

MINUTES

SPECIAL EDUCATION AND RELATED SERVICES FUNDING TASK FORCE

January 5, 2024
Room 112-N —Statehouse

Committee Members Present

Senator Molly Baumgardner
Senator Renee Erickson
Representative Adam Thomas
Representative Kristey Williams
Representative Valdenia Winn
Melanie Haas, State Board of Education
Amy Haussler, Holton Special Education Cooperative (replacement)
Kathy Kersenbrock-Ostmeyer, Northwest Kansas Educational Service Center
Monica Ross, Infant-Toddler Services of Johnson County
Brent Yeager, Olathe USD 233

Members Absent

Brian Skinner – Excused
Chris Wyant – Excused

Staff Present

Matthew Willis, Kansas Legislative Research Department
Jennifer Light, Kansas Legislative Research Department
Tamera Lawrence, Office of Revisor of Statutes
Nick Myers, Office the Revisor of Statutes
Cyndi Rexer, Committee Assistant

Conferees

John Hess, Director of Fiscal Services and Operations, Kansas State Department of Education (KSDE)
Leah Fliter, Assistant Executive Director for Advocacy and Governmental Relations, Kansas Association of School Boards
Dave Trabert, Chief Executive Officer, Kansas Policy Institute
Dr. Marvin J. Miller, Chair, KSDE Special Education Advisory Council
Monica Ross, Low Incidence Teacher, Gardner-Edgerton USD 231
Cassandra Sines, private citizen
Timothy R. Graham, Director of Government Relations and Coalitions, Kansas National Education Association
Jonathan Eshnaur, Special Education Teacher, Olathe USD 233
Dr. Rebekah Varvel, Assistant Director of Special Education, Leavenworth USD 453
Kellen J. Adams, Superintendent, Leavenworth USD 453

Judith Deedy, Game On for Kansas Schools
Sherry Dumolien, Chief of Special Education, Shawnee Mission Public Schools USD 512
Mary Sinclair, Ph.D., Kansas PTA Advocacy Team

**Friday, January 5
Afternoon Session**

Call to Order

Representative Williams called the meeting to order at 1:02 p.m. She welcomed Task Force members and staff and asked that everyone introduce themselves.

Leadership Elections

Following introductions, Representative Williams opened the floor for nominations.

Representative Winn moved to nominate Melanie Haas as Chairperson, seconded by Kathy Kersenbrock-Ostmeyer. The motion passed.

Kathy Kersenbrock-Ostmeyer moved to nominate Representative Winn as Vice-chairperson, seconded by Amy Haussler. The motion passed.

Chairperson Haas explained the purpose of the Special Education and Related Services Funding Task Force (Task Force), stating the Legislature requested a deeper examination of the education funding formula and charged the Task Force to send a report of its findings to the Legislature within 10 days of the meeting. The Chair stated that she wanted the Task Force to discuss alternatives to special education funding, including how other states figure their funding, and wanted that discussion to result in recommendations and next steps. The Chair expressed her desire for the Task Force to remain bipartisan and place its focus on special education students, teachers, and families. She also noted that the State Board of Education (State Board) recommended the Legislature fund special education fully to 92.0 percent over the next four years. The Chair ended her remarks by stating that the meeting was also the beginning of a conversation on the new school finance formula for 2027.

Senator Baumgardner reminded Task Force members that they are required to follow the rules of the Kansas Open Meetings Act.

Testimony on Evidence-based Solutions for Special Education Funding

Chairperson Haas directed members' attention to documents provided by the Kansas Legislative Research Department, including: a memo from Matthew Willis, Senior Research Analyst, regarding Special Education Requirements and Funding in Kansas with Supporting Maps, Tables, and Documents; Portion of the Local Option Budget (LOB) Attributable to Special Education Weighted FTE SY 2022-2023 by District; Estimated Special Education Excess Costs FY 2024 and FY 2025; Special Education Unencumbered Cash Balances 2020-2024 Budgeted

by District Number; and a memo from the Kansas State Department of Education (KSDE) regarding Special Education State Aid Excess Costs. ([Attachment 1](#)) ([Attachment 2](#)) ([Attachment 3](#)) ([Attachment 4](#)) ([Attachment 5](#))

Dr. John Hess, Director of Fiscal Services and Operations, KSDE, provided an overview of special education funding through the years, including the excess costs formula, distribution of state aid, current special education estimates, effects of not funding at 92.0 percent, transfers to the special education fund above requirements, the amended State Board of Education (State Board) plan, and different ways to fund special education. Dr. Hess noted that the current excess cost statute was not codified until 2005 as a result of the *Montoy* decision and that the formula was modeled after the informal formula utilized during the 1990s. He also stated that while 92.0 percent of excess cost was the funding goal prior to codification in 2005, funding typically ranged from 50.0 to 77.0 percent prior to codification. ([Attachment 6](#))

Leah Fliter, Assistant Executive Director for Advocacy and Governmental Relations, Kansas Association of School Boards (KASB), stated that one in five Kansas students receives special education services. Bipartisan efforts in the Legislature and the State Board to focus on early childhood and reading readiness were leading to an increased partnership between parents and schools to identify and address obstacles to student success, including identifying the need for special education services. Ms. Fliter noted that school districts must provide services regardless of funding levels, including services for eligible students attending private schools. Shortfalls in Special Education State Aid force school districts to transfer funding from general education programs for all students to pay for special education costs. She stated that locally elected boards of education respectfully and urgently request the Kansas Legislature do its part to help improve student achievement for all Kansas students by fulfilling its promise to pay for 92.0 percent of the excess costs after federal reimbursement. ([Attachment 7](#))

Dave Trabert, Chief Executive Officer, Kansas Policy Institute (KPI), encouraged the Task Force to consider how special education services are provided in Kansas. He stated that parents are concerned about the delivery of special education services, as mainstreaming students is not always in the best interest of the student. Mr. Trabert stated that disruptive students in a classroom are often detrimental to other students and that parents, students, and educators need to be empowered to help each a child in a way that is beneficial for that child, not through “one-size-fits-none” bureaucratic procedure. He asserted that districts have inconsistent positions on statutory compliance, and their records indicate special education funding isn’t impacting service delivery. Mr. Trabert also stated that the discussion on special education funding was misguided, as the focus should be on the services provided to students, not the transfer of funds.

Mr. Trabert shared with the Task Force five recommendations for providing special education services:

- Districts should survey parents of special education students to determine interest in modifications to the Least Restrictive Environment regulations and other pertinent matters;
- The state should make the first payment of special education aid in July or August rather than October;
- Districts should reduce special education cash reserves and use the money to remove barriers preventing students from being proficient in reading and math;

- The Legislature should modify the formula for distributing special education aid so each district receives the same percentage of excess cost reimbursement; and
- The Legislature should modify the formula for calculating state aid for special education to include all forms of aid related to special education. He also suggested a maintenance of effort clause to require minimum funding at the current-year level, as counting all funding would require less state aid to meet the 92-percent threshold for a few years. ([Attachment 8](#))

Dr. Marvin J. Miller, Chair, KSDE Special Education Advisory Council, stated the Kansas Legislature has failed his daughter by not fully funding special education and the transition to work programs. He stated that the solution to better outcomes and incomes is aligning and funding services statewide. Mr. Miller further asserted that specialized tech classes, career pathway classes, and other electives have been eliminated because there are not enough funds to hire teachers. He also challenged the Legislature to fully fund special education. ([Attachment 9](#))

Monica Brown, Low Incidence Teacher, Gardner-Edgerton USD 231, provided the Task Force with an overview of a typical day at her job. She discussed the importance of para-educators (paras) assisting her and the impacts that a lack of paras and substitute teachers are having on her professional and personal life. Ms. Brown discussed the challenges special education services face with current funding levels to recruit and retain quality staff and afford the specialized equipment and services needed for student individualized education plans (IEPs). She also stated that students and educators deserve dignity, respect, and resources, and that additional funding is needed for special education. ([Attachment 10](#)) ([Attachment 11](#))

Cassandra Sines, private citizen, provided testimony on her two children, who received special education services from the public school system. She noted that if special education is not fully funded, districts have to pull money from elsewhere, generally from the general education funds. Ms. Sines discussed the impact these transfers can have on all students. She stated that busing students from certain addresses was stopped in her district and a student was hit by a car while walking to school because the area lacked sidewalks and other safety measures. Ms. Sines asserted that the biggest disagreement in Kansas is how to help those who need it the most. She stated that fully funding special education in this year's budget is the first step to addressing the problem. ([Attachment 12](#))

Timothy Graham, Director of Government Relations and Coalitions, Kansas National Education Association (KNEA), provided an overview of KNEA and the resolutions it has adopted regarding special education. The resolutions address the following topics:

- Appropriate licensing, training, and preparation of special educators;
- Appropriate inclusion of special education professionals in policy and decision making;
- Student opportunity for all exceptional students;
- Appropriate classroom setting; and

- Appropriate funding.

Mr. Graham stated that it is increasingly difficult to provide evidence-based solutions to special education funding because opposing sides of the issue refuse to accept data and outcomes that do not fit their narrative. He asked that the Legislature allow teachers to be a resource that guides all of the debates. He asserted that a special educator's voice is critical to this debate because they deal with the real-world consequences of the decisions made in the Statehouse. He stated that KNEA asks that the Task Force recommend full state funding of special education excess costs. ([Attachment 13](#))

Jonathan Eshnaur, Special Education Teacher, Olathe USD 233, stated that one consequence of the State failing to fully fund special education is that districts are not able to recruit and retain special education providers because they cannot compete with the labor marketplace. Mr. Eshnaur noted that his district has resorted to telehealth to provide some of the needed services for students, and he detailed some of the detriments he perceived from that choice. He further discussed the critical nature of special education paraprofessionals who work to ensure students have access to a general education curriculum with appropriate, individualized support. He stated that these educators are invaluable but are not compensated adequately due to lack of funding. Mr. Eshnaur stated that Kansas has made great strides since the *Gannon* decision in returning funding to Kansas Constitutional levels. However, he believes that special education students are still not receiving the required funding. He further discussed the impact that transferring funds from general education to special education can have on school districts by limiting the hiring and pay raises of staff and adding additional programming. He also stated that funding 92.0 percent excess cost could have a "game-changing" effect on special education in public schools. ([Attachment 14](#))

Dr. Rebekah Varvel, Assistant Director of Special Education, Leavenworth USD 453, stated that her school district uses approximately \$2.7 million from the general budget to pay for special education services that are required by state and federal law but are not fully funded. She stated that the costs of education continue to rise due to new challenges educators face, such as a marked increase in behavior issues and the severity of disabilities when students enter the school system. She also discussed the impact mental health concerns have on a child's ability to function in a school setting and at home. Ms. Varvel stated these students require intensive programming with a low student-to-staff ratio, and that staff require high levels of training and knowledge to work with the intensive needs of the students. Ms. Varvel also stated that there has been a marked decrease in the number of staff who are willing and able to serve the most vulnerable population of students. She noted that this causes the district to be creative with staffing and, in many cases, leads to contracting employees from third-party or outside companies. She also stated the low salary rate makes hiring paraprofessionals challenging, and she urged the Task Force to fully fund education for all Kansas students. ([Attachment 15](#))

Kellen Adams, Superintendent, Leavenworth USD 453, provided the Task Force with information on underfunding of special education within the state. Mr. Adams stated that he does not believe the current excess cost formula is broken, that a reimbursement method is the best means of providing special education funding, and that the current system of special education cooperatives and interlocal organizations functions well. Mr. Adams also stated that the inadequate allocation of resources directly impacts the ability of schools to deliver the necessary services for students with disabilities, leading to a compromised learning environment. He asserted that the most pressing issue is the insufficient amount of categorical aid and that the total funding allocated falls far below the actual needs of these programs. He urged a comprehensive review of the categorical aid amount. He also stated that collaboration

is necessary to reassess the current funding structure and identify areas where adjustments can be made to better reflect the actual needs of special education programs in Kansas. Mr. Adams noted that an increase in special education funding would not lead to an instant impact because the system would need to catch up as the market of educators and service providers responds to the increased funding through increased capacity and availability. ([Attachment 16](#))

Judith Deedy, Game On for Kansas Schools, stated special education services are being provided, but they could be improved with additional funding, which would benefit all special education students. She stated that districts use large amounts of general education funds to pay for unfunded special education services. She stated that increased special education funding would benefit all students. She also asserted that special education costs are rising, and districts have no way to avoid the consequences of rising costs with the lack of federal and state funding. ([Attachment 17](#))

Sherry Dumolien, Chief of Special Education, Shawnee Mission Public Schools USD 512, urged the Task Force to support special education services and state funding at the required 92 percent of excess costs. She discussed how her schools worked to complete Needs Assessments for the upcoming school year and how some of the areas with the highest need are increased staff, including counselors, paras, and interventionist; lower class sizes to better support all students; increased support for students seeking Real World Learning opportunities; and increased time and funding for professional development. Ms. Dumolien also stated that equipment and services needed for student IEPs are often specialized, making them expensive for districts to purchase, which creates a challenge. She also stated that her district anticipates significant impact on special education services from recently passed open enrollment legislation. Ms. Dumolien also stated that federal law requires school districts to provide transportation services to any special education student who requires it, which would obligate the receiving district to pay potentially high and unlimited transportation costs. She stated that her district is strongly opposed to any restrictions imposed by the State on the use of Local Option Budget revenue that is raised from special education state aid. ([Attachment 18](#))

Mary Sinclair, Ph.D., Kansas PTA Advocacy Team, noted that the Division of Post Audit studied special education 13 times and 2 additional legislative cost studies have included special education. She stated that the conclusions and recommendations have been identified over the years to address equity and accountability in the distribution of funds. She also stated that explanations for cost estimations have been provided, including reasons for rising district expenditures and unique components of the calculation; however, she asserted, four decades of study have yet to negate the State's financial obligation, which was put into statute in 2005 in the context of the *Montoy* school finance lawsuit that focused on actual costs. She stated that the underfunding of special education services erodes general education resources and undermines the impact of the *Gannon* school finance agreement. Ms. Sinclair stated that the Kansas PTA urges the Task Force to recommend full funding of special education under current state law and without delay. ([Attachment 19](#))

Written-only Testimony:

Written-only testimony was provided by the following persons:

Paula Athey, private citizen; ([Attachment 20](#))

Thomas Barker, Social Studies Teacher, Lawrence USD 497; ([Attachment 21](#))

Kristen Blackton, private citizen; ([Attachment 22](#))

Jerald J. Braun, Special Education Teacher, Hays USD 489; ([Attachment 23](#))

Dawn Brumbley, private citizen; ([Attachment 24](#))

Mischa Buckler-Mullins, private citizen; ([Attachment 25](#))

Kevin Cole, President, SEK Interlocal; ([Attachment 26](#))

Jill and Chris Compton, private citizens; ([Attachment 27](#))

Dr. Ronald L. Sarnacki, Director of Special Education, Cowley County Special Services Cooperative; ([Attachment 28](#))

David Drovetta, private citizen; ([Attachment 29](#))

Erica Hunter, private citizen; ([Attachment 30](#))

Jeanne Gray, Transition Specialist, Leavenworth USD 453; ([Attachment 31](#))

Lisa Hamrick, private citizen; ([Attachment 32](#))

Marcel Harmon, private citizen; ([Attachment 33](#))

Jennifer Hurley, M.A., CCC-SLP; ([Attachment 34](#))

Jerry and Tana Johnson, private citizens; ([Attachment 35](#))

Patty Carter, KASEA Legislative Committee Chair; and Dr. Lena Kisner, KASEA President; ([Attachment 36](#))

Jacqueline Lightcap, Auburn-Washburn USD 437 Board of Education member; ([Attachment 37](#))

Leigh Anne Rogers, Educator, Olathe USD 233; ([Attachment 38](#))

Sarah Mackay, private citizen; ([Attachment 39](#))

Brandyn McDonald, private citizen; ([Attachment 40](#))

Emily Meissen-Sebelius, private citizen; ([Attachment 41](#))

Sara Moore, private citizen; ([Attachment 42](#))

Ashley Motley, Teacher, Manhattan-Ogden USD 383; ([Attachment 43](#))

Ashley Muehlbauer, private citizen; ([Attachment 44](#))

Samantha Neill, private citizen; ([Attachment 45](#))

Adrienne Newlin, private citizen; ([Attachment 46](#))

Claire M. Reagan, private citizen; ([Attachment 47](#))

R. Rogers, private citizen; ([Attachment 48](#))

Deb Schneider, private citizen; ([Attachment 49](#))

TinaRae Scott, School Board Member, Council Grove/Morris County USD 417; ([Attachment 50](#))

Greg Kubler, Director, SEK Interlocal #637; ([Attachment 51](#))

Kristin Shuck, Special Education Teacher, Kansas City, Kansas, Public Schools, USD 500; ([Attachment 52](#))

Jenny Skillman, private citizen; ([Attachment 53](#))

Sandy Smith, private citizen; ([Attachment 54](#))

Lindsay Weiss, Affiliate Director, I Support The Girls Kansas City; ([Attachment 55](#))

Trisha Hunter, Resource Teacher, Olathe USD 233; ([Attachment 56](#))

David Westbrook, private citizen; ([Attachment 57](#))

Rod Stewart, Board of Education President, Washington County Schools USD 108; ([Attachment 59](#))

Dr. Tonya Merrigan, Superintendent, Blue Valley USD 229; ([Attachment 60](#))

Dr. Brian Huff, Superintendent, Gardner-Edgerton USD 231; ([Attachment 61](#))

Allison Anderson-Harder, Superintendent, Emporia USD 253; ([Attachment 62](#))

Jess Herbig, Executive Director of Student Support Services, Goddard USD 265; ([Attachment 63](#))

Deena Hilbig, Superintendent, Ellsworth-Kanopolis-Geneseo, USD 327; ([Attachment 64](#))

Sandy Halling, Board of Education Vice President, Bucklin USD 459; ([Attachment 65](#))

Kelly Jones, President, Board of Education, Lawrence USD 497; ([Attachment 66](#))

Jim Edwards, Lobbyist, Topeka Public Schools USD 501; ([Attachment 67](#))

Private Citizen, Satanta USD 507; ([Attachment 68](#))

Jessica Weiner, private citizen; ([Attachment 69](#))

Kyle Carlin, Director of Special Education, West Central Kansas Special Education Cooperative #708; ([Attachment 70](#))

Brooke Wisley, Special Education Teacher, Wichita USD 259; and ([Attachment 71](#))

Lindsey Yankey, private citizen ([Attachment 72](#))

Discussions and Recommendations

Following testimony, Chairperson Haas opened the meeting to discussion and possible recommendations by the Task Force.

Distribution of Special Education State Aid

The Task Force discussed the timing of when KSDE disburses Special Education State Aid to school districts. The Task Force noted the gap of any transfers over the summer and how expenses from the end of a school year are not reimbursed through state aid payments until October of the following school year. The Task Force also noted how this gap forces districts to maintain sizable ending balances in order to cover special education expenses until the October payment.

Medicaid Codes for Pre-K and Special Education Services

The Task Force discussed the use of Medicaid billing codes to cover the cost of providing some special education services and some pre-K services, such as Tiny-K. Task Force members experienced in the field of pre-K education noted that they are aware of neighboring states with more robust Medicaid codes for pre-K service providers to bill Medicaid for services rendered. Members also noted that providers located in a hospital or health clinic providing the same service as a Tiny-K program are able to bill their services under Medicaid while the Tiny-K program cannot.

Student Enrollment and School Finance

The Task Force discussed the current school finance system regarding its impact on special education funding. Members specifically noted the enrollment lag built into the school finance formula so that districts continue to receive some funding for up to two years for a student or students who have left the district.

The Task Force also discussed the following:

- Lower student enrollment does not mean the district has lowered costs, such as fewer teachers, and so funding “empty seats” may be needed;
- How funding for students no longer in attendance impacts special education funding; and

- Whether that Task Force would support a change in the school finance formula to utilize current enrollment data in exchange for increased Special Education State Aid.

Special Education State Aid Disbursement

The Task Force discussed the disbursement model for Special Education State Aid in statute. Task Force members noted that attempts by KSDE to show a special education excess cost breakdown by district showed a wide discrepancy in the amount of excess cost that each school district was reimbursed for. The Task Force voiced support to establishing a work group or groups to study the topic of Special Education State Aid disbursement to see if there are any correlations or trends regarding the amount of Special Education State Aid a district received and the characteristics of the school district.

The working group or groups would also potentially research issues such as the decline in Gifted enrollment in K-12 schools, enrollment data, and other data questions involving special education.

Special Education State Aid Appropriations

The Task Force discussed the State Board's recommendation for the Legislature to appropriate additional money over the next four years to achieve the 92.0 percent of special education excess cost as prescribed in statute. Members further discussed issues surrounding State spending on special education, such as the maintenance of effort component to maintain federal funding, federal Special Education Aid, and whether the special education excess cost formula should be altered, and if so, when.

Special Education Metrics

The Task Force discussed the concept of "metrics" and what metrics should be used by the Legislature to determine whether Special Education State Aid and policies are leading to better, the same, or worse outcomes. Members noted that if the State increases spending on education without understanding acceptable metrics, it will be hard to determine whether the increased spending is having an impact. Further discussion between the Task Force and a representative of KSDE involved understanding the metrics currently provided by KSDE to the federal government on special education and how to interpret those metrics for the members' understanding.

Continued Task Force Meetings

The Task Force discussed the desire to continue to meet so as to continue its charge as established in statute. Members expressed the desire that future meetings involve representatives of school districts, special education interlocals, and special education cooperatives to discuss topics such as equitable distribution of Special Education State Aid. Questions were also raised regarding the authority of the Chair to call meetings and whether approval was required from the Legislative Coordinating Council prior to future meetings being called.

Recommendations

The Task Force made the following official recommendations to be included in its report to the Legislature:

- The final distribution of Special Education State Aid to school districts should be made no later than August 1 of each year;
- The Kansas Department of Health and Environment and the Kansas Department of Aging and Disability Services should work to increase codes available to school districts and other education organizations for utilizing Medicaid to fund eligible special education services, including services for children 0 to 3 years of age;
- The Task Force should study how distribution of special education funds currently occurs and whether elements of school district size, services rendered, or other factors are causing special education funding disparities among school districts;
- KSDE should quickly distribute a survey to school districts regarding the Three-Cueing System;
- The Legislature should adopt the State Board's request for increasing Special Education State Aid over the next four years to achieve state reimbursement of 92.0 percent of special education excess costs; and
- The Task Force should continue to study the equitable funding of special education and its additional components and should continue to meet for further study of the issues surrounding special education and related services.

Adjourn

With no further business before the Task Force, Chairperson Haas adjourned the meeting at 3:26 p.m.

Prepared by Cyndie Rexer

Edited by Matthew Willis and Jennifer Light

Approved by the Committee on:

May 21, 2024

(Date)