

Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
SJR 4 (Wilk) – As Introduced April 19, 2021

SENATE VOTE: 38-0

SUBJECT: Special education funding

SUMMARY: Memorializes the 117th Congress of the United States and the President of the United States to reintroduce and enact legislation similar to H.R. 2902, introduced in 2017, or S. 866, introduced in 2019, which would fully fund the federal Individuals with Disabilities Education Act (IDEA). Specifically, **this resolution:**

1) Declares the following:

- a) The federal Education for All Handicapped Children Act of 1975 (Public Law 94-142) (1975 Act) was enacted by the United States Congress and signed into law by the President of the United States to address the failure of states to meet the educational needs of children with disabilities. This act, known as the federal IDEA, since 1990 with the enactment of Public Law 101-476, remains the cornerstone of federal statutory mandates governing special education;
- b) The purpose of the 1975 Act, as declared by the United States Congress, was to ensure that all children with disabilities have available to them within specified time periods “a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities;”
- c) The 1975 Act authorized a maximum state funding entitlement of 40% for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per-pupil expenditure in public elementary and secondary schools in the United States;
- d) Since 1975, including in the most recent amendments to IDEA, the United States Congress has maintained the funding authorization at “40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States;”
- e) The federal government has never paid its promised 40% share of the IDEA mandate. For many years, the United States Congress paid less than 8% of the excess cost of educating children with disabilities, which forced states and local educational agencies (LEAs) to cover the remaining costs. The California student population requiring special education and related services continues to grow each year;
- f) School, disability, and parent groups have been trying for years to bring IDEA appropriations up to the authorized 40% of average per-pupil expenditures, the maximum

any state can receive per student with disability. This effort has come to be known as “full funding,” but the effort has never succeeded;

- g) The California Legislature, since the early 1990’s, has approved a number of joint resolutions memorializing the President of the United States and the United States Congress to provide the full federal share of funding for special education programs to states so that this state and other states will not be required to take funding from other vital state and local programs to fund this underfunded federal mandate;
 - h) In the 2018–19 school year, federal funding only represented 8.4% of special education costs, well short of the promised 40%;
 - i) Because the promised federal funding level is not being met, the burden has fallen on states and local school districts, which leads to cuts in programs, tax increases, or both;
 - j) A bill was introduced in the United States House of Representatives in 2017, H.R. 2902, known as the IDEA Full Funding Act, that aimed to reach the 40% “full funding” level by the 2027 fiscal year through incremental increases in the federal share of funding each fiscal year;
 - k) Another bill was introduced in the United States Senate in 2019, S. 866, known as the IDEA Full Funding Act, that aimed to reach the 40% “full funding” level by the 2029 fiscal year through incremental increases in the federal share of funding each fiscal year; and
 - l) No vote was taken on H.R. 2902 by the 115th United States Congress even though it contained a bipartisan coalition of 119 cosponsors, and S. 866 died in the 116th United States Congress without a vote.
- 2) Resolves, by the Senate and the Assembly of the State of California, jointly, that the Legislature respectfully memorializes the 117th Congress of the United States and the President of the United States to reintroduce and enact legislation similar to H.R. 2902, introduced in 2017, or S. 866, introduced in 2019, which would fully fund the IDEA.
- 3) Resolves, that the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to the Chair of the Senate Committee on the Budget, to the Chair of the House Committee on the Budget, to the United States Senate Committee on Appropriations, to the Chair of the House Committee on Appropriations, to each Senator and Representative from California in the Congress of the United States, and to the United States Secretary of Education.

EXISTING LAW:

- 1) Provides support for special education through a combination of federal, state, and local funds.

- 2) Appropriates, under the IDEA, grants to states to partially fund the excess cost associated with educating students with disabilities, using a formula based on the national average per pupil expenditure (APPE).
- 3) Establishes special education local plan areas (SELPAs) as the entity responsible for distributing state allocated special education funding to school districts and for coordinating services to students with disabilities.

FISCAL EFFECT: This resolution has been keyed non-fiscal by the Office of Legislative Counsel.

COMMENTS:

Need for the resolution. According to the author, “Congress made a promise when it passed IDEA – a promise to provide sufficient special education funding for states and school districts. They have never fulfilled their promise, leaving localities to bear the burden, and hanging all students out to dry.

S. 3213, sponsored by U.S. Senator Chris Van Hollen (D – Maryland), commits Congress to funding IDEA for the benefit of students, teachers and school across the nation. This resolution urges support for S. 3213, as it holds Congress to its promise and provides a sufficient level of funding for schools and students across California and nationwide.”

A brief history of federal special education funding. According to the Congressional Research Service (CRS), the federal government did not begin providing assistance to states for the education of children with disabilities until 1966, when the Elementary and Secondary Education Act (ESEA) was amended to create a two-year grant program that funded states’ efforts to educate students with disabilities in preschool, elementary, and secondary grades. ESEA grant allotments were based on a state’s population of children with disabilities, ages 3-21, who were in need of special education services.

Despite this provision, by 1970 the United States Office of Education estimated that 60% of school-aged children with disabilities were not receiving special education services. In response, Congress enacted the Education of the Handicapped Act (EHA), which consolidated all federal educational assistance for children with disabilities into one statute and established a grant program to support projects that provided services for students with disabilities. The EHA distributed federal funds to states based on the number of all children, aged 3 to 21, within each state.

By 1974, continuing financial constraints prevented states from being able to meet special education requirements established by court mandates, federal law, and their own laws. As a result, Congress amended the EHA to provide a one-year emergency assistance program, which supported state-run special education programs and set the stage for subsequent enactment of the Education of All Handicapped Children Act in 1975.

Since 1975, special education law has been reauthorized by Congress five times, most recently in 2004. A reauthorization in 1990 renamed the act the IDEA. According to the CRS, “in its current form, the IDEA both authorizes federal funding for special education and related services and, for states that accept these funds, sets out principles under which special education and related

services are to be provided.” Among these principles is the requirement that students with exceptional needs, aged birth to 22, be provided a free and appropriate public education in the least restrictive environment.

The current IDEA funding formula is not based on states’ actual special education costs. In 1975, Congress appointed a conference committee to resolve differing versions of the Education of All Handicapped Children Act produced by the Senate and House. According to the CRS, the Committee agreed to a funding formula that established a maximum grant for each state, equal to the number of children with disabilities served in each state, multiplied by a gradually increasing percentage of the national APPE. Congressional intent was for the federal government to pay a portion of the “excess” cost associated with educating students with disabilities, using APPE as the metric for determining this cost.

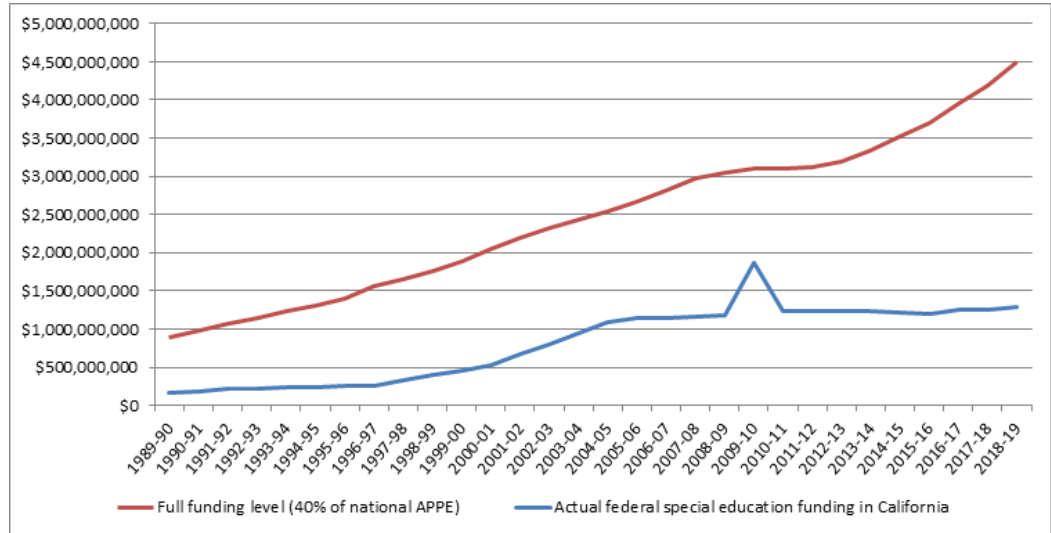
The funding level began at 5% of national APPE in 1978 and was slated to reach 40% in 1982. This funding level—40% of APPE multiplied by the number of children with disabilities served by a state—represented the maximum allowable grant that each state could receive per special education student from 1982 onward, and has come to be known as “full funding” under special education law. It remains in effect today with some modifications, as described below. In 1975, the Senate Committee on Labor and Public Welfare explained its rationale for the formula by stating:

The Committee adopted this formula in order to provide an incentive to states to serve all handicapped children and to assure that the entitlement is based on the number of children actually receiving special education and related services within the State and for whom the State or the local educational agency is paying for such education.

According to the CRS, Congress revised the IDEA funding formula in 1997 to account for growing concerns that the existing formula created a financial incentive to over-identify children as having disabilities; in particular, there were concerns that minority children were being over-identified as having disabilities in the categories of intellectual disability, specific learning disability, and emotional disturbance. Specifically, Congress changed the formula so that it appropriated funds on the basis of the total population of children in each state and the percentage of those children living in poverty, rather than on the basis of the number of children receiving special education services. However, the maximum allowable grant amount for each state—that is, full funding—was still calculated using 40% of APPE, adjusted for the number of children with disabilities served by a state. The 2004 IDEA amendments changed the full funding calculation slightly, such that today a state’s full funding level is calculated as 40% of APPE, multiplied by the number of children with disabilities served, and adjusted for each state’s annual changes in child population and poverty rate.

The 1997 formula revisions took effect in 2000 and guaranteed states a minimum base-year amount equal to their fiscal year 1999 funding level. In subsequent years, when Congress appropriated more special education funding to states than it had in the prior year, funding above the base-year amount would be allocated based on two criteria: 1) each state’s *total* population of children (not just children with disabilities), ages 3-21, and 2) the percentage of those children living in poverty. 85% of funds above the base grant would be allocated based on the former criterion, while 15% of funds above the base would be allocated on the basis of the latter. This basic structure remains in place today, although IDEA amendments in 2004 made some additional modifications to the formula.

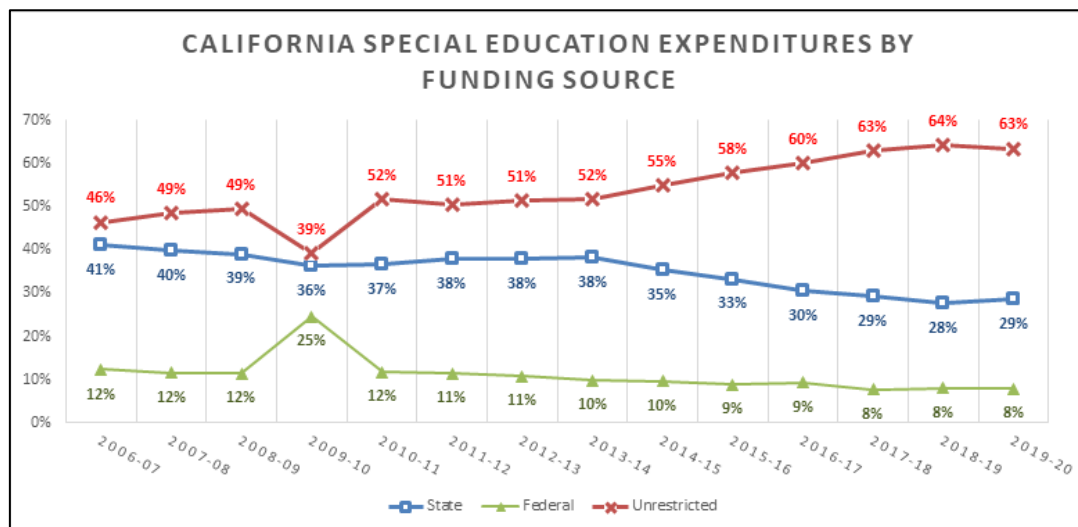
The IDEA has never received full federal funding. Full federal funding for special education has been an issue of national concern for decades. The CRS states that as early as 1969, federal appropriations to special education



were only about 18% of the authorized amount. The CRS further states that in the four decades since the signing of the Education for All Handicapped Children Act, special education appropriations have never met the full funding level of 40% of the national APPE. The chart above, provided by the Legislative Analyst’s Office (LAO), shows that federal funding for special education in California results in a \$3.2 billion deficit in federal appropriations for special education.

This resolution constitutes one example of multiple federal and state measures that have been issued over the past twenty years in an attempt to require or encourage the federal government to fully fund special education. This resolution petitions Congress and the President to pass a measure which aims to reach the 40% “full funding” level by the through incremental increases in the federal share of funding each fiscal year.

Federal funds cover declining share of California’s special education spending. Special education in California is funded with a combination of federal, state, and local revenues, totaling \$14.6 billion in 2019-20. In 2019-20, local general purpose funds covered the largest share of these costs (\$9.2 billion, or 63%), followed by state special education categorical funds (\$4.1 billion, or 29%), combined with federal special education funds (\$1.2 billion, or 8%). In recent years local general fund dollars have been covering an increasing share of special education costs.



As shown in the adjacent chart, provided by the LAO, between 2006-07 and 2019-20 the local share of special

education funding has increased from 46% to 63%. This is a result of a number of factors, including:

- The growth formula for state special education funding is based on overall student growth and not on growth in special education. Because overall student growth has been declining, state funding for special education has been relatively flat, despite growing special education enrollment.
- The federal share of special education costs has declined from 14% in 2005-06 to 8% in 2019-20. The state has increased special education funding by \$943 million since 2019-20, and an additional \$500 million is proposed to be added in the 2022-23 state budget.
- The following compensation-related factors increase demands on local funds: 1) since special education personnel are paid on the same salary schedules as general education personnel, any negotiated increases in compensation raise special education costs, and 2) in recent years the state has required LEAs to provide an increased share of contributions to state retirement systems for school employees.
- There has been a marked increase in special education placements that require a higher level of service (such as autism spectrum disorders (ASD)), and a decline in placements requiring a lower level of service (such as Specific Learning Disability).
- Dedicated funding for higher cost placements, already small in proportion to overall funding, has not kept pace with the changing composition of student needs.

Recommended Committee amendments. In the time since this resolution was introduced, a new measure, S. 3213, which would fully fund the IDEA by 2031, has been introduced in Congress. ***Staff recommends that the bill be amended*** to reflect the introduction of that measure.

Related legislation. SJR 8 (Wilk), Resolution Chapter 131, Statutes of 2019 memorializes the Congress and the President of the United States to enact S. 866, which would fully fund the IDEA.

SJR 19 (Wilk), Resolution Chapter 126, Statutes of 2018, memorializes the Congress and the President of the United States to enact H.R. 2902, which would fully fund the IDEA.

AB 428 (Medina) of the 2019-20 Session requires that special education funding rates be equalized to the 95th percentile after the Local Control Funding Formula (LCFF) is fully funded, creates a funding mechanism for state support of special education preschool, establishes a high cost service allowance to provide supplemental funding on the basis of the number of students with severe disabilities, and changes the calculation of the declining enrollment adjustment so that it is based on school district, rather than SELPA, enrollment. This bill was held in the Senate Appropriations Committee.

AB 3136 (O'Donnell) of the 2017-18 Session was substantially similar to AB 428 of this Session. This bill was held in the Senate Appropriations Committee.

AJR 31(Buchanan), Resolution Chapter 41, Statutes of 2010, recognized the shortfall in funding available from the federal government for special education purposes and the need for the federal government to generate and allocate sufficient funds for special education.

AJR 83 (Daucher), Resolution Chapter 132, Statutes of 2004, memorialized the President and the Congress of the United States to provide the full federal share of funding for special education programs to the states so that this state and other states will not be required to take funding from other vital state and local programs to fund this underfunded federal mandate.

SJR 11 (Alpert), Resolution Chapter 68, Statutes of 2003, memorialized the President and Congress of the United States to provide the full federal share of funding for special education programs to the states so that this state and other states will not be required to take funding from other vital state and local programs to fund this underfunded federal mandate.

AJR 12 (Lempert), Resolution Chapter 76, Statutes of 1999, memorialized the President and the Congress of the United States to provide the full federal share of funding for special education programs.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Regional Center Agencies
Coalition for Adequate Funding for Special Education

Opposition

None on file

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