

STATE FUNDING OF SPECIAL EDUCATION SERVICES - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4031 (attached as an appendix) directs the Legislative Council to study the method by which the state funds special education services.

BACKGROUND

Over four decades ago, a group of persons interested in education in this state recognized that a number of children in the educational system were unable to benefit from the existing educational services. These children were "exceptional children" and a committee was formed to determine the feasibility of establishing an aid program that could direct special attention to such children in order that they might overcome their special problems and become productive citizens.

The efforts of this committee resulted in the recommendation and eventual passage of 1951 House Bill No. 540. Exceptional children were defined as "educable children under the age of twenty-one whose educational needs are not adequately provided for through the usual facilities and services of the public schools, school districts, or state institutions because of physical, mental, emotional, or social conditions . . ." Special education was defined as "the provision of facilities, instruction, supervision, and other necessary services not otherwise provided such children in the public schools and institutions."

The 1951 legislation created an Advisory Council on Special Education consisting of the Superintendent of Public Instruction, the State Health Officer, the director of the Division of Child Welfare of the Public Welfare Board, the director of the Division of Vocational Rehabilitation of the Board of Higher Education, the superintendent of the State School for the Deaf, the superintendent of the State School for the Blind, and the superintendent of the Grafton State School. The advisory council was given specific duties such as establishing a general state policy regarding special education and endeavoring to ensure a cooperative special education program characterized by the coordination of all available services with which to assist exceptional children. The director of special education, who was employed by the Superintendent of Public Instruction, was in turn directed to "assist the school districts of the state in the inauguration, administration, and development of special education programs, establish standards and provide for the approval of certification of schools, teachers, facilities, and equipment."

Larger than ordinary per student payments were required to be made to school districts offering special education programs. The 1951 report of the

Legislative Research Committee stated that increased payments were deemed warranted because "education of this type requires individual and special attention, and it is not always possible to conduct it in classrooms where a large number of children can come together."

The appropriation for special education during the 1951-53 biennium was \$50,000. By the 1959-61 biennium, the appropriation for special education had risen to \$365,000 and the number of children served had risen from 472 in 1951 to 3,055. Using national statistics, it was estimated that the number of children requiring special education services in North Dakota might be as high as 15,000 or 20 percent of all schoolchildren.

A 1959-60 interim study cited three main problems associated with the delivery of special education--lack of space for instruction, shortage of trained personnel, and inadequacy of available funds. It was the opinion of the interim committee that if a substantially increased special education program were to be provided, it would have to be financed primarily from funds by local governments and not the state. The committee also found that county-level special education programs would be the most desirable from a financial perspective and would best utilize the available personnel and facilities. Since many school districts did not have a sufficient number of children in need of special education services to warrant programs within their districts, the committee suggested that a county board of special education should be given the authority to contract with school districts both within and outside the county for special education facilities.

In response to the recommendations made by the interim committee, the 1961 Legislative Assembly enacted legislation that authorized the establishment of county boards of special education, funded by the boards of county commissioners out of county general funds, or if approved by a majority of the county electorate, by a county special education levy not in excess of three mills.

For the next 12 years, the delivery of special education services in North Dakota remained structurally unchanged. However, in 1973 the Legislative Assembly required all school districts to submit a plan for implementing special education services to the Superintendent of Public Instruction by July 1, 1975.

This mandate spurred considerable growth in the provision of special education services to exceptional children. Some school districts extended their special education programs while many others, not having made prior arrangements for special education

services, took the first steps toward implementing special education programs. The amount of state funding assistance for special education was also increased in 1973, with the legislative objective being the expansion of special education programs in terms of both scope and availability.

The involvement of special education in North Dakota was significantly affected in the mid-1970s by the enactment of federal legislation.

Federal Law

In 1975 Congress enacted legislation that has been the foundation for the provision of special education to children with disabilities in this country. Known as the Education for All Handicapped Children Act, the legislation articulated the following nine specific findings:

1. There are more than eight million children with disabilities in the United States;
 2. The special education needs of such children are not being fully met;
 3. More than one-half the children with disabilities do not receive appropriate educational services that would enable them to have full equality of opportunity;
 4. One million of the children with disabilities are excluded entirely from the public school system and will not go through the educational process with their peers;
 5. There are many children with disabilities participating in regular school programs and failing to have successful educational experiences because their disabilities are undetected;
 6. Because of the lack of adequate services within the public school system, families are often forced to find outside services, often at great distances from their residences and at their own expense;
 7. Developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, state and local educational agencies can and will provide effective special education and related services to meet the needs of children with disabilities;
 8. State and local educational agencies have a responsibility to provide an education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and
 9. It is in the national interest that the federal government assist state and local efforts to provide programs that meet the educational needs of children with disabilities to assure equal protection of the law.
- The findings were reaffirmed by the 1991 amendment known as the Individuals With Disabilities Education Act (IDEA).
- In the 1997 reauthorization of IDEA, Congress updated its findings:
- (1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.
 - (2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142)--
 - (A) the special educational needs of children with disabilities were not being fully met;
 - (B) more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity;
 - (C) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers;
 - (D) there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected; and
 - (E) because of the lack of adequate services within the public school system, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.
 - (3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.
 - (4) However, the implementation of this chapter has been impeded by low expectations, and an insufficient focus on

- applying replicable research on proven methods of teaching and learning for children with disabilities.
- (5) Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by--
- (A) having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible;
 - (B) strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;
 - (C) coordinating this chapter with other local, educational service agency, State, and Federal school improvement efforts in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;
 - (D) providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate;
 - (E) supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them--
 - (i) to meet developmental goals and, to the maximum extent possible, those challenging expectations that have been established for all children; and
 - (ii) to be prepared to lead productive, independent, adult lives, to the maximum extent possible;
 - (F) providing incentives for whole-school approaches and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs; and
 - (G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results.
- (6) While States, local educational agencies, and educational service agencies are responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.
- (7) (A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.
- (B) America's racial profile is rapidly changing. Between 1980 and 1990, the rate of increase in the population for white Americans was 6 percent, while the rate of increase for racial and ethnic minorities was much higher: 53 percent for Hispanics, 13.2 percent for African-Americans, and 107.8 percent for Asians.
- (C) By the year 2000, this Nation will have 275,000,000 people, nearly one of every three of whom will be either African-American, Hispanic, Asian-American, or American Indian.
- (D) Taken together as a group, minority children are comprising an ever larger percentage of public school students. Large-city school populations are overwhelmingly minority, for example: for fall 1993, the figure for Miami was 84 percent; Chicago, 89 percent; Philadelphia, 78 percent; Baltimore, 84 percent; Houston, 88 percent; and Los Angeles, 88 percent.
- (E) Recruitment efforts within special education must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.
- (F) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited English proficient students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children

- in special education. The Department of Education has found that services provided to limited English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.
- (8) (A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.
- (B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.
- (C) Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterpart.
- (D) Although African-Americans represent 16 percent of elementary and secondary enrollments, they constitute 21 percent of total enrollments in special education.
- (E) The drop-out rate is 68 percent higher for minorities than for whites.
- (F) More than 50 percent of minority students in large cities drop out of school.
- (9) (A) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this chapter; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.
- (B) In 1993, of the 915,000 college and university professors, 4.9 percent were African-American and 2.4 percent were Hispanic. Of the 2,940,000 teachers, prekindergarten through high school, 6.8 percent were African-American and 4.1 percent were Hispanic.
- (C) Students from minority groups comprise more than 50 percent of K-12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.
- (D) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.
- (E) Ten years ago, 12 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 13 percent minority, while one-third of the students in public schools are minority children.
- (F) As recently as 1991, historically black colleges and universities enrolled 44 percent of the African-American teacher trainees in the Nation. However, in 1993, historically black colleges and universities received only 4 percent of the discretionary funds for special education and related services personnel training under this chapter.
- (G) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.
- (H) In 1986-87, of the degrees conferred in education at the B.A., M.A., and Ph.D. levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.
- (10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.
- With respect to the purposes of IDEA, Congress maintained its initial premises of ensuring that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their

unique needs and prepares them for employment and independent living" and that "the rights of children with disabilities and parents of such children are protected." The legislation goes on to state the following additional purposes:

- (1) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;
- (2) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and
- (3) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

The legislation maintains its earlier language regarding the maximum grant amount to which a state is entitled:

The maximum amount of the grant a State may receive under this section for any fiscal year is--

- (A) the number of children with disabilities in the State who are receiving special education and related services--
 - (i) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and
 - (ii) aged 6 through 21; multiplied by
- (B) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

NORTH DAKOTA

During the 1997-98 school year, 12,902 North Dakota students received special education services. These students made up roughly 10.3 percent of the total school population. Of the 12,902 students, approximately 80 percent were diagnosed as having mild learning problems and were categorized as speech-language impaired or learning disabled. These students spent the majority of their schooldays in general education and, if needed, received support services within that setting. The remaining 20 percent of the students fell into one or more of 11 disability categories, including orthopedic impairments, visual impairments, deafness, mental retardation, and

emotional disturbances. Thirty-one special education units assist North Dakota schools in providing special education services to students. In some cases, these units are multidistrict cooperatives; in other cases, they are single districts.

During the 1997-98 school year, expenditures for special education (\$67,791,650) amounted to 11.2 percent of the total K-12 expenditures (\$604,534,506). Federal funds constituted 8.56 percent of the total expenditures. State funds constituted 28.62 percent and local funds constituted 62.82 percent.

Senate Bill No. 2013 (1999) contains a special education appropriation for the 1999-2001 biennium of \$46.6 million. The following specifications regarding the manner in which those funds are to be used were included in Section 5 of the bill:

1. Eleven million five hundred thousand dollars to reimburse school districts or special education units for excess costs incurred relating to contracts for students with disabilities and for boarding care reimbursements, as provided in Sections 15-40.2-08, 15-59-06, 15-59-06.2, 15-59-07, and 15-59-07.2. Of this amount, \$5,500,000 must be distributed during the fiscal year ending June 30, 2000, and \$6,000,000 must be distributed during the fiscal year ending June 30, 2001. Any funds remaining after distributions pursuant to Sections 15-40.2-08, 15-59-06, 15-59-06.2, 15-59-07, and 15-59-07.2 for either year must be distributed to school districts and special education units to proportionately reduce school district and special education unit liability for costs in excess of 2.5 times the state average per student cost, as provided in Sections 15-59-06, 15-59-06.2, 15-59-07, and 15-59-07.2.
2. Four hundred thousand dollars to reimburse school districts or special education units for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the Superintendent of Public Instruction. The Superintendent of Public Instruction shall encourage cooperative efforts for gifted and talented programs among school districts and special education units.
3. Any amount remaining in the grants - special education line item must be distributed on a per student basis as required by Section 15-40.1-07.6, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. State special education payments distributed as required by Section 15-40.1-07.6 must be reduced by the amount of matching funds required to be paid by school districts or special education units

for students participating in the Medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by the Superintendent of Public Instruction to the Department of Human Services on behalf of the school district or unit.

Senate Bill No. 2013 also amended the language regarding state reimbursement of excess costs. A

school district is now responsible for two and one-half times the state average per student cost plus 20 percent of all remaining costs. The state is liable for "eighty percent of the remainder of the cost of education and related services for each such student with disabilities within the limits of legislative appropriations for that purpose."

ATTACH:1

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE CONCURRENT RESOLUTION NO. 4031
(Senators Cook, Flakoll, Kelsh, O'Connell, Redlin, Wanzek)

A concurrent resolution directing the Legislative Council to study the method by which the state funds special education services.

WHEREAS, Public Law 94-142 requires that all children with disabilities have available to them a free appropriate public education; and

WHEREAS, Public Law 94-142 requires that a child with disabilities be educated in the least restrictive environment; and

WHEREAS, Public Law 94-142 requires that a child with disabilities be removed from the regular classroom only when the nature or severity of the disability is such that education in that setting cannot be achieved satisfactorily, even with the use of supplementary aids; and

WHEREAS, Public Law 94-142 requires that a child with disabilities be educated in the school that the child would attend if not disabled, unless the child's individual education program requires an alternative placement; and

WHEREAS, funding by the Legislative Assembly for special education has increased from \$24,176,529 for the 1987-89 biennium to \$40,550,000 for the 1997-99 biennium; and

WHEREAS, many urban school districts are experiencing a significant increase in special education expenditures as families relocate to obtain the best available services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the method by which the state funds special education services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.