

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Special Committee on education
From: Office of Revisor of Statutes
Date: November 30, 2021
Subject: Overview of Recent Legislation Regarding At-Risk Education Funding
and Requirements for At-Risk Education Fund Expenditures

I. At-Risk Education Funding

The school finance formula, the Kansas School Equity and Enhancement Act (KSEEA), provides additional state funding for school districts to provide students who are at risk of academic failure with additional educational opportunities, interventions and services. A school district's at-risk student funding amount is calculated based upon the number of students enrolled in a school district who are eligible for free lunches under the national school lunch program. The state provides such additional funding through two formula weightings – the at-risk student weighting and the high-density at-risk student weighting. At-risk funding is not determinative of which students receive at-risk educational services.

In 2021 HB 2134, the Legislature provided that the purpose of the at-risk education weighting and the high-density at-risk education weighting is to provide students who are identified as eligible to receive at risk educational services with evidence-based instructional services in addition to regular instructional services.

A. At-risk Student Weighting

The at-risk student weighting provides an additional .484 formula weighting for each full-time student who is eligible for free lunches. To determine a district's amount of at-risk funding, the number of students enrolled in the district who are eligible for free lunches is multiplied by

.484 and then multiplied by the BASE aid amount for such school year.¹ In 2017 SB 19, the Legislature increased the at-risk student weighting from .456 to the current weighted amount.

B. High-Density At-Risk Student Weighting

The high-density at-risk student weighting provides an additional formula weighting to school districts that have higher percentages of free lunch eligible students. A school district receives the high-density at-risk weighting if: (1) 35% or more of the students enrolled in a school district are eligible for free lunches; or (2) 35% or more of the students enrolled in an individual school building are eligible for free lunches.² In 2017 SB 19, the Legislature amended the high-density at-risk weighting to allow school districts to use the building level calculation.

If a school district or an individual school building of a district has a free-lunch enrollment between 35% to 50%, the value of the high-density at-risk weighting factor increases as such enrollment increases. To determine the applicable weighting factor, subtract 35% from the district's or building's free-lunch enrollment and multiply such result by 0.7. The product of this calculation multiplied by the free-lunch enrollment provides the high-density at-risk weighting for the district or building.

If a school district or an individual school building of a district has an enrollment of 50% or more students who are eligible for free lunches, the weighting factor for such district is 0.105. This weighting factor multiplied by such enrollment provides the weighting for the district or building.

Since the passage of the KSEEA in 2017 SB 19, the Legislature has set a statutory expiration date for the high-density at-risk student weighting. The Legislature has since extended such expiration date multiple times and has not allowed the weighting to expire. In 2021 HB 2134, the Legislature extended such weighting through July 1, 2024.

¹ K.S.A. 72-5151

² K.S.A. 72-5151

II. Identification of Students who are Eligible for At-Risk Programs and Services

2021 HB 2134 provides that the purpose of at-risk educational programs is to provide students who are identified as eligible to receive at-risk programs and services with additional educational opportunities, interventions, and evidence based instructional services above and beyond regular educational services.

Students are identified as eligible for at-risk programs and services based upon certain academic related needs criteria. Free-lunch eligibility has no bearing upon such identification. Rather, pursuant to 2021 HB 2134, a student is deemed eligible for at-risk programs and services if the student meets one or more of the following criteria:

1. Is not working on academic grade level;
2. is not meeting the requirements necessary for promotion to the next grade or is failing subjects or courses of study;
3. is not meeting the requirements necessary for graduation from high school or has the potential to drop out of school;
4. has insufficient mastery of skills or is not meeting state standards;
5. has been retained;
6. has a high rate of absenteeism;
7. has repeated suspensions or expulsions from school;
8. is homeless or migrant;
9. is identified as an English language learner;
10. has social-emotional needs that cause the student to be unsuccessful in school; or
11. is identified as a student with dyslexia or characteristics of dyslexia.³

Prior to codifying the above eligibility criteria in law, the State Board of Education was charged with establishing the at-risk student identification criteria and the criteria consisted of the first ten listed items. Upon codification, the Legislature effectively added the eleventh criteria so that a student who is identified as a student with dyslexia or characteristics of dyslexia are now eligible for at-risk educational programs and services.

³ K.S.A. 72-5153a

III. At-Risk Education Fund Requirements

To track and account for district expenditures on at-risk educational programs and services, state law establishes an at-risk education fund in each school district. All expenses that are attributable to the provision of at-risk student assistance programs must be paid from the at-risk fund of the district.

A. At-Risk Education Fund Transfers

Each school district is required by law to make certain transfers of moneys into the at-risk education fund. In 2021 HB 2134, the Legislature required school districts to transfer all moneys that are generated by the at-risk student weighting and the high-density at-risk student weighting to the at-risk fund of the school district. Pursuant to an amendment passed in 2018 SB 423, each school district must also transfer to the at-risk education fund the amount raised from a district's local option budget that is attributable to the district's at-risk student weighting. Lastly, a school district would also be required to transfer moneys from another funding source, such as the general fund, if the district's expenses for the provision of at-risk educational programs and services exceed the available moneys in the at-risk education fund.

B. Expenditure Requirements for At-Risk Education Funds

School districts may only expend funds from their at-risk education funds in accordance with the law. Upon passage of the KSEEA in 2017 SB 19, and through additional revisions made in 2019 SB 16 and 2021 HB 2134, the Legislature has required that at-risk education funds may only be used for:

1. At-risk and provisional at-risk programs;
2. personnel providing educational services in conjunction with such programs;
3. supports that are designed to provide training to classroom personnel related to evidence-based best practices for at-risk educational programs; and
4. contracted services that provide at-risk and provisional at-risk programs.

Expenditures from the at-risk education fund may only be used for programs and services that are approved by the State Board of Education as a program or service that provides an evidence based best practice for instruction of students who are identified as eligible to receive at-risk services. 2021 HB 2134 requires the State Board to provide a list of the approved at-risk educational programs to each school district and to also publish such list on KSDE's website. School districts are generally prohibited from expending at-risk education funds on any program

or service that is not included on the State Board's list of approved educational programs unless the program is a provisional at-risk educational program.

2021 HB 2134 authorizes districts to expend at-risk education funds on programs that are not on the list provided by the State Board if the expenditure is made for a provisional at-risk educational program. A provisional at-risk educational program is an evidence based at-risk educational program or service identified or developed by a school district that is producing or likely to produce measurable success. If a school district expends at-risk education funds on a provisional at-risk program, such school district may only fund the provisional program for up to three years and must submit such program to the State Board for review. If the State Board finds that such program provides an evidence-based best practice, then the State Board is required to place such program on the list of approved programs and the school district may continue to utilize such program.

2021 HB 2134 provides that any school district that receives the high-density at-risk weighting shall expend such amount of money attributable to such weighting upon the at-risk best practices developed by the state board. If a school district fails to expend such moneys upon such best practices, the school district must repay such amount to the school district's at-risk education fund and expend such money in accordance with the law. The State Board is required to notify the education committees of the Legislature of any school districts that had to repay moneys through the operation of such provision.

2021 HB 2134 contemplates that the delivery of at-risk programs and services may generally include, but is not limited to, the following:

1. Extended school year;
2. before-school programs and services;
3. after-school programs and services;
4. summer school;
5. extra support within a class;
6. tutorial assistance; and
7. class within a class.

IV. Required Reports upon At-Risk Education Programs

School districts are required to submit annual reports to the State Board of Education on the at-risk educational programs that are provided by the school district. Such report must include

the number of students who are identified as eligible for at-risk educational programs and services, the type of programs and services provided to such students and the data and research upon which the school district used to determine what programs and services were needed.

2021 HB 2134 also requires districts to track and report the longitudinal performance of students who are continuously receiving at-risk programs and services within the district. If applicable, a district shall include data regarding state assessment scores, Kansas English language proficiency assessment results, four-year graduation rates, progress monitoring, norm-referenced test results, criterion based-test results, individualized education program goals, attendance, and average ACT scores.

V. LPA At-Risk Education Audit

2021 HB 2134 requires the Legislative Post Audit Committee to direct the Legislative Division of Post Audit to conduct a performance audit of at-risk education expenditures in 2023. The purpose of the audit is to evaluate how school districts are expending at-risk education moneys, whether those expenditures comply with the law and whether the State Board and KSDE are acting in accordance with the law as it relates to at-risk expenditures and programs. The audit should also evaluate the trends in the academic outcomes of students receiving at-risk programs and services. The final audit report is to be submitted to the Legislature on or before January 15, 2024.