

# The Special Education Report

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## The Changing Face of Special Education

### IDEA-Federal Funding

The Individuals with Disabilities Act (IDEA) was enacted in 1990, replacing the Education for Handicapped Children Act of 1975 (EHA). When originally passed in 1975, Congress made a commitment that the federal government would fund 40 percent of the excess educational costs of the nation's average per pupil expenditure through Part B state grants for students with disabilities. State and local funds would supplement the rest. The commitment did not materialize. The reauthorized Individuals with Disabilities Education Improvement Act of 2004 Pub. L. No. 108-446, 118 Stat. 2647 (codified as amended at 20 U.S.C. §§1400-1482) allocated specific funding levels to allow the federal share of special education funding to grow from 18 percent in 2004 to 40 percent by 2011. Unfortunately, Congress never appropriated enough funding to match the levels specified in the law. Federal funding remains at 18 percent or lower of the excess costs of special education.

### IDEA-State Funding

According to K.S.A. 72-978, the Kansas State Board of Education shall determine the amount of state aid for the provision of special education and related services each school district shall receive for the ensuing school year. The amount of such state aid is computed according to this statute. The computed number is multiplied by 92 percent for a total the districts are entitled to receive for the provision of special education and related services. Currently, the Legislature has appropriated 79.6 percent of excess cost and unless appropriations are increased the figure will drop to 78.4 percent for the next fiscal year.

**Side note** - In 1975, a loaf of bread cost 28 cents! Also, gas was 57 cents a gallon. In 2005, a loaf of bread cost \$2.29 and gas cost \$2.27 a gallon. What does a gallon of gas cost you today?

### Mandated Increases in Special Education Services

- **6-21** With the initial passage of EHA in 1975, special education services were to be provided to students six-21 years of age across 10 areas of disabilities.
- **Autism** was added as a separate category of disability in 1990 under the IDEA. There was a significant increase in the prevalence of the number of students with autism during the 1990s, from one in every 2,500 children to one in every 125. Currently, The Centers for Disease Control and Prevention (CDC) updated its estimate of autism prevalence in the United States to 1 in 88 children.
- **Zero Reject** The zero reject rule was affirmed in *Parks v. Pavkovic*, 753 F.2d 1397 (7<sup>th</sup> Cir. 1985) and *Timothy W. v. Rochester School District* 875 F.2d 954 (1st Cir. 1989). The courts have ruled that even if the student is completely incapable of benefiting from educational services and all efforts are futile—even if the child is unconscious or in a coma—the school is still required to provide educational services to the child.
- **TBI** In 1990, the federal government added students with traumatic brain injury to the list of those eligible for special education services. This decision was in recognition of the fact that TBI occurs much more frequently than was previously thought. For example, estimates are that about one million children and adolescents receive head injuries each year, with 15,000 to 20,000 incurring lasting effects (Council for Exceptional Children, 2001).
- **ADHD** In the late 1980s and early 1990s, parents of affected children lobbied intensely for ADHD as a new category of special education. Therefore, in 1991, Congress came up with the compromise that students with ADHD could receive special education services if they were identified as

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having other health impairments (OHI), i.e., had a condition that interfered with their educational performance. This change resulted in a large increase of students identified with OHI.

- **Least Restrictive Environment** In the 1970s and early 80s students were mainstreamed into only nonacademic classes such as physical education, music, recess, and/or art rather than academic classes. Supports and planning were not often provided. In a landmark case interpreting IDEA's legal predecessor (EHA), *Daniel R.R. v. State Bd. of Education* 874 F.2d 1036 (5<sup>th</sup> Cir.1989), it was determined that students with disabilities have a right to be included in both academic and extracurricular programs of general education within the general education classroom.
- **Birth to Age Three/Pre-School** Under the reauthorized version of the IDEA in 2004: special education and related services are designed to meet the unique learning needs of eligible children with disabilities, preschool through age 21. Part C of IDEA requires every state to provide early intervention services to children from birth to age three who have disabilities and to their families.
- **Developmental Delay** IDEA allows states to use this eligibility category up to age nine and to establish their own criteria such as developmental inventories and/or informed clinical opinion. 34 C.F.R. § 300.8(b). (*Young children who may later be identified as Learning Disabled are frequently included in this category.*) For many infants and preschoolers, it is often difficult to determine whether they have a true disability or have a temporary delay in maturation. In addition, it is sometimes difficult to determine the exact nature

of a very young child's disability. For these reasons, professionals are often reluctant to make a clinical diagnosis and, instead, refer to them as having a developmental delay.

- **Discrepancy Formula** The reauthorized Individuals with Disabilities Education Improvement Act of 2004 did away with the absolute requirement for a severe discrepancy between age and achievement to be needed to determine whether a child has a Learning Disability. The decision can now also be based on criteria established by each state based on a child's response to scientific research-based interventions and on a pattern of strengths and weaknesses in performance in light of age, grade level standards or intellectual development. 34 C.F.R. § 300.309.
- **Additional Increases in Numbers of Students Served**
  1. Medical, economic, and social factors (advances in medical knowledge and technology) resulting in more children with more severe special needs entering public schools.
  2. While increases in the enrollment of students with very severe needs are arguably beyond district control, the predominant categories of rising enrollment are in the less severe categories of disability.
  3. The **deinstitutionalization** of special needs children. (Happened in mid 1980s and continues today.)
  4. The consequences of higher percentages of children living in poverty.
  5. The increase in families experiencing social and economic stress.

### **Kansas Association of Special Education Administrators (KASEA) Legislative Platform**

Recognizing the critical importance played by both state and Federal legislators, KASEA members are politically active and work to provide comprehensive and timely support for legislators as key decisions are made. The KASEA legislative platform is as follows:

1. Kansas special education mandates should mirror those in Federal Individuals with Disabilities Education Act (IDEA) statutes and regulations.
2. Public funds should be used to fund Free and Appropriate Public Education (FAPE) as determined by the Individual Education Program (IEP) team.
3. KASEA should be an active participant in the research regarding any potential changes in the current funding formula.
4. Special education should be funded at 100 percent of excess cost.

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