

Special Education

Income Research Paper

**CBO Mentor Project
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The Mandate

Perhaps one of the most controversial and complex funding sources in all of school finance is in the area of special education program funding. In my opinion, no other major educational program funding component better exemplifies the challenges that a Chief Business Official must face in supporting a quality educational program. From Federal IDEA requirements and other amendments to Public Law 94-142 to California Education Codes and Title 5 California Code of Regulations to parent, community, legal and advocacy group expectations, the world of providing for a viable special education program can often be confusing, political and overwhelming.

Add to the mix the ominous cloud of the lack of sufficient funding to meet the increasing service needs of this at-risk student population in California, and it is easy to understand why many feel this program is one where you are “damned if you do and damned if you don’t.” In the mean time, district administrators are struggling “to make this program work” and navigate a program in one of the most unsettling and uncertain environments in public education.

What you have is an under-funded mandate where the chips are stacked against you and your every move to operate an efficient and effective program is complicated by a variety of issues that always competes with the lack adequate funding.

Federal Laws Governing Education for Special Education Students

According to Coping.Org: “Tools for Coping with Life’s Stressors,” the root source of special education requirements is derived from Public Law 94-142. PL 94-142 was enacted by Congress in 1975 and its regulations for implementation were published in 1977. The law and the regulations stated that a free and appropriate public education would be available for all handicapped children aged 3-21, no later than September 1, 1980.¹

In 1986, the Education Handicapped Act (EHA) was amended through PL 99.457 to establish the Handicapped Infants and Toddlers Program (Part H) for directing the special needs of children, from birth to their third birthday.

In 1990, Education of the Handicapped Act Amendments of 1990 (PL 100-476) changed the name of the EHA law to Individuals with Disabilities Education Act (IDEA). The IDEA expanded services for special need students to include transition services, assistive technology, rehabilitation counseling and social work.

Some of the key provisions of the IDEA include:

- The establishment of a process to identify and evaluate special needs students,

¹ “The Federal Laws Governing Education for Exceptional Students,”
www.coping.org/specialed/laws.htm

- Preparation of an Individualized Education Plan (IEP) to establish a student’s individual needs,
- When possible, providing the Least Restrictive Environment (LRE) for special needs students to be educated with non-handicapped children, and
- Provide for Due Process rights of parents and children to ensure an appropriate hearing and appeal process.

With the passage of PL 94-142 and the creation of the IDEA, the federal government has provided students with special needs and their parents with the ability to ensure that all handicapped children receive a free and appropriate public education which emphasizes special education instruction and related services designed to meet their unique needs. But what does this mean? Over time, PL 94-142 has been dissected and interpreted by various constituencies for the proposed benefit of the special needs student.

Costs of providing a “free and appropriate education” have skyrocketed. Today, it is not unusual for a district to pay thousands of dollars per student for multiple services related to speech, occupational therapy, physical therapy, psychological evaluations and assessments, vision and hearing services and the list can go on and on.

California Laws Governing Special Education Instruction

For the most part, state laws governing special education instruction in California follows the regulations established by the federal government in PL 94-142 and the creation of the IDEA. According to Lori Stillings, Assistant Superintendent of Student Services with the Tustin Unified School District, “Currently, the California Education Code follows the Federal Government in the established law of PL 94-142 and IDEA. But there is also a push in Sacramento to further enhance and strengthen special education laws that would go beyond federal requirements. So it would not surprise me to see increased requirements in California above and beyond what the federal government requires.”

Specifically, California Education Codes along with the Federal regulations are very prescriptive in that they go into great detail explaining the definition of a handicapped child, eligibility for placement, parent participation, notice of consent, protection of confidentiality, free and appropriate education, references to various public laws related to students with special needs, the continuum of program options related classroom settings and alternative educational environments and maximum caseloads to name a few. Needless to say, the regulations governing special education instruction are similar to a double-edged sword that on one hand is designed to assist and inform parents and instructors in seeking the best route of instructional education for a special needs student while at other times can be cumbersome to decipher, subject to wide versions of interpretation, binding and perceived to be difficult to navigate through on an ongoing basis. How is a school district administrator able to manage such a program?

Local Level Expectations

As a parent of special needs child (Downs Syndrome), I feel uniquely qualified in discussing the level of expectations that I have of my school district in the instruction of my daughter, Anna. From our first IEP meeting with a room filled with district “administrators” including a principal, psychologist, program specialist, speech therapist, occupational therapist and classroom teacher, my wife and I felt overwhelmed by the district protocol in establishing an educational path for Anna. As parents, we wanted what was best for Anna. We wanted specific levels of support for her educational needs and we had a definite “plan” for her educational future. My wife, a stay-at-home mom, wanted to participate at every level possible to ensure that Anna would have the best opportunity to reach her fullest potential.

To make a long story short, Anna is now going into the sixth grade and doing well in her class, although we expected more. As parents of a special needs child, we have experienced many highs and lows. Over the years, we have observed a sincere interest in our daughter’s educational interests, as well as some less than expected outcomes from our school district. We have had to utilize an advocate, an attorney and have gone through the mediation process because we felt our district was not providing the appropriate educational setting for our daughter. In the end, it has turned out to be a give and take process, which we are not completely satisfied.

As a school administrator in another school district and knowing the costs of mediation and instructing a special education student, I have mixed feelings about my experiences. I have had to keep my professional interests separate from my personal interests in doing what is in the best interest of my daughter’s education. I have always tried to be fair and not place any undue expense to the district.

This scenario is not always the norm in the educational arena. Through my experiences as a district administrator, I have seen and heard countless examples of situations where our district has been forced to provide unreasonable levels of services, not only for the student but for other family members to include everything from recreational activities to highly suspicious out-of-pocket expenses. In these instances, I have found greedy parents, “shark-like” attorneys, as well as for-profit advocates working behind the scenes looking to profit from a child’s disability. What is a district administrator to do?

An Under-Funded Mandate

Given the level of Federal and State requirements, parents, advocacy groups and legal community interests, one would expect establishing a sufficient level of special education funding to be a high level priority for the federal and state government. Wrong!! The fact of the matter is that special education is severely under-funded for the level of expectation. When a funding source does exist for a specific purpose, either there is no correlation to offsetting actual costs or the funding formula is so complex and convoluted, the end result usually is confusion and frustration in addition to insufficient funding.

Let's take a look at my district, Tustin Unified as an example. Below is a five-year chart that summarizes from fiscal years 2002-03 through 2006-07. In addition, a comparison column of the county average percentage of encroachment is provided for all unified school districts.

Year	Sp. Ed. Apportion	Federal Revenue	Sp. Ed. Revenue Limit	Other State & Local Revenues	Total Sp. Ed. Revenue	Total Expenses	Encroachment	TUSD % of Encroachment	Ave. Unified % of Encroachment
2002-03*	\$ 8,809,275	\$2,206,727	\$2,050,808	\$ -	\$13,066,810	\$20,329,482	\$ 7,262,672	35.72%	29.02%
2003-04*	\$ 8,529,243	\$2,410,710	\$2,099,453	\$218,293	\$13,257,699	\$24,546,436	\$11,288,737	45.99%	35.27%
2004-05*	\$ 9,241,280	\$2,870,509	\$2,214,410	\$116,997	\$14,443,196	\$24,501,798	\$10,058,602	41.05%	35.73%
2005-06*	\$10,096,363	\$3,076,345	\$2,487,494	\$370,265	\$16,030,467	\$26,500,089	\$10,469,622	39.51%	37.01%
2006-07**	\$10,701,900	\$3,069,638	\$2,583,158	\$408,941	\$16,763,637	\$26,916,288	\$10,152,651	37.72%	N/A

* Source: Orange County Department of Education

** Source: District Estimated Actuals

Note: Both revenues and expenditures also incorporate special education transportation operations.

Over the five year period while expenditures increased approximately \$6.6 million, revenues have increased only \$3.7 million. Consequently, our district's percentage of encroachment has consistently exceeded the county average. Some may argue the level of encroachment is more closely tied to skyrocketing costs and potential mismanagement of the program. However, in recent years our district has successfully brought back students and programs previously contracted out with the County Office of Education, Non-Public Agencies and other consultants, and we are starting to realize the benefits of internalizing these operations. Our district has also begun to more aggressively challenge unreasonable demands requested by parents, advocates and attorneys.

As a well-managed school district with a significant level of special education deficits, it is difficult to fully fund our district's special education obligation without encroaching on the general fund. Taken in totality, federal and state special education funding sources come in many different forms and do not align with the actual costs of program requirements. Below are the funding sources for our district.

Local Assistance Entitlements

The largest source of federal special education funding is from the Local Assistance Entitlement. According to the state, this sub-grant is based on a three-part formula:²

1. A base amount established by the Federal government which is then divided by the 1999 pupil count;
2. An amount in excess of the base of which 85% is allocated on the basis of students enrolled within each SELPA's jurisdiction, and
3. 15% on the basis of the relative number of children living in poverty using free and reduced price meal participation as the indicator of poverty.

Wow!! In a district like Tustin Unified where much of the growth is coming from the more affluent areas, how does this funding formula relate? As a single district SELPA, we do not have the population to justify a large apportionment. In addition, we struggle to keep our free and reduced meal counts stable due to the stigma placed on students within our schools. We utilized these funds to pay for a portion of our district's Resource Specialist Program for which the net encroachment is projected to be almost \$2 million.

Federal Preschool/Early Intervention Programs

Collectively, our district is projected to receive approximately \$3,070,000 for the Preschool Local Entitlement, Preschool Staff Development, Federal Preschool and Early Intervention programs in fiscal year 2006/07. The funding calculations are based on federal funds available and allocated in a similar manner as the Local Assistance Entitlement. With expenditures estimated at approximately \$4.6 million, our district encroachment for these programs is projected in excess of \$1.5 million.

The correlation of preschool funding in California to actual costs incurred for program operation, not including transportation services, is a dismal situation. The only source of funds for preschool operations comes from the federal government. There is no revenue limit ADA funding component from the State. In fiscal year 2000-01, we operated less than two preschool classes. Today, we operate seven classes as well as a small infant program with the student population projected to continue to grow. Of all of the special education revenue sources available, the preschool funding component is in dire need of change.

² "Local Education Agency (LEA) Grants,"
www.cde.ca.gov/sp/se/as/leagrants0506.asp

State Special Education Funding

State funding for special education programs accounts for 82% of all special education funding in our district. Program funding exists for specific purposes such as transportation, mental health services, personnel staff development, low incidence services and equipment, and vocational education in our workability program. Collectively, approximately \$585,000 is expected to be received in the 2006/07 fiscal year to offset the costs associated with providing for the diverse needs of these programs. In reality, districts are left with trying to cut corners providing for these important programs.

By far the two most significant sources of State Special Education funding come from the Special Education Revenue Limit Transfer and AB 602.

The Special Education Revenue Limit Transfer is essentially an allocation of the district's base revenue limit funding for special education ADA to the special education program to offset a portion of the costs of the program.

AB 602, the Special Education Reform Act was signed into law in October 1997 and implemented in the 1998/99 fiscal year to replace the old J-50 Special Education funding formula. The J-50 calculation was supposedly devised to calculate revenues based on actual cost of providing classroom instruction. The formula was complex and not completely equitable for all districts.³

After a period of equalization funding, the AB 602 funding formula was to be based on a rate per ADA and incorporates funding for Cost of Living Adjustment (COLA), growth, special disability adjustments, program specialists/regionalized services, low incidence materials and equipment funding, non-public school/out-of-home care funding and an extraordinary cost component. On the surface, the formula appears to be fairly simple. However, after reviewing the formula, it involves various levels of deficits for each funding component and requires extensive tracking of adjustments from the previous year's calculation.

To make matters worse, the State developed the calculation to offset federal Local Assistance funding from the State calculation of the COLA. Consequently, a potential portion of the COLA was lost to the federal funding offset.

For the most part, AB 602 revenues are the largest source of special education funding. However, for our school district, the level of AB 602 funding is significantly exceeded by the level of contribution needed by the district's general fund. While the formula simplifies the calculation based on total ADA to the district, it does not specifically fund on actual special education ADA. In a district where the proportionate growth in the special education ADA may exceed the actual percentage growth in overall ADA, the costs of the increase special education population could exceed growth funding received.

³ "Special Education SELPA Funding Past, Present, Future AB 602"
Vicki L. Barber, Ed.D., County Superintendent and Francie Heim, Deputy Superintendent, El Dorado Office of Education, April 7, 2006

In summary, special education funding cannot be adequately discussed without thoroughly examining all the challenges and complexities involved with this program. The Chief Business Official is tasked with trying to provide for a cost effective quality program while sorting through various federal and state requirements. In addition, the local pressure from parents, advocates and the legal community are enormous. The funding components are both diverse and as complex as preparing a corporate tax return. Yet with careful analysis, cooperation and coordination with various district staff, outside agencies and other support groups, a plan to effectively utilize the special education program's limited funds can be developed.