

January 3, 2024

Testimony to the Special Education Task Force

Meeting of January 5, 2024 at 12:00 pm

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Room 112-N, State Capitol Building

Special Education Task Force Members,

Thank you for contributing your time and expertise to the critical work of this Special Education Task Force established by the 2023 Kansas legislature.

Kansas PTA has been advocating for full funding of special education services since the law, known as the Individuals with Disabilities Act, was first passed in 1975 ([see Priorities 2, 3](#)). And again today, we urge the Kansas legislature to fully fund their portion of mandated special education services without further delay.

Studies of special education are abundant.

Kansas Legislative Division of Post Audit (KS LPA) has studied special education 13 times between 1983 and 2020 ([see appended list](#)), plus two additional legislative cost studies that include special education ([2018](#), [2002](#)). Conclusions and recommendations have been identified over the years to address equity and accountability in the distribution of funds. Explanations for cost estimations have been provided, including reasons for rising district expenditures and unique components of the calculation.

“Special education funding has been correctly calculated and distributed in the years we reviewed, but the Legislature has provided less funding than required by state law” ([KS LPA, 2018, p.21](#)).

“... by providing funding based on district expenditures instead of special education students, the state reduces the incentive to over-identify students for additional funding” ([KS LPA, 2018, p.7](#)). For example, “state funding is distributed to districts primarily based on the number of Special Education teachers they employ” ([KS LPA, reissued 2015, p. 43](#)).

“Districts maintain unencumbered cash balances for several reasons... Districts use balances to manage cash flow. School district funding comes periodically throughout the year. For example, school districts start paying special education staff and buying materials for students in August but do not receive their first special education funding payment until October. To pay their bills at the beginning of the year, they must set aside money from the previous year” ([KS LPA, 2020, p.3 pdf](#)).

However, four decades of study have yet to negate the state’s financial obligation which was put into statute in 2005. The state committed to 89.3% for 2005-06, and 92.0% for every year thereafter, in the context of the Montoy school finance lawsuit that focused on actual costs.

“... in January 2005 (Montoy II). The Court affirmed that SDFQPA was neither equitable nor adequate, particularly for “middle- and large-sized districts with a high proportion of minority and/or at-risk and special education students.” Addressing adequacy, it ruled that “the financing formula was not based upon actual costs to educate children but was instead based on former spending levels and political compromise,” and that “[t]he equity with which the funds are distributed and the actual costs of education... are critical factors for the legislature to consider in achieving a suitable formula for financing education” ([KS Legislative 2018 cost study, p.2](#)).

“... the greater the reliance on LOB-generated funds, and the less the reliance on BASE-generated funds, the more the specter of unconstitutional structure looms” ([Gannon V, p. 41](#); [Gannon VI, p. 33](#)).

“Plaintiffs argue the reduction of special education state aid forces districts to cannibalize other funding to cover the state and federal special education requirements” ([Gannon V, p. 19](#)).

“...given the potential inequities that arise from local funding based on property taxes, the legislature must always be cognizant that capital outlay and LOB statutory changes raise equity concerns. Indeed, in previous situations where the legislature has exacerbated wealth-based disparities while attempting to cure past inequities that violate our state constitution, we have rejected the legislative change” ([Gannon V, p. 61](#)).

“... the panel rejected LOB funds as a ‘constitutionally adequate funding source’ because the LOB ‘statutory funding design is optional and voluntary as to both its existence and in the dollar contribution to be made by it’” ([Gannon IV, p. 53](#)).

“... We have previously held that ‘total spending is not the touchstone of adequacy.’ Gannon I, 298 Kan. at 1172. So we reiterate that **the legislature should focus instead on creating a public education financing system for grades K-12 that—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in Rose** and as presently codified in K.S.A. 2016 Supp. 72-1127” ([Gannon IV, p. 80](#)).

Our local public schools are preparing to cover about \$226.5 million in unreimbursed special education costs by the 2024-2025 school year.

If not fully funded now, when?

At present, Kansas is approaching a \$3 billion dollar surplus ([KS Division of Budget](#)), plus an additional \$1.7 billion in the state’s rainy day fund. The Governor’s Office has been operating from a balanced budget year after year ([Gov Budget Report FY 2024](#)), which continued to pay down debt and build up reserves. The Governor’s annual budgets are in keeping with state education law, including the general education school finance formula and phasing-in full funding for special education. The budgets have honored the Gannon school finance agreement for which the Kansas State Supreme Court still retains jurisdiction. Full funding of special education reflects only a small fraction of the budget surplus and yet stands to yield a positive return on investment.

The question being asked by parents and teachers of the Kansas PTA is if not now, when? Why did the Kansas legislature stop fully reimbursing public schools for their 92% share of excess costs back in 2012? And if the services deemed necessary by parents and educators are mandated by the legislature, why wouldn’t funding be mandatory as well? Who is questioning the cost estimates of providing services to students with disabilities and gifted youth, costs which are recognized as valid by the professional Kansas agencies and organizations: Consensus Revenue Estimate Group (CREG), Legislative Research Department (KLRD), Legislative Post Audit (KS LPA), Governor’s Office, Department of Education (KSDE),

State Board of Education (SBOE), Kansas Association of School Boards (KASB), Kansas National Education Association (KNEA) and United School Administrators of Kansas (USA|KS). Who is saying otherwise? What is the mission of these other entities?

Ensure quality services for students with and without disabilities, in public and private schools.

Underfunding special education services erodes general education resources and undermines the impact of the Gannon school finance agreement. When local districts are not fully reimbursed for mandated IEP services provided to students enrolled in public and private schools, the dollars must come out of public school general operating budgets and general education classrooms. Few dollars can be found elsewhere, with roughly 5% of total district expenditures associated with general administration and central services ([KSDE](#)) and a 96% efficiency rating from the recent legislative cost study ([Taylor, 2018, p. 63](#)). Restoration of general education state aid is being compromised and diminishing learning opportunities, particularly among students with special needs. Note that most students with an IEP spend the majority of their time in general education classrooms, as do at-risk students and English language learners.

We urge the Task Force to recommend full funding of special education under current state law and without delay. Thank you for your consideration. Please note that PTA has been actively calling on our federal legislators to keep their promise and fully fund their portion of special education costs, a financial responsibility being passed on to states and local districts (see attached [Kansas PTA Myth Busters on Special Education Costs](#)).

Denise Sultz, Kansas PTA President
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THE PTA POSITION

Kansas PTA is a nonpartisan association that promotes the welfare of children and youth. The PTA does not endorse any candidate or political party. Rather, we advocate for policies and legislation that affect Kansas youth in alignment with our legislative platform and priorities. [PTA mission and purpose](#) have remained the same since our inception over 100 years ago, focused on facilitating every child's potential and empowering families and communities to advocate for all children.

Kansas Special Education Legislative Post Audit and cost studies, over past 40 years

The following are archived online at LPA ([KS LPA audits](#)):

- 2020 LPA – Evaluating School Districts' Unencumbered Cash Balances (includes SPED)
- 2018 LPA – Evaluating SPED Costs (includes review of other state models)
- 2016 LPA – Federal Education Funds: Evaluating Costs/Benefits of K-12 Funding
- 2015 LPA – Federal Funds; Evaluating State Spending Required by Federally Funded Programs
- 2009 LPA – K-12 Reviewing Issues Related to Catastrophic Aid for SPED
- 2007 LPA – Reviewing Issues Related to SPED Funding
- 2006 LPA - Montoy Cost-Function Analysis
- 2001 LPA – SPED: Determining Whether School Districts Are Accountable
- 1998 LPA – Reviewing Issues Related to SPED Funding
- 1990 LPA – Update on SPED Programs and Costs in Kansas
- 1987 LPA – Reviewing SPED in Kansas

- 1985 LPA – Options for Containing Costs of SPED in Kansas
- 1983 LPA – Variations Between School Districts in SPED Placements

- The Taylor study delivered to KS Legislature in 2018 also includes SPED costs analysis ([Taylor, 2018](#))
- The Augenblick & Myers Cost Study ([2002](#))

MYTH BUSTERS

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Special Education Costs

FACTS: Local school districts across Kansas are budgeting to pay over \$155 million in unreimbursed costs for mandated special education services this school year.¹ The unreimbursed expenses must be paid for from local district general operating budgets. Keep in mind:



These recurring excess cost estimates are recognized as valid by the professional Kansas agencies and organizations: Consensus Revenue Estimate Group (CREG), Legislative Research Department (KLRD), Legislative Post Audit (KSLPA), Governor's Office, Department of Education (KSDE), State Board of Education (SBOE), Kansas Association of School Boards (KASB), Kansas National Education Association (KNEA) and United School Administrators of Kansas (USA|KS).



The majority of students receiving special education services spend the majority of their time in general education classrooms and activities. This means that these students incur both general and special education costs.²

MYTH: Kansas public schools are reimbursed for over 100% of special education costs.

Fact 1 – Mandate. Federal law was passed in 1975 to ensure that students with disabilities received a **free appropriate public education (FAPE)** along with their peers without disabilities, currently known as the **Individuals with Disabilities Education Act (IDEA)**.³ States and local school districts are required to support students with disabilities in the **least restrictive educational environment (LRE)**, from ages 3 to 21 years—providing up to 6 additional years of education. Public school districts and special education cooperatives “must provide these services regardless of the cost to the organization.”⁴

Kansas Stats (school year 2021)⁵

- ▶ Special education student-teacher ratio about 20:1
- ▶ **88,622 Students with IEPs**
 - ▷ 78,273 Students with IEPs for disability
 - ▷ 10,349 Students with IEP for gifted services
- ▶ 4,470 Special education teachers
- ▶ 6,857 Paraprofessionals to support instruction

Fact 2 – Federal funding shortfall. When the federal mandate was adopted, Congress promised to allocate revenue for up to 40% of the excess costs of special education services. Federal reimbursement has never even reached 15% of the costs in over 45 years.⁶ Federal support in school year 2021, was on average \$1,739 per student with a disability.⁷

Fact 3 – State shortfall, funding less than 92%. Kansas special education funding formula was set into law in 2005 and mandates the state legislature to funding 92% of the excess costs of special education

services.⁸ The state's responsibility was defined with a focus on the **actual costs** of providing students with the opportunity to achieve their education goals. State reimbursement has been **below state law** since 2012, leaving local districts to cover \$105 million out of their general operating budgets last year - and another projected \$155 million this school year.⁹

Shifting the financial burden to local districts has undermined the impact of the school finance agreement under the Gannon State Supreme Court ruling. When funds intended to cover the actual costs of general education must be diverted, all students struggle especially youth with learning challenges due to disability, poverty, and/or language barriers.

What is Gannon? read here¹⁰

Fact 4 – Costs of Special Education Services.

The cost of special education services in Kansas were estimated to range from \$12,400 to \$19,200 per pupil, in 2018, varying in relation to students' needs.¹¹ The majority of costs are for personnel. Costs to districts include:

- ▶ special education teachers, paras and related services personnel—psychologists, social workers, nurses, speech pathologists, OT/PT and such
- ▶ special transportation
- ▶ medical equipment and supplies
- ▶ instructional equipment and supplies
- ▶ payment for out-of-districts services for students whose needs cannot be met otherwise

- ▶ state mandates that exceed federal requirements:
 - ▷ services for gifted students
 - ▷ services for students enrolled in private schools
 - ▷ services beginning age 3 and up to 22 years depending on birthdate
 - ▷ dyslexia screening and teacher training
 - ▷ Language Assessment Program for hearing impaired
 - ▷ services cannot change by more than 25% or end unless parent signs off

Fact 5 – Maintenance of Effort (MOE). The special education MOE is a federal requirement to spend at least the same amount of local and state funding for the program, and related services, as it expended in the previous fiscal year.¹² The federal grant program carries a potential financial penalty if the MOE is not upheld. Consider, any bill passed by the legislature, with a fiscal note reflecting annual costs for implementation of that law, is an implicit MOE requirement that will be incurred as long as that law is in place.

Fact 6. Two Formulas. The state uses one method to estimate the actual costs of special education services for the coming year, to get as close as possible without going over. This cost-estimate method is structured for budgeting purposes and is different from the statutory formula used to distribute the special education funds.

Fact 7 – Special Education Services. The federal and state mandates direct public schools to make **special accommodations and modifications** for students with disabilities to facilitate access to the general education curriculum and typical school experiences in the LRE. The accommodations are

written into an Individualized Education Program (IEP) developed by parents, students and educators and have real costs that exceed base aid. The IEP essentially serves as a contract, in which excess costs are generated for case management, individualized plans and instruction, adaptive resources, door-to-door transportation, medical support, formal assessments, pre-referral interventions and/or more.

Fact 8 – Responsibilities of Special Education Teachers. In 2021 about 4,470 special education teachers were responsible for 88,622 students with IEPs.¹³ Their responsibilities include:

- ▶ Direct Instruction: Preparing instructional plans and delivering direct instruction (based on minutes of service)
- ▶ Case Management:
 - ▷ coordinating formal evaluation and assessment of students’ potential needs, with school psychologists and other educators (being careful not to over or under identify)
 - ▷ preparing instructional plans and collaboration with general education teachers, paraprofessionals and resource staff to deliver instruction as well
 - ▷ development and routine review of each student’s IEP
 - ▷ ongoing progress monitoring for each student with an IEP
 - ▷ documentation for compliance and accountability
 - ▷ participation in any dispute resolution (due process outlined in IDEA).

**If not now,
WHEN?**

Kansas current surplus is close to \$3 billion.¹⁴

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Endnotes.

- 1 CREG (2022) The Consensus Revenue Estimating Group of the state budget office computes the annual special education cost estimates.
- 2 Kansas Legislative Post Audit (2015). Abridged Cost Study Analysis, p.48. [20170123_02.pdf \(kslegislature.org\)](https://kslegislature.org/20170123_02.pdf)
- 3 Individuals with Disabilities Act (IDEA). <https://sites.ed.gov/idea/>
- 4 Kansas Legislative Post Audit (2018). K-12: Special Education, p. 9. [18-012 - K-12 Education: Special Education \(kslpa.org\)](https://kslpa.org/18-012-K-12-Education-Special-Education.pdf)
- 5 Kansas Department of Education (2021). [Data Central \(ksde.org\)](https://ksde.org/data-central/)
- 6 Education Week (2020). [Why the Feds Still Fall Short on Special Education Funding \(edweek.org\)](https://edweek.org/why-the-feds-still-fall-short-on-special-education-funding/)
- 7 Office of Special Education Programs (2021). Budget, p. 21. [i-specialied; Tallman \(2022, July\) Federal Funding Shortfall \(kasb.org\)](https://www.federalregister.gov/documents/2021/07/01/2021-13183-special-education)
- 8 KS LPA (2015). p. 43 [20170123_02.pdf \(kslegislature.org\)](https://kslegislature.org/20170123_02.pdf)
- 9 KASB (2022, April). [Kansas Special Education Funding - News \(kasb.org\)](https://kasb.org/news/kansas-special-education-funding/)
- 10 Kansas Revisors Office (2019). [Gannon VII Comprehensive Summary Revisor of Statutes FINAL June 21.pdf \(ksrevisor.org\)](https://ksrevisor.org/gannon-vii-comprehensive-summary-revisor-of-statutes-final-june-21.pdf)
- 11 KS LPA (2018). p 15. [18-012 - K-12 Education: Special Education \(kslpa.org\)](https://kslpa.org/18-012-K-12-Education-Special-Education.pdf)
- 12 KSDE (2010). [IV.D.1 Understanding MOE.pdf \(ksde.org\)](https://ksde.org/iv-d-1-understanding-moe.pdf)
- 13 KSDE (2021). [Data Central \(ksde.org\)](https://ksde.org/data-central/)
- 14 CJOnline (2022, June). [Kansas economy and taxes produce state budget surplus, rainy day fund \(cjonline.com\)](https://cjonline.com/kansas-economy-and-taxes-produce-state-budget-surplus-rainy-day-fund/)