

MINUTES

2022 SPECIAL COMMITTEE ON EDUCATION

November 10, 2022
Room 112-N—Statehouse

Members Present

Representative Kristey Williams, Chairperson
Senator Molly Baumgardner, Vice-chairperson
Senator Renee Erickson
Senator Beverly Gossage
Senator Alicia Straub
Senator Dinah Sykes
Representative Kyle Hoffman
Representative Adam Thomas
Representative Jarrod Ousley
Representative Sean Tarwater (appointed substitute for Representative Susan Estes)
Representative Valdenia Winn

Members Absent

All members present.

Staff Present

Gabrielle Hull, Kansas Legislative Research Department (KLRD)
Jessa Farmer, KLRD
Molly Pratt, KLRD
J.G. Scott, KLRD
Matthew Willis, KLRD
Jill Wolters, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Deborah Bremer, Committee Assistant

Conferees

Dr. Craig Neuenswander, Deputy Commissioner, Kansas State Department of Education
Dave Trabert, CEO, Kansas Policy Institute
Leah Fliter, Assistant Executive Director Advocacy, Kansas Association of School Boards
Kyle Carlin, Director of Special Education, West Central Kansas Special Education
Cooperative

THURSDAY, NOVEMBER 10 ALL DAY SESSION

Welcome and Introductions

Chairperson Williams opened the meeting at 8:00 a.m. and asked all the members and staff to introduce themselves.

Special Education Overview

Gabrielle Hull, Fiscal Analyst, Kansas Legislative Research Department (KLRD), gave a special education (SPED) overview with a focus on funding. Ms. Hull explained the current law concerning the process of determination of students who have been evaluated as having an exceptionality, which requires special education and related services. The first step is determining a category of disability or giftedness, then matching the child's special need to educational supports, and writing an Individual Education Plan (IEP). Ms. Hull explained the contents of the IEP, how it is developed, and what an IEP must include ([Attachment 1](#)).

There was a period of questions and answers were provided by Ms. Hull; Dr. Craig Neuenswander, Deputy Commissioner, Kansas State Department of Education (KSDE); and Kyle Carlin, Director of Special Education, West Central Kansas Special Education Cooperative. There was a focus on how a child is identified as having special needs.

Ms. Hull provided the Committee with several documents that share SPED data:

- Special Education Categorical Aid Fiscal Year (FY) 2019 - FY 2022 ([Attachment 2](#));
- Special Education Student Headcount by Gender, Race and Ethnicity FY 2013 - FY 2022 ([Attachment 3](#));
- Special Education Students, Statewide by Category of Disability 2003 - 2022 ([Attachment 4](#)); and
- Headcount of Special Education Students and Headcount of All Students FY 2003 – FY 2022 ([Attachment 5](#)).

Chairperson Williams reviewed the Category of Disability document 2003 - 2022 and noted that the number of students identified as autistic increased by a multiple of five over these two decades. There was a conversation about why some of the category totals are increasing (autism) and some are decreasing (gifted). Senator Baumgardner asked questions specifically about students who are deaf and blind and what methods are being used to teach them. She also questioned the IEP required meetings and reviews, specifically about providing interpretative services for parents if necessary, as it is important for the needs of the parents to be met.

Representative Winn asked questions about why the SPED headcount did not increase for non-Hispanic Black students from 2013 to 2022. Senator Straub asked questions about the age at which these assessments are made. Dr. Neuenswander noted the assessment age is whenever the need is noticed, which could be age three or older. Senator Straub also asked whether a parent always has the ability to attend their student's class; Dr. Neuenswander answered that depends on the local school policy.

The Chairperson asked why the numbers of gifted students have declined and whether students who leave for private schools are still eligible for either gifted or disability services funding. Dr. Neuenswander noted that funding is not based on student headcount, but by teacher, transportation, and budget needs, so the special education weighting remains at the public school. Senator Gossage stated the definition of autism has changed over the years, based on Diagnostic and Statistical Manual of Mental Disorders (DSM) categories, and it is all now an autism spectrum, and this is why some of the categories have shifted. She shared her personal experience as a mother of a dyslexic student. She stated she wondered why dyslexia is not in the SPED categories of disabilities. Dr. Neuenswander noted that is a federal issue. Senator Sykes shared some thoughts on gifted students, wondering whether the headcount is dropping because of finances. Senator Erickson asked whether a student can refuse special services. Dr. Neuenswander answered affirmatively. Senator Erickson asked about a parent's role in the IEP process. Dr. Neuenswander answered that, under most circumstances, the IEP must be determined by the entire team.

The Chairperson brought up the issue of "least restrictive environment" and how that works in practical terms. Dr. Neuenswander answered that the Chairperson has just described the art and practice of teaching. There was a question about ratio of teachers to students. Dr. Neuenswander answered there are approximately 14,000 full-time equivalent (FTE) SPED teachers, including paraeducators, and the FTE count for SPED students is about 29,000.

Special Education Statute Overview

Tamera Lawrence, Senior Assistant Revisor of Statutes, Office of Revisor of Statutes, introduced two documents: a chart describing the federal Individuals with Disabilities Education Act (IDEA) and the state Special Education for Exceptional Children Act (SEECA) ([Attachment 6](#)) and a memorandum ([Attachment 7](#)) on the issues. She reviewed her memorandum on SPED law including basic Kansas SPED laws. She described IDEA, which is the primary federal law on educating children with disabilities. She described the requirements for local school districts and how these requirements were not suspended during the pandemic. She then focused on SEECA, noting that "exceptional" does include gifted children. She stated the *Kansas Constitution* does not include SPED policy; however, there were mentions of SPED throughout the school finance litigation with the Kansas Supreme Court.

Ms. Lawrence shared a second memorandum (Legislative History with Statewide Excess Costs) ([Attachment 8](#)) and noted KSA 72-3422(a) was initially codified in the 2005 Regular Session (during *Montoy* litigation) and, during that Session, the Legislature made changes to SPED funding. The Legislature increased the statewide excess costs rate to 85.0 percent for school year 2005-2006, 88.0 percent for school year 2006-2007, and 91.0 percent for school year 2007-2008 and every school year thereafter. In the 2005 Special Session, those percentages were amended to 89.3 percent for school year 2005-2006 and 92.0 percent for school year 2006-2007 and each school year thereafter. The 92.0 percent rate remains in statute. Ms. Lawrence stood for questions.

The Chairperson asked whether the most recent *Gannon* decision agreed that 92.0 percent was adequate. Ms. Lawrence said yes, but the Court did maintain jurisdiction. Chairperson Williams noted the base aid has been increased and the Legislature has fulfilled its responsibility to fully fund as required by the Court.

Current Special Education Funding

Ms. Hull noted a copy of KSA 72-3422 is provided in the notebook for the members ([Attachment 9](#)).

Ms. Hull reviewed the Estimated Special Education Excess Costs for FY 2023 and FY 2024 document ([Attachment 10](#)). She described how the computation works, and how the shortfall from 92.0 percent of excess costs is calculated. She reviewed the methodology for both upcoming years and then reviewed the Historical Consensus Caseloads Estimates for the decade FY 2011 – 2020 document ([Attachment 11](#)). She noted that, according to IDEA, the federal government has set the goal of funding special education nationwide at the maximum of 40.0 percent of the national average per pupil expenditures for elementary and secondary education. She noted that Kansas has historically fallen below this level, referencing the document Estimate of Historic Federal Special Education Funding based on 40.0 percent of the National Average Per Pupil Expenditures ([Attachment 12](#)). She noted that KLRD had to make some decisions about how to analyze this funding. She stood for questions.

Chairperson Williams noted that Kansas is not receiving a large amount of federal funding, as the state falls below the goal of 40.0 percent of the nationwide average per pupil expenditure. Senator Sykes asked about language included in Kansas statute compared to Federal law and inquired if the difference is due to the Kansas using “we shall” and the federal using “we may.” Ms. Hull agreed this is a difference in policy. Senator Sykes asked, if the federal government is not meeting its goal, then where does that funding come from? Ms. Hull answered that federal law requires these students to be given these services, and the funding is local and there is some increased funding from the State. Senator Erickson noted the federal government is not providing SPED aid, and the responsibility falls to local schools, and then money is taken from the general education budget and that affects students who do not have IEPs. Senator Erickson referenced KSA 72-3409, especially the subsection that authorizes school boards to use up to 15 percent of funds to develop programs for students in kindergarten through third grade who have not been designated as SPED but do need some special support. Dr. Neuenswander answered he would get that data.

Chairperson Williams asked about the past three years in which it was estimated 300 new teachers would be hired, but fewer than that were hired. Referring to the document Estimated Special Education Excess Costs for FY 2023 and FY 2024 ([Attachment 10](#)), Ms. Hull explained the Consensus Revenue Estimating process.

Representative Tarwater asked about the 40.0 percent federal funding, and the obligation as a state to make up the amount of funding that is not forthcoming. Dr. Neuenswander answered the basic idea is the state and local funding must match the previous year’s funding for the State to receive federal funding based on the Maintenance of Effort requirement in federal law. Representative Hoffman noted that it is not known how much the federal government will give to the State. He wondered what data the federal government is using to calculate the funding. Senator Sykes asked about the difference between the future estimates and the actual costs. Dr. Neuenswander explained that process and stated the vast

majority of expenditures (about 86.0 percent) are for teacher entitlements and estimates are all based on the actual costs of the prior year.

Senator Erickson asked whether Elementary and Secondary School Emergency Relief (ESSER) funds changed these estimates. Ms. Hull answered these pandemic funds were factored into the excess costs calculation as federal funds, but are being phased out of future estimates as ESSER funds have an obligation deadline of September 30, 2024.. Senator Erickson asked whether there is any limit to what a district can spend on SPED. Dr. Neuenswander answered the school must pay for the SPED services. Senator Erickson noted general education funds are being used to supplement SPED. Dr. Neuenswander explained how SPED funding is put into general education and how it is then used for SPED costs. Senator Baumgardner asked for the ratio of paraeducators to teachers and how many special education teachers have provisional licenses. She asked for information regarding sign-on bonuses and stated she would like to see numbers of teachers (salary) and paraprofessionals (hourly). Dr. Neuenswander stated he would provide that information.

Senator Gossage noted excess costs means “this is how much special education costs above regular education.” She asked for the per pupil costs for SPED. Dr. Neuenswander stated he would provide that information. Senator Gossage stated she would like to see what the other states show. Chairperson Williams recommended Legislative Post Audit as a helpful source for that. The shortfall from the costs to the funding must be paid, based on both federal and state law, and is estimated to be \$109.5 million in FY 2023.

Excess Costs

Dr. Neuenswander introduced the Special State Aid Excess Costs document ([Attachment 13](#)). He also provided a second document with data for all the Kansas school districts’ SPED for school years 2019-2022 ([Attachment 14](#)). He explained SPED cooperatives and interlocal organizations (interlocals) receive federal aid directly. He noted 86.0 percent of SPED funding is used for salaries, districts with more teachers or higher wages will have a lower percentage of excess costs, costs vary based on student need, and small districts with low weightings show higher costs per pupil, which makes their SPED excess cost percentage higher. Dr. Neuenswander then referred to another memorandum ([Attachment 15](#)) that answers some questions previously asked. He described the difference between student FTE and headcount. He stated the factors used in excess costs calculations. He stated SPED teachers and paraeducators must be licensed and have a time and effort log with a percentage of time spent in SPED. He described how SPED state aid is calculated for individual districts and described how this aid is distributed in terms of timing and calculations. He showed how much of the SPED ESSER I (\$2,087) and ESSER II (\$9.0 million) funds are remaining. These funds are not ongoing.

Senator Gossage asked about the categorical aid for teachers. Dr. Neuenswander stated \$67,000 is the average amount of salary, and the reimbursement is \$30,867. The total number minus the reimbursement is the excess cost amount.

Chairperson Williams noted the total SPED expenditures and asked whether expenditures for SPED students come out of the SPED fund. Dr. Neuenswander stated yes, and noted total SPED expenditures exceed \$1.0 billion. He stated federal aid is deposited into the SPED fund and any additional funds needed are transferred from the State General Fund and local option budget (LOB) moneys into the SPED fund. Chairperson Williams replied many of the SPED expenses are not specifically SPED, such as substitute teachers. She questioned the

mandate to pay 92.0 percent of the total SPED, when that directive is not parallel with other guidelines with different percentages. Dr. Neuenswander noted KSDE audits the time teachers actually spend engaging with SPED students, so what actually gets funded is only the time spent.

Senator Sykes asked about Medicaid reimbursement and, if Kansas had expanded Medicaid, whether that would have affected SPED funding. Dr. Neuenswander said he thinks the answer is yes. Representative Tarwater said the effect would be very minimal because Medicaid expansion would affect only people 19 and older.

Representative Hoffman referred to the KSDE data printout of 2019 - 2020 district spending asking about the difference in excess costs percentages. He referred to Marmaton Valley and Iola and noted how they were different. Dr. Neuenswander answered it depends on student needs and that smaller schools tend to get higher percentages. He noted cooperatives spend monies as a unit.

Senator Erickson asked about ESSER I and II, where ESSER moneys are spent, and who received premium pay. Dr. Neuenswander answered it varied by district. Senator Gossage asked about Medicaid and noted it is usually health aid. Dr. Neuenswander answered students who are disabled receive Medicaid aid. Senator Gossage asked for a list of services that are paid by Medicaid. Senator Straub asked what percentage of students with an IEP also receive services through the State intellectual and developmental disability waiver and noted those services would be covered under Medicaid. Representative Tarwater asked about the percentage of work for SPED students and asked how the salary is broken out if two students in a class both have IEPs. Dr. Neuenswander said the salary is prorated based on the students.

Dave Trabert, Kansas Policy Institute, presented testimony ([Attachment 16](#)) related to excess costs. He stated SPED students are eligible for weightings and the State is not getting credit for that. He stated between 2020 and 2022, school districts increased their SPED reserves by \$24.0 million dollars and that, in general, school districts added \$180.0 million to operating cash reserves over the past two years. He questioned why these operating cash reserves were not being tapped and stated that balances have been going up over the past two decades. He stated he believes SPED spending needs to be revised so that all funding is counted and needs to be audited for proper accounting. He noted \$1.1 million of utilities are charged to SPED and stated a Legislative Post Audit review of all SPED spending is needed. He asked why the interlocal spending and employment is not included in the total spending (that is reported).

Senator Gossage asked about the chart on the last page of Mr. Trabert's testimony and he responded the chart is a breakdown of expenditures. Representative Hoffman asked about the interlocal and cooperative expenses on that chart, and Mr. Trabert explained the calculations. Senator Baumgardner asked about instruction tuition, and Mr. Trabert answered it is tuition to private schools and other institutions in the state. Senator Gossage asked whether reserves are taken into account. Mr. Trabert answered that school districts average about 18.0 percent in reserve, but some districts are better at cash management and will have less than 10.0 percent in reserve. Representative Tarwater noted questions in previous legislative meetings regarding how the State is credited for SPED funding.

Leah Fliter, Assistant Executive Director Advocacy, Kansas Association of School Boards (KASB), provided information on SPED services and stated one in six students in Kansas benefits from these services. Ms. Fliter stated SPED students and costs are increasing in part because of new ways of identifying students, often earlier, and parents have a stronger voice in

getting services for their children. She stated Kansas is in the top five states for graduation rates for SPED students and noted the previous Legislative Post Audit special education audit report stating that SPED is underfunded, perhaps by hundreds of millions of dollars ([Attachment 17](#)).

Senator Sykes asked about the cash reserves. Dr. Neuenswander explained the cash reserves are used in the following fiscal years, in fall, until schools receive more State Aid in October. Senator Baumgardner asked Ms. Fliter about administration and utilities costs coming out of SPED. Ms. Fliter answered KASB advises their school boards to follow the law and that utility costs might be from a stand-alone facility, or for a SPED administrator. Senator Erickson asked about the effectiveness of identifying SPED needs younger, wondering whether there is any longitudinal data, and Ms. Fliter stated SPED administrators could provide that information. Senator Gossage asked about the salary level and whether salary numbers include health insurance. Ms. Fliter answered yes, but not Kansas Public Employee Retirement System (KPERs) amounts. Senator Baumgardner stated KPERs should be included in the overall expenses. Senator Erickson asked about inflation related to SPED funding; Ms. Fliter stated she would provide that information. Chairperson Williams asked about KASB's statement that the cost of SPED has increased more than inflation. She noted that, according to the numbers she has, the education funding increases have exceeded inflation. Chairperson Williams introduced a data document indicating state totals over the past two decades ([Attachment 18](#)). Ms. Fliter noted that education funding was unconstitutionally underfunded for a decade and there continues to be underfunding in terms of keeping up with inflation.

Mr. Carlin, West Central Kansas Special Education Cooperative (WCKSEC), offered testimony based on his experience with rural schools. ([Attachment 19](#)). He stated Hays is the host school district for this cooperative and stated this cooperative serves 966 students. He explained how its budget is created, including transportation costs and cash balances. He noted 71 students in private schools are being served by WCKSEC.

Representative Hoffman asked about districts receiving reimbursement at different rates and districts receiving reimbursement at or above 92.0 percent. Mr. Carlin answered that there is an economy of scale that is hard to replicate for small schools. Chairperson Williams questioned the expenses listed by districts and noted the term "total expenditures" is not clearly defined in statute. Senator Erickson asked about economy of scale and how that relates to a smaller school and Mr. Carlin stated smaller districts need to be reimbursed at higher rates to get to that 92.0 percent. Senator Sykes asked about the student-to-teacher ratios. Mr. Carlin provided these ratios: early childhood is 20:1, speech pathology is 45:1, elementary resource averages 17:1, secondary is 18:1, life skills programs are under 10:1, and gifted is about 30:1. Senator Gossage asked about the "other" category. Mr. Carlin answered that category includes IEP systems, data management systems, services contracted for such as for services for students with hearing impairments, computer resources for staff, legal expenses, and other miscellaneous items.

Representative Tarwater asked whether there is accounting for the numbers that these students bring in. Mr. Carlin said no. Senator Baumgardner asked how long the cooperative has been in operation. Mr. Carlin said 36 years, since 1986. She asked why schools join the cooperative. Mr. Carlin said economy of scale and that a cooperative can help districts obtain resources to hire an physical therapist, occupational therapist, psychologists, social workers, administrators, and other specialists.

A break was taken for lunch.

Discussion on Possible Alternatives to Current Special Education Funding Methods

J.G. Scott, Director, KLRD, provided Consensus Revenue Estimates related to school finance. Mr. Scott stated inflation will be a major contributing factor in the funding of SPED and education in general. For 2024, inflation is estimated at 5.3 percent, for 2025 at 6.24 percent, and for 2026 at 4.82 percent. Director Scott emphasized these are true estimates. The low interest rate is falling off and so it is estimated costs will rise in 2025. In 2023 the BASE State Aid per pupil rate will be \$4,846; the estimate for 2024 is \$5,103 and for 2025 is \$5,421. He stated excess costs will continue to rise and this will reduce the percentage of funding.

The following documents were shared with the Committee members as resource materials:

- KSDE Special Education Unencumbered Cash Balances 2011-2022 Budgeted by District Number ([Attachment 20](#));
- Weightings Attributable to Special Education Students ([Attachment 21](#)); and
- K-12 and Special Education Funding, 50 State Comparison ([Attachment 22](#)).

The Chairperson distributed her recommendations for how the Legislature might change how special education funding is handled ([Attachment 23](#)). The following recommendations were discussed.

Option 1: increase state funding to 92.0 percent statewide.

Senator Baumgardner asked what changes would need to occur so that every district could be funded at 92.0 percent. Dr. Neuenswander responded the amount distributed is in statute, but how it is distributed is up to the State Board of Education. Co-ops and interlocals are funded differently than individual schools. He stated that, based on cost, if districts are being reimbursed at 92.0 percent, then SPED will get full funding. He noted that some local schools feel overwhelmed by the rising costs asked of them by the co-ops. Senator Gossage asked how a co-op works. Dr. Neuenswander explained one district will sponsor a co-op and other districts will sign up to share mostly staffing costs. Each co-op assesses districts based on total enrollment. State aid then goes to the co-op. Interlocals work the same way for funding, but the teachers and paraprofessionals are hired by the interlocals and not the local schools. The interlocals control the SPED budget. Federal dollars go to the interlocal and state aid goes to the local district and then it is sent to the interlocal. Representative Hoffman asked, if a small district belongs to a co-op, what expenses the district has for SPED beyond the co-op. Dr. Neuenswander said it depends on the agreements between the school and co-op and that generally administrative costs are taken by the co-op and interlocal.

Chairperson Williams stated that in the 2018 Legislative Post Audit report *K-12 Education: Evaluating Special Education Costs* (<https://www.kslpa.org/audit-report-library/k-12-education-evaluating-special-education-costs/>), the percentage of excess costs varies based on district needs (higher staff salaries), and districts that have costs that are not reimbursable. She stated only three areas are covered: teacher and parapeducator salaries, transportation, and catastrophic aid, and those categories are in statute. She stated the State is responsible for covering 92.0 percent of total costs but funding for these three areas is required.

Ms. Lawrence reviewed KSA 72-3422, subsection (a). The statute states how the amount of state aid is to be computed and the percentage and then lists travel and other costs for special teachers.

Chairperson Williams asked Ms. Lawrence why these categories are listed and then a calculated number is to be multiplied by 92.0 percent, by statute. Ms. Lawrence replied she needs to do more research and that subsection (a) was added to law during the *Montoy* litigation.

Senator Straub asked about data on integrating disabled children into mainstream education. She asked if there is a funding connection and how it connects to student achievement. Dr. Neuenswander responded that IDEA requires the least restrictive environment.

Senator Gossage asked about the federal government commitment to fund SPED. She stated the State is being asked to pay more than its portion.

Senator Baumgardner asked whether IEP goals need to be measurable. Dr. Neuenswander responded that they do need to be measurable. Representative Winn shared that in her recent experience sitting in on IEP meetings, the goals are very specific in measurement.

Senator Sykes referenced the 2018 Legislative Post Audit report related to special education and noted that the measurements could be varied, not necessarily a state assessment.

Option two: Shift excess, above constitutional funding to special education.

Chairperson Williams stated since the most recent court case, the Legislature has been over-funding other areas of education. This option would shift that over funding to SPED. She gave some examples, such as career and technical education, dyslexia services, math, School Safety and Security grants, and the Mental Health Pilot Program.

Option three: amend KSA 72-3422.

The Chairperson explained option three and shared that she has been working with KLRD and with KSDE to see how this would work. This option would define expenditures, define the formula for annual increases, amend statutes to address the lack of federal funding, address growing cash carryover special education balances, crediting LOB, and address average per pupil funding and other variables. This option would also include the review of other states' funding methods and review and implement changes recommended in the special education Legislative Post Audit report. She noted that the percentage of state funding and the allowable funding do not square.

Senator Gossage agreed that it is important to itemize all the things that are covered by the state government.

The Chairperson asked that the members of the Committee work with this recommendation handout and express their preferences.

Option four: reestablish the Special Education Funding Task Force with changes to KSA 72-3441.

The Chairperson noted authorization for this statutory Task Force expired in 2011.

Committee Comments and Recommendations

The Chairperson thanked Ms. Hull and Dr. Neuenswander for the many hours they gave to this topic prior to today's meeting. She also thanked everyone present.

Representative Winn asked what route will be taken on this topic in the upcoming session. Chairperson Williams responded by saying these issues would come through the House Committee on K-12 Education Budget. Representative Winn stated that these issues are serious and everyone needs the data, to be accountable to the state and the taxpayer. Chairperson Williams responded by saying her recommendations are her best way forward.

Senator Erickson noted this meeting was very productive and noted the more she learned, the more she understood how many questions she had. Senator Erickson stated she is interested to see how this meeting is reported in the media. She wants all students, especially special education students, to have all the support they need, and this is her priority and she believes that this is true for all the members of the Committee and the people sitting in the room today.

Senator Baumgardner thanked everyone. She stated special education has been part of her life for many years, and many positive services are being provided to students in need. She often hears disappointment from parents, especially those with students in junior and senior high school, that there is not enough teacher support. Senator Baumgardner stated parents with special needs children need all the support we can give them. School districts must utilize their experts when coming up with budgets and funding.

The Chairperson adjourned the meeting at 3:10 p.m.

Prepared by Deborah Bremer

Edited by Gabrielle Hull and Jessa Farmer

Approved by the Committee on:

December 20, 2022

(Date)