	Professional	Paraprofessional
01 EDUCABLE MENTAL RETARDATION	253.11	215.71	227.01	229.91
02 TRAINABLE MENTAL RETARDATION	113	152.17	111.2	170.09
03 EARLY CHILDHOOD	237.15	315.48	271.52	378.61
04 NURSE	54.48	6.75	53.5	5.13
05 LEARNING DISABILITY	712.03	390.02	635.5	398.08
06 HEARING IMPAIRED	71.21	137.23	71.28	143.25
07 PHYSICALLY IMPAIRED	10.3	18.19	9.2	18
08 GIFTED	392.27	98.59	397.2	111.6
09 BEHAVIOR DISORDER	458.79	412.02	441.67	442.63
10 VISUALLY IMPAIRED	29.29	29.51	29.51	33.48
11 SEVER MULTIPLE DISABILITIES	79.3	184.41	80.7	183.99
12 AUDIOLOGY	18.8	16.1	19.84	15.26
14 ADAPTIVE PE	37.33	18.16	41.76	21.58
15 PSYCHOLOGY	364.32	20.77	381.09	34.45
16 SOCIAL WORK	182.37	13.53	188.43	19.92
17 SPEECH/LANGUAGE	488.45	184.75	508.82	216.88
18 SEIMC	23.5	59.12	21.72	52.52
19 SPECIAL ED ADMINISTRATION	102.09	11.19	98.96	58.97
20 HOMEBOUND	7.5	0	15.74	0.07
22 COUNSELOR	19.38	2.5	25.59	0
23 OCCUPATIONAL THERAPY	68.4	33.25	74.36	49.89
24 PHYSICAL THERAPY	46.91	46.97	42.36	53.32
25 INTERRELATED LD/EMR	227.43	176.28	245.69	214.03
26 INTERRELATED LD/BD	167.55	175.98	165.66	203.89
27 INTERRELATED LD/EMR/BD	367.6	418.94	449.49	475.62
28 INTERRELATED EMR/TMR	70.8	100.96	69.9	112.19
29 INTERRELATED TMR/SMD	41.9	88.27	44.8	100.65
30 INTERRELATED-OTHER	131.2	160.25	229.57	353.41
31 VOCATIONAL SPECIAL NEEDS	43.12	40.68	45.01	40.82
32 ART THERAPY	1.67	1	1.13	1
33 DANCE/MOVEMENT THERAPY	0	0	0	0
34 MUSIC THERAPY EDUCATION	15.48	1.4	14.3	1
35 RECREATION THERAPY	1	1	0	0
36 WORK STUDY/VOCATIONAL	32.29	42.72	34.4	47.82
37 SUPERVISOR	52.1	10.7	52.4	22.11
38 DIAGNOSTIC TEACHER	16.64	10.9	13.5	4.5
39 INTERRELATED BD/EMR	4	3.6	7	10.18
40 ASSISTIVE TECHNOLOGY	0	0	3.55	2
41 PROGRAM EVALUATION	0	0	0.5	0
42 PERSONNEL DEVELOPMENT	0	0	5.14	2.67
43 INTEGRATION SPECIALIST	0	0	18.51	43.93
44 TRANSITION SERVICES	0	0	1	3.6
45 REHABILITATION COUNSELING	0	0	0	0
46 ORIENTATION/MOBILITY SPEC	0	0	1	3
48 INFANT/TODDLER	0	0	0	0
49 EDUCATIONAL INTERPRETER	0	0	0	0
SUMMER SCHOOL	120.5	98.84	132.5	88.56
NON-PUBLIC EQUIVALENCY	26.1		40.05	
TOTAL FTE	5089.36	3697.94	5322.06	4368.61

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Kansas Total Compensated FTE by Area

AREA	Fiscal Year 1994		Fiscal Year 1995	
	Professional	Paraprofessional	Professional	Paraprofessional
01 EDUCABLE MENTAL RETARDATION	155.86	159.36	151.64	163.92
02 TRAINABLE MENTAL RETARDATION	91.17	158.23	81	138.42
03 EARLY CHILDHOOD	270.8	386.67	299.08	446.22
04 NURSE	56.17	5.83	62.41	7.22
05 LEARNING DISABILITY	473.27	350.62	447.41	392.97
06 HEARING IMPAIRED	72.9	152.66	73.25	144.63
07 PHYSICALLY IMPAIRED	8.25	13.3	7.2	9.3
08 GIFTED	403.24	112.25	398.7	129.76
09 BEHAVIOR DISORDER	338.17	360.39	332.36	369.08
10 VISUALLY IMPAIRED	28.68	38.82	32.47	36.17
11 SEVER MULTIPLE DISABILITIES	77.57	181.16	70.72	170.71
12 AUDIOLOGY	19.94	15.49	19.02	16.57
14 ADAPTIVE PE	44.09	19.17	46.96	22.44
15 PSYCHOLOGY	397.68	27.83	406.38	34.22
16 SOCIAL WORK	188.36	19.79	187.15	19.25
17 SPEECH/LANGUAGE	528.78	261.04	531.27	281.07
18 SEIMC	20.72	52.45	18.62	42.08
19 SPECIAL ED ADMINISTRATION	100.29	66.11	96.01	65.99
20 HOMEBOUND	11.73	0.2	17.59	1.2
22 COUNSELOR	24.86	0	32.81	0.2
23 OCCUPATIONAL THERAPY	74.98	49.98	78.41	57.19
24 PHYSICAL THERAPY	43.37	57.24	47.25	52.81
25 INTERRELATED LD/EMR	252.17	245.09	0	0
26 INTERRELATED LD/BD	152.23	185.73	0	0
27 INTERRELATED LD/EMR/BD	792.84	869.61	0	0
28 INTERRELATED EMR/TMR	64.95	105.62	0	0
29 INTERRELATED TMR/SMD	52.6	115.16	0	0
30 INTERRELATED-OTHER	335.38	535.55	1788.54	2466.97
31 VOCATIONAL SPECIAL NEEDS	56.67	58.63	60.36	60.69
32 ART THERAPY	0.6	0.4	1.5	0.99
33 DANCE/MOVEMENT THERAPY	0	0	0	0
34 MUSIC THERAPY EDUCATION	10.55	1	12.5	2.8
35 RECREATION THERAPY	0	0	0	0
36 WORK STUDY/VOCATIONAL	28.76	41.23	27.36	38.43
37 SUPERVISOR	54.19	20.3	56.6	23.45
38 DIAGNOSTIC TEACHER	11.56	1	12.49	2.4
39 INTERRELATED BD/EMR	9	15.76	0	0
40 ASSISTIVE TECHNOLOGY	4.05	1.3	3.55	1
41 PROGRAM EVALUATION	0.71	0	1.65	0
42 PERSONNEL DEVELOPMENT	4.55	1.67	7.35	2.57
43 INTEGRATION SPECIALIST	28.13	44.65	35.08	62.03
44 TRANSITION SERVICES	12.1	18.67	15.1	20.06
45 REHABILITATION COUNSELING	0	0	0	0
46 ORIENTATION/MOBILITY SPEC	0.6	1.2	0	0
48 INFANT/TODDLER	27.98	19.04	28.75	19.57
49 EDUCATIONAL INTERPRETER	0	0	6.63	0
SUMMER SCHOOL	102.53	89.12	103.65	97.24
NON-PUBLIC EQUIVALENCY	47.28		79.55	
TOTAL FTE	5480.31	4859.32	5678.37	5399.62

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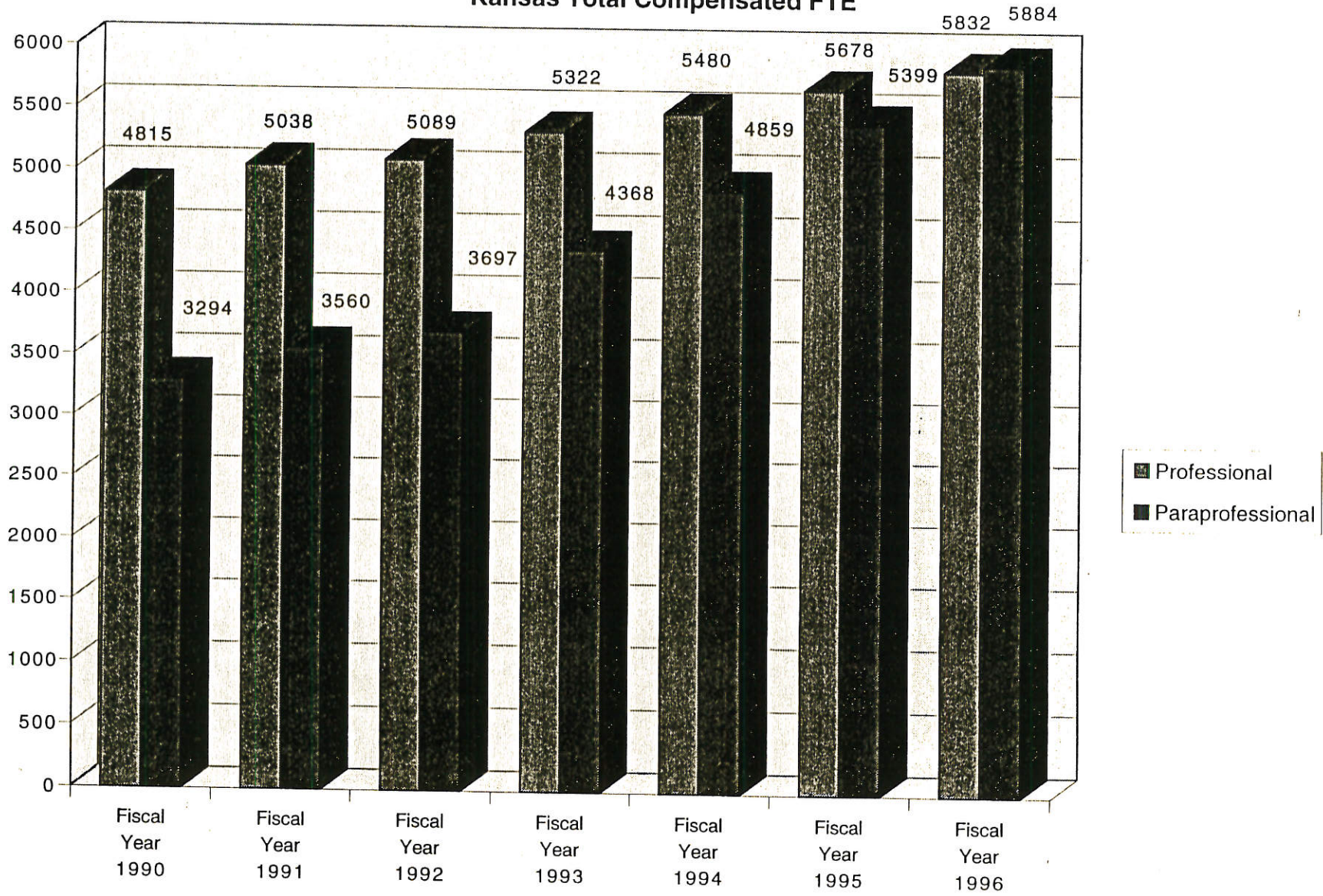
Kansas Total Compensated FTE by Area

AREA	Fiscal Year 1996	
	Professional	Paraprofessional
01 EDUCABLE MENTAL RETARDATION	147.2	151.82
02 TRAINABLE MENTAL RETARDATION	80.4	171.15
03 EARLY CHILDHOOD	319.46	486.31
04 NURSE	58.61	7.09
05 LEARNING DISABILITY	431.76	404.5
06 HEARING IMPAIRED	70.33	142.94
07 PHYSICALLY IMPAIRED	8.12	11.8
08 GIFTED	393.28	130.56
09 BEHAVIOR DISORDER	356.03	390.39
10 VISUALLY IMPAIRED	32.87	35.23
11 SEVER MULTIPLE DISABILITIES	64.84	170.42
12 AUDIOLOGY	19.3	16.09
14 ADAPTIVE PE	49.37	29.32
15 PSYCHOLOGY	416.33	39.67
16 SOCIAL WORK	185.46	15.9
17 SPEECH/LANGUAGE	539.91	310.53
18 SEIMC	19.07	38.58
19 SPECIAL ED ADMINISTRATION	93.21	68.63
20 HOMEBOUND	13.7	1.09
22 COUNSELOR	29.71	0
23 OCCUPATIONAL THERAPY	85.53	58.52
24 PHYSICAL THERAPY	47.17	47.96
25 INTERRELATED LD/EMR	0	0
26 INTERRELATED LD/BD	0	0
27 INTERRELATED LD/EMR/BD	0	0
28 INTERRELATED EMR/TMR	0	0
29 INTERRELATED TMR/SMD	0	0
30 INTERRELATED-OTHER	1876.56	2785.86
31 VOCATIONAL SPECIAL NEEDS	61.82	67.36
32 ART THERAPY	1.5	1
33 DANCE/MOVEMENT THERAPY	0	0
34 MUSIC THERAPY EDUCATION	12.5	4.18
35 RECREATION THERAPY	0	0
36 WORK STUDY/VOCATIONAL	25	37.15
37 SUPERVISOR	54.2	25.11
38 DIAGNOSTIC TEACHER	12.5	1
39 INTERRELATED BD/EMR	0	0
40 ASSISTIVE TECHNOLOGY	4.49	0.5
41 PROGRAM EVALUATION	1.75	0
42 PERSONNEL DEVELOPMENT	7.82	1.3
43 INTEGRATION SPECIALIST	42.15	79.43
44 TRANSITION SERVICES	18.15	22.42
45 REHABILITATION COUNSELING	0	0
46 ORIENTATION/MOBILITY SPEC	1	0
48 INFANT/TODDLER	32.61	22.39
49 EDUCATIONAL INTERPRETER	16.04	0.9
SUMMER SCHOOL	108.84	107.08
NON-PUBLIC EQUIVALENCY	93.85	
TOTAL FTE	5832.44	5884.18

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Kansas Total Compensated FTE



Kansas State Board of Education

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

September 24, 1996

TO: Special Committee on School Finance
FROM: State Board of Education and
Legislative Research Department
SUBJECT: Special Education Catastrophic State Aid

The 1994 Kansas Legislature approved a special education program for high-cost students that were part of special education programs in unified school districts. Beginning with the 1994-95 school year, each school district which provided special education services for an exceptional child who uniquely or so severely differs from other exceptional children in physical, mental, social, emotional or educational characteristics that the costs attributable to the provision of special education services for the child are in excess of \$25,000 for the school year is eligible to receive a grant of state moneys in an amount equal to 75 percent of that portion of the costs, incurred by the district in the provision of special education services for the child, that is in excess of \$25,000.

All moneys received under this program must be paid from the special education fund.

Listed below is a chart which summarizes the first two years under the special education catastrophic state aid program.

	<u>1994-95</u>	<u>1995-96</u>
Amount above \$25,000	\$ 625,567	\$ 1,147,071
No. of Students	27	33
State Aid Entitlement	\$ 469,176	\$ 860,304

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September 24, 1996

To: Special Committee on School Finance

Re: Selected Factors Regarding Special Education Costs

For several years, the rapid escalation of the costs of providing special education services required under federal and state law has been a major concern of policymakers. This matter has been reviewed under legislative auspices on several occasions, but, to date, solutions have proved elusive. This memorandum has been prepared in order to give Committee members a convenient listing of pertinent observations that have been raised in connection with this issue.

Part 1 of the memorandum draws principally from legislative work and State Department of Education input relative to factors that contribute to the special education cost pressures. Part 2 identifies a few significant state policy control areas that materially can affect the costs of special education services.

PART 1 COST PRESSURE ISSUES

1. With the imposition of the broad special education services mandate, there has been greater emphasis on identifying exceptional children and providing services to them. Thus, many more children have been identified as candidates for special education services.
2. As related to No. 1 (above), a large number of special education personnel have been added to the system in order to comply with the mandate for services. It has taken several years beyond the original full service mandate deadline (July 1, 1979, for school age children with disabilities and July 1, 1980, for gifted) to meet the staffing requirements on a statewide basis. Subsequently, special education services were mandated for three- and four-year-old children with disabilities. This mandate became effective for the 1991-92 school year. According to State Department of Education staff, the question remains as to whether special education staffing, statewide, has yet reached the level necessary to fully deliver the mandated services.
3. In a similar vein (to Nos. 1 and 2), largely as a result of federal legislation, much greater emphasis has been placed on preschool identification and intervention services for children with disabilities. This means there has been an increased dedication of resources to providing services, including screening and prevention, to preschoolers. While early intervention services are regarded in professional circles to be cost-effective, they do contribute to increased special education costs in the short term.

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4. Members of special education advocacy groups and parents of exceptional children have become increasingly better informed about the range of special education services available and those services to which exceptional children are entitled. These persons have become more persistent in pressing for the services they believe to be required.
5. Advances in medical procedures have made it possible to save some children born prematurely or with serious medical conditions who, in an earlier era, would not have survived. One consequence is an increase in required special education interventions on behalf of these children in order to help them better realize their potential.
6. It appears that in recent years there have been more low birth weight babies born as the result of inadequate prenatal care and drug usage of mothers. It is likely that many of these children will be in need of special services.
7. Disintegration of the family structure and poor parenting have resulted in neglect of both psychological and physical needs of some children. One consequence is special education involvement for some children for whom such services might otherwise have been avoided or for whom less severe interventions would have been indicated.
8. The trend being urged as a matter of public policy both at the federal and state levels toward deinstitutionalization of persons with mental illness and persons who have mental (and, often, physical) disabilities means that the educational services to which these persons are entitled more often must be provided by the public schools. This results in additional costs in the public education sector. The decisions of the 1996 Kansas Legislature to close Winfield and Topeka State Hospitals are examples of this trend.
9. Approximately 10 percent of all children entering school will require special education services. This means that, in times when the public schools are experiencing enrollment increases generally, it can be expected that the number of children needing special education services also will increase. After several years of decline, in 1985-86, enrollments in Kansas school districts began to increase. In 1992-93, the rate of increase began a systematic decline. Nevertheless, in 1996-97, the projected full-time equivalent enrollment still is expected to increase about 550 over the prior year. This means, due to enrollment growth alone, that about 55 additional children, statewide, will be added to the special education services system.
10. 1990 federal legislation added to the main special education law the terms "assistive technology devices" and "assistive technology services." The State Board of Education has incorporated assistive technology devices and services as "related services" in the Board's "State Plan for Special Education." Greater awareness of these devices and services would be expected to be related to greater use of them, thus affecting special education costs. Technological advancements can be expected to stimulate growth and sophistication in the area of assistive devices. This will contribute to special education cost pressures.
11. Fear of costly litigation may cause some school districts to agree to provide special education services beyond the level required under federal law, thus resulting in higher expenditures than otherwise would occur.
12. An amendment contained in the 1990 federal legislation waived the state's immunity from suit in federal court for violations of the Individuals with Disabilities Education Act (the

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federal special education law—formerly known as the Education of the Handicapped Act). This change could result in greater litigation costs for the state.

13. The 1990 federal legislation increased the emphasis on including transition services in the child's individualized educational program (IEP). Transition services include plans in the IEP designed to assist special education students who complete school district special education programs to move into employment, employment training, rehabilitation, or other community settings. Transition services plans are required for all students 16 years of age and older and, to the extent appropriate, are encouraged for students 14 years of age and younger. This focuses increased attention on post-elementary and post-secondary school experiences. Fully implemented, this change could have some impact on other established training and educational programs, as well as various social service providers. (This was not a new concept; rather, it was an increased focus of attention.)
14. There is a strong movement toward a renewed effort to more fully implement the least restrictive environment concept. The term "inclusion" is being used in connection with this programming focus. Thus, it appears that there will be increased emphasis on collaborative teaching models involving the classroom teacher and special education personnel. This could mean fewer programs in which students are pulled out of the classroom for a portion of the day for special services and fewer separate special education rooms. What impact this direction will have on special education costs is uncertain. Some believe costs will be increased, but others believe service delivery will become more cost effective.
15. The shift in the focus in educational accountability from "inputs" to "outcomes" might result in identification of more and different services in order to ensure that specific outcomes are achieved.
16. Inflationary cost increases that affect public education generally also affect special education. In this connection, personnel salary increases generally are the same for special education teachers and paraprofessionals as for their regular education counterparts. Therefore, any emphasis placed on increasing teachers' salaries applies equally to special education personnel.

PART 2 MAJOR STATE POLICY AREAS

1. The Kansas law mandates services for exceptional children. This includes children with disabilities and those who are gifted. In contrast, the federal law requires special education services only for children with disabilities. The point is that mandating special education services for gifted children is exclusively a state level policy choice.
2. The state determines personnel standards. This is accomplished through rules and regulations adopted by the State Board of Education. Currently, the whole area of general and special education teacher training and certification is under study by the State Board of Education. In this regard, there is a federal requirement that the state use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and related services. This means that in areas where there are

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professional licensure or certification requirements established by an agency other than the State Board of Education, such as audiology, for example, requirements of those agencies might control.

3. Presently, Kansas imposes a variety of class size and caseload standards for the various types of disability and service delivery configurations. These are state requirements exclusively. Many times it becomes difficult for the local education agencies to assemble students and personnel to both meet service requirements and optimize the use of staff resources. As a consequence, it has become a common practice for the State Board of Education to authorize a large number of exceptions to the specific staffing configuration requirements.

The State Board of Education is operating a pilot program with several volunteer local education agencies which involves waiver of the class size and caseload standards. In place of these standards, the local education agencies use a management information system that had been developed via contract for the State Department of Education. The goal is that the management system will serve as an effective tool to be used by the local education agency in making staffing assignments for the varied types of service configurations that are encountered. The State Board of Education waives the class size and caseload standards for a local education agency that is piloting the new management system.

4. The present law provides categorical state aid for funding special education services. From the annual appropriation for this purpose, an amount is paid to school districts that qualify for "catastrophic" aid. Under this provision, the state reimburses a school district for 75 percent of the annual special education costs for a student above \$25,000. The amount of the appropriation that remains after these reimbursements are determined is distributed under a formula which reimburses districts for student and teacher transportation at 80 percent of costs and for a child receiving special education services away from home at 80 percent of costs (up to \$600 per year) and which distributes the remaining amount to school districts on the basis of full-time equivalent (FTE) special education teaching units, with paraprofessionals counted at .4 FTE. In several years under this formula, the Legislature has used some agreed upon percentage of the total "excess costs" of providing special education services as the basis for determining the total appropriation for this program.

The funding level is one of the issues concerning special education support. That is, the degree to which categorical aid approaches paying school district excess costs for special education services has important implications to school districts because they must allocate more or less of their general and supplemental general fund resources for special education purposes, depending upon the state aid amount that is provided for this program. The less categorical aid that is provided, the more difficult the school district spending decisions become.

Kansas State Board of Education

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

September 24, 1996

TO: Special Committee on School Finance
FROM: State Board of Education and
Legislative Research Department
SUBJECT: Special Education

The number of children receiving special education services for the past 10 years (1986 to 1995) has continued to increase.

The attached tables and charts show the number of exceptional children currently being served.

Dale M. Dennis
Deputy Commissioner
Assistant Commissioner for
Fiscal Services and Quality Control
(913) 296-3871
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SPECIAL EDUCATION AND REGULAR EDUCATION
 ENROLLENTS

	<u>No. of Spec. Educ. Students (Headcount)</u>	<u>Percent Inc./Dec.</u>	<u>No. of Reg. Educ. Students (Headcount)</u>	<u>Percent Inc./Dec.</u>	<u>No. of Reg. Educ. Students (FTE)</u>	<u>Percent Inc./Dec.</u>
12-1-86	54,263		416,091		394,409	
12-1-87	55,222	1.8	421,112	1.2	399,398	1.3
12-1-88	55,972	1.4	426,596	1.3	403,532	1.0
12-1-89	56,599	1.1	430,864	1.0	407,882	1.1
12-1-90	58,458	3.3	437,034	1.4	414,593	1.6
12-1-91	59,923	2.5	445,390	2.0	424,737	2.4
12-1-92	62,187	3.8	451,536	1.4	431,321	1.6
12-1-93	63,612	2.3	457,744	1.4	437,210	1.4
12-1-94	66,132	4.0	460,905	0.7	440,684	0.8
12-1-95	67,813	2.5	463,018	0.5	442,747	0.5
Percent Increase 12-1-86 to 12-1-95		25.0		11.3		12.3

Kansas Child Count Primary Exceptionality

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Dec 1 Year	12/1/86	12/1/87	12/1/88	12/1/89	12/1/90	12/1/91	12/1/92	12/1/93	12/1/94	12/1/95
Part H / (0-2 year old)*	104	231	379	383	491	650	853	1005	1200	1429
3-5 year olds	2801	3542	3612	3597	3881	4472	4815	5534	5856	6135
Behavior Disorders	4384	4400	4542	4696	4729	4846	4969	4924	5044	5251
Deaf-Blind	42	61	62	12	15	13	14	10	31	23
Hearing Impairments	629	552	618	633	717	593	592	568	580	595
Mental Retardation	5844	5775	5911	5786	5946	5390	5467	5414	5506	5621
Other Health Impairments	292	249	214	251	380	623	783	1095	1648	2262
Physical Impairments	625	428	453	555	577	369	417	484	498	513
Severe Multiple Disabilities	698	560	593	640	737	589	600	572	522	585
Specific Learning Disabilities	16514	16731	16663	16557	17302	18732	19449	20021	20741	21043
Speech / Language Impairments	10397	10492	10588	10630	10775	10674	10672	10416	10625	10850
Visual Impairment	251	257	258	242	228	211	206	215	216	225
Autism							79	147	185	237
Traumatic Brain Injury							114	159	213	273
Total Disabled	42477	43047	43514	43599	45287	46512	48177	49559	51665	53613
Gifted	11786	12175	12458	13000	13171	13411	14010	14053	14467	14200
All Exceptional	54263	55222	55972	56599	58458	59923	62187	63612	66132	67813
*Part H child counts from KDHE and not included in State totals.										

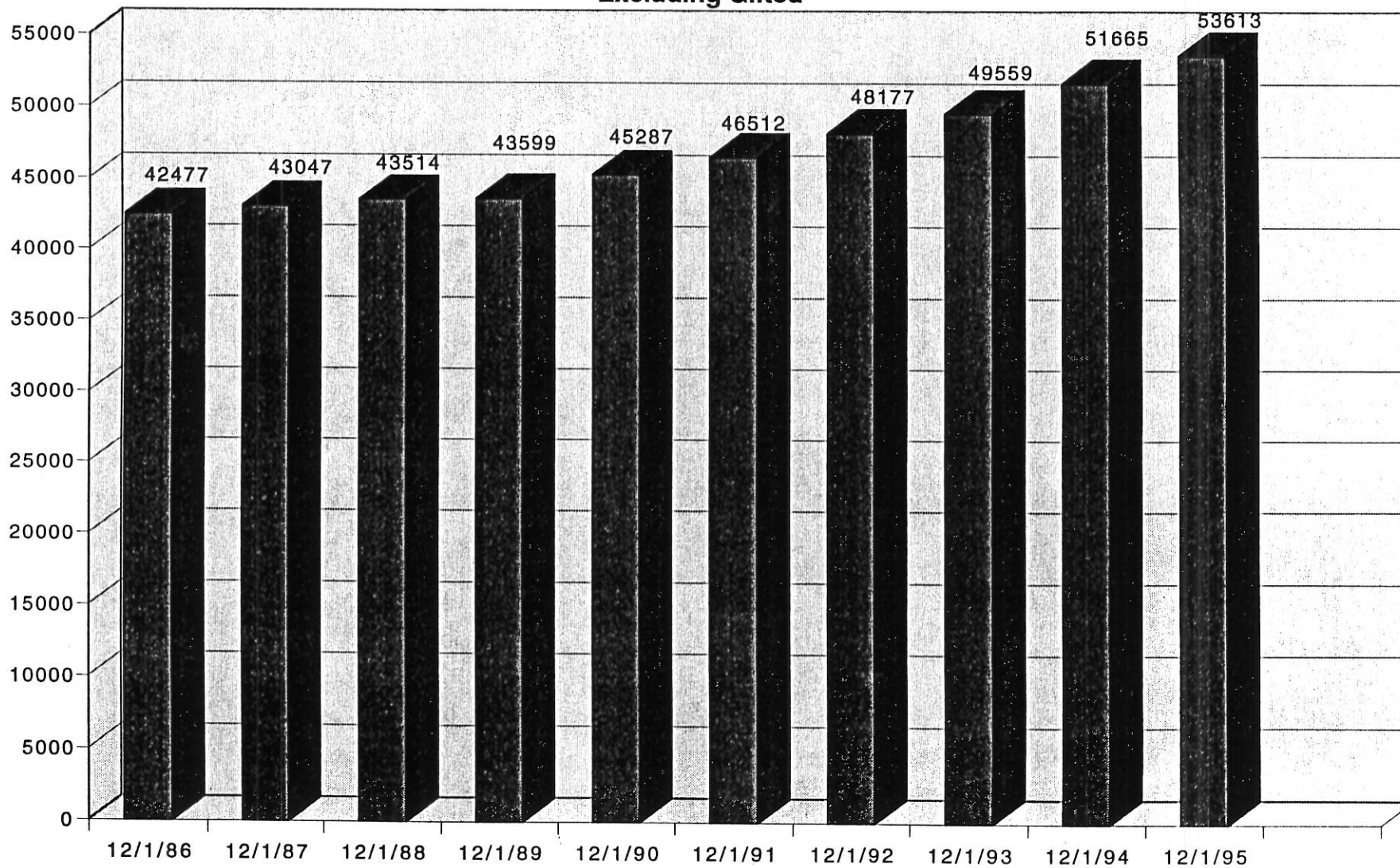
Kansas Special Education Child Count by Percentage

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December 1 Year	12/1/86	12/1/87	12/1/88	12/1/89	12/1/90	12/1/91	12/1/92	12/1/93	12/1/94	12/1/95
Part H / (0-2 year old)*	104	231	379	383	491	650	853	1005	1200	1429
3-5 year olds	6.6%	8.2%	8.3%	8.3%	8.6%	9.6%	10.0%	11.2%	11.3%	11.5%
Behavior Disorders	10.3%	10.2%	10.4%	10.7%	10.4%	10.4%	10.4%	9.9%	9.8%	9.8%
Deaf-Blind	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
Hearing Impairments	1.5%	1.3%	1.4%	1.5%	1.6%	1.3%	1.2%	1.2%	1.1%	1.1%
Mental Retardation	13.8%	13.4%	13.6%	13.3%	13.1%	11.6%	11.5%	10.9%	10.7%	10.5%
Multiple Disabilities	1.6%	1.3%	1.4%	1.5%	1.6%	1.3%	1.3%	1.2%	1.0%	1.1%
Other Health Impairments	0.7%	0.6%	0.5%	0.6%	0.8%	1.3%	1.0%	2.2%	3.2%	4.2%
Physical Impairments	1.5%	1.0%	1.0%	1.3%	1.3%	0.8%	0.9%	1.0%	1.0%	1.0%
Specific Learning Disabilities	38.8%	38.9%	38.4%	38.0%	38.2%	40.3%	40.5%	40.4%	40.0%	39.2%
Speech / Language Impairments	24.5%	24.4%	24.3%	24.2%	23.9%	22.9%	22.3%	21.0%	20.6%	20.2%
Visual Impairment	0.6%	0.6%	0.6%	0.6%	0.5%	0.5%	0.4%	0.4%	0.4%	0.4%
Autism							0.2%	0.3%	0.4%	0.5%
Traumatic Brain Injury							0.3%	0.3%	0.4%	0.5%
Total Disabled	78%	78.0%	77.7%	77.0%	77.5%	77.6%	77.5%	77.9%	78.1%	79.1%
Gifted	22%	22.0%	22.3%	23.0%	22.5%	22.4%	22.5%	22.1%	21.9%	20.9%
All Exceptional	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
*Part H child counts from KDHE and not included in KSBE State totals.										

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Kansas Exceptional Students Served Age 3-21 Excluding Gifted



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Kansas Total of Exceptional Students Served Age 3-21

