

House Concurrent Resolution No. 5033

By Committee on Education

4-26

A CONCURRENT RESOLUTION urging the President and the Congress of the United States to increase funding for special education from an average federal share of 15% nationwide to the 40% level authorized by the Individuals with Disabilities Education Act.

WHEREAS, In *Brown v. Board of Education*, a unanimous Supreme Court of the United States recognized that education is perhaps the most important function of state and local governments; in *Wisconsin v. Yoder*, the Supreme Court recognized that the provision of public schools ranks at the very apex of the function of a state; in *San Antonio Independent School District v. Rodriguez*, the Supreme Court refused to invalidate the Texas system of financing its public schools opining that education is one of the most important services performed by the state and declining to intrude in an area which traditionally has been reserved for state legislatures; and

WHEREAS, The architects of America's Constitution and Bill of Rights constructed a unique form of federalism under which the people delegated to the national government certain limited powers while reserving all other authority to the states and the people; the powers of the two government levels were carefully balanced and each had distinct roles with most day-to-day functions being left at the level closest to the people; the founders expected state power to rival national power; and

WHEREAS, America's unique form of federalism worked for a while, but has been severely eroded over the years; the states have become enfeebled while the federal government has consolidated power and now involves itself in every conceivable area of governance, including the most local of concerns; nowhere is encroachment by the federal government on state rights more apparent than in the area of education, specifically special education; and

WHEREAS, The states were and are well aware of the constitutional obligation to provide public education for children with disabilities; many of the states enacted constitutionally sound special education laws prior to enactment in 1975 by Congress of Public Law 94-142, the Education for All Handicapped Children Act, known since 1990 as the Individuals with Disabilities Education Act or IDEA; nearly six million American

1 children receive special education services provided by the states at a cost
2 of almost \$40 billion, only about \$6.3 billion of which is federal money;
3 and

4 WHEREAS, Enactment of the IDEA transferred decisions about the
5 ways in which special education services would be provided from state
6 capitals to Washington, D.C.; in an effort to alleviate the intrusion that
7 transfer of control over special education had upon an area traditionally
8 reserved to the states, the Act authorized appropriation of a sum equal
9 to 40% of the average per pupil expenditure for general education pupils;
10 Congressional appropriations have never come near the authorization
11 level; and

12 WHEREAS, A recent report by the Kansas State Department of Ed-
13 ucation provided the Kansas Legislature with the estimated special edu-
14 cation expenditures in Kansas for fiscal year 2002; the report estimated
15 expenditures for special education in the amount of \$515,362,780, and
16 was broken down by anticipated state, local, and federal aid percentages;
17 the report revealed that federal aid, including medicaid reimbursement
18 of approximately \$17 million, would comprise only 14% of the total ex-
19 penditures for special education; if increased to the authorized 40% level,
20 federal aid would increase from \$55,300,000 to \$158,000,000; and

21 WHEREAS, The National Council on Disability recently reported
22 that many children with disabilities are receiving substandard schooling
23 because the states are not complying with federal rules on special edu-
24 cation; the response of officials at the U.S. Department of Education, the
25 federal agency responsible for overseeing compliance with the IDEA, was
26 predictable, not an assertion that the agency would make an intense effort
27 to get Congress to provide assistance to the states in the form of increased
28 dollars, at least to a level more nearly approaching the 40% level of ex-
29 penditures authorized for special education, but with a threat to be more
30 aggressive in monitoring and enforcing compliance; and

31 WHEREAS, In 1998 and in 2000, the Kansas Legislature adopted con-
32 current resolutions memorializing the Congress to assume its fair share
33 of the costs of special education services by increasing funding to a level
34 more nearly approaching the level authorized by the Individuals with
35 Disabilities Education Act; and

36 WHEREAS, The Kansas Legislature devotes considerable effort and
37 a great amount of time during each session in an attempt to address
38 concerns regarding delivery of special education services and to find some
39 solution to the rapidly escalating costs of providing such services; in the
40 course of its study of the matter during the 2000 session, the Legislature
41 received reports from the Kansas State Department of Education and
42 from embattled providers of special education services in the field; the
43 reports were overwhelmingly disturbing and revealed that from 1990

1 through 1998, Kansas realized a 29% increase in the number of pupils
2 with disabilities, a 32% increase in the number of professionals, and a
3 150% increase in the number of paraprofessionals; one special education
4 cooperative reported a 48% increase in expenditures for special education
5 from the 1990-91 school year through the 1999-2000 school year; school
6 districts are experiencing continuing growth in the population of children
7 with severe disabilities, in the number of behavior disordered pupils and
8 in other high need populations of children, such as children with autism
9 or traumatic brain injury, who require high cost programs; the 1997 IDEA
10 amendments added several new specific disabling conditions; the quality
11 and quantity of special education teachers is a major concern as the
12 growth in numbers of pupils and severity of disabilities increase and the
13 pool of trained teachers decreases; special education professionals face
14 stress, burnout and increased paperwork even though the 1997 amend-
15 ments to the IDEA were supposed to reduce paperwork; one director of
16 special education services stated that he had been a special education
17 professional since 1972 and was more worried than in his whole career
18 about the increasing demands on the system to serve more pupils, with
19 more severe disabilities, to higher standards than ever before, with fewer
20 trained, skilled teachers and decreasing financial resources; and

21 WHEREAS, President Bush has sent Congress a budget proposal con-
22 taining an education reform plan that offers federal support for several
23 new programs; while many of the centerpieces of the budget proposal
24 may be praiseworthy, legislators and school officials in Kansas would
25 rather the Congress, in drafting its own spending proposals, honor the
26 commitment to fully fund the federal share of special education costs
27 before adopting any spending proposal that is dedicated to new programs:
28 Now, therefore,

29 *Be it resolved by the House of Representatives of the State of Kansas,*
30 *the Senate concurring therein:* That the Legislature, in recognition that
31 children with disabilities have a fundamental right to be provided with a
32 free and appropriate public education and that the Congress of the United
33 States has enacted a federal law for the purpose of assisting the states in
34 honoring that fundamental right and in the belief that projected federal
35 budget surpluses present the federal government with the tremendous
36 opportunity to assume its fair share of the costs of providing special ed-
37 ucation services, hereby strongly urges the President and the Congress
38 of the United States to put a new twist on the old joke about federal
39 officials appearing in a state and saying "we're here to help" by increasing
40 funding for the provision of special education services for children with
41 disabilities from the average federal share of 15% nationwide to the 40%
42 level authorized by the Individuals with Disabilities Education Act; and

43 *Be it further resolved:* That the Secretary of State is hereby directed

1 to send enrolled copies of this resolution to The Hon. George W. Bush
2 at 1600 Pennsylvania Ave., Washington, D.C. 20500; The Hon. Pat Rob-
3 erts at 302 Hart Senate O.B., Washington, D.C. 20510; The Hon. Sam
4 Brownback at 303 Hart Senate O.B., Washington, D.C. 20510; The Hon.
5 Jerry Moran at 1519 Longworth House O.B., Washington, D.C. 20515;
6 The Hon. Jim Ryun at 330 Cannon House O.B., Washington D.C. 20515;
7 The Hon. Dennis Moore at 431 Cannon House O.B., Washington, D.C.
8 20515; The Hon. Todd Tiahrt at 428 Cannon House O.B., Washington,
9 D.C. 20515; National Conference of State Legislatures at 444 North Cap-
10 itol Street, N.W., Suite 515, Washington, D.C. 20001, and at 1560 Broad-
11 way, Suite 700, Denver, CO 80202; American Legislative Exchange
12 Council at 910 17th Street N.W., Fifth Floor, Washington, D.C. 20006;
13 Council of State Governments at Hall of the States, Suite 401, Washing-
14 ton, D.C. 20001; National Governors' Association at Hall of States, 444
15 North Capitol Street, Washington, D.C. 20001.

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