

Special Education Funding

Three Critical Moves State Policymakers Can Make to Maintain Funding and Bolster Performance

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Funding special education takes up a large share of many states' education budgets. So, when state finances are tight, it is not surprising that policymakers may look for options to limit or reduce the state's share of special education spending. However, unlike general education funds, which are typically unrestricted, state funding for special education operates in the context of a unique regulatory framework designed to protect the rights of students with disabilities. State and local education agencies are compelled by federal law to maintain funding levels and ensure a free and appropriate public education for students with disabilities. These rights cannot be waived, even in the midst of a fiscal crisis.

Special education requirements create what may feel like an impossible task for state policymakers: balancing the need to ensure supports and services for students with disabilities with the need to bring the education budget in line with reduced state revenues.

Existing policy templates and budget models, however, are unlikely to produce the results state policymakers seek. Put simply, states cannot "cut" their way out of the current situation, nor will one-time recovery funds or federal waivers provide

lasting relief. Instead, this brief provides guidance for states to pursue systemic reforms aimed at unifying and integrating programs that serve students with diverse learning needs, including students with and without disabilities, and developing new approaches for funding those integrated systems of support.

The brief draws on (1) the authors' experiences assisting multiple states to revise special education funding and student support systems, (2) a review of the research literature and relevant state policies, and

KEY TAKEAWAYS

1. Reaffirm the state's commitment to educating students with disabilities.
2. Use state policy to promote early intervention and coordinated service delivery.
3. Leverage flexibility in how federal and state special education funds are used.

About This Series

The National Conference of State Legislatures (NCSL) has partnered with WestEd to publish a series of briefs summarizing the evidence and research on common school finance issues that arise during an economic downturn. Specifically, with the onset of an economic downturn, states face the prospect of reduced tax revenue available to fund public services, including public education. This series of briefs leverages what we know from evidence and research to present approaches that state policymakers may take to address these funding realities while supporting public education.



(3) lessons learned from budget and policy reforms created during the Great Recession and in response to education stimulus funds. The following sections describe three critical moves that state policymakers can make now to ensure that students with disabilities' needs continue to be met and that levels of support are maintained, while setting a course for increasing the reach and efficiency of special education funds.

Reaffirm the state's commitment to educating students with disabilities.

When budgets are tight, educators might alter programs and practices in ways that limit access to special education or curtail services. State policymakers may also be tempted to change the state's special education funding formula or other policies in an effort to disincentivize identifying more students for special education.¹

However, policies that put up unnecessary barriers or create such disincentives are ineffective strategies for closing budget gaps and put the state at risk of falling out of compliance with federal laws and regulations. Failure to comply with federal law, including the requirement to maintain financial support for special education (MFS), can trigger serious financial penalties, which ultimately can worsen, rather than improve, the state's financial circumstances. States and districts may not, directly or indirectly, arbitrarily limit the number of students who receive special education services.

Rather, as a first step, now is the time for each state to reaffirm its commitment to providing comprehensive supports to students, including identifying and serving students with disabilities. To do so in a time of budget cuts, policymakers can focus on improving systems, cross-sector collaboration, and asset sharing.

Use state policy to promote early intervention and coordinated service delivery.

Current dollars reflect current practice. Accordingly, meaningful changes to special education spending start with examining how the current system allocates resources, operates programs, and provides services.

Maintaining funding without making changes to existing policy and practice may negatively impact special education services for students with disabilities.² Reducing funding may result in states running afoul of the federal MFS requirements.³ Rather than considering maintaining funds or reducing funds as the only options, state policymakers can focus on reforming their education system's effectiveness and efficiency. Such reform requires transformational work that includes ensuring that students with disabilities are seen as general education students first and that they receive the full benefit of the general education program, allowing special education funding to be targeted to the deficits that are truly due to disability. Policy and practice reforms that promote this priority include the following:

1 DeMatthews, D. E., & Knight, D. S. (2019). The Texas special education cap: Exploration into the statewide delay and denial of support to students with disabilities. *Education Policy Analysis Archives*, 27(2). <http://dx.doi.org/10.14507/epaa.27.3793>

2 Needham, C., & Houck, E. A. (2019). The inequities of special education funding in North Carolina. *Journal of Education Finance*, 45(1), 1–22. <https://www.muse.jhu.edu/article/747802>

3 Kolbe, T. (2019). *Funding special education: Charting a path that confronts complexity and crafts coherence*. National Education Policy Center. <http://nepc.colorado.edu/publication/special-ed>

» **Reinforce policy frameworks that promote early intervention and multi-tiered systems of support in schools.**

Implementing educational support systems is among the most influential practices for increasing student achievement and improving schools.⁴ State policy can be used to emphasize local implementation of comprehensive, differentiated student support systems — such as response to intervention (RTI) and multi-tiered systems of support (MTSS) — that provide a continuum of academic and non-academic supports to students with and without disabilities,⁵ and early intervention⁶ for struggling students.

» **Encourage student-focused systems of support.**

Increasingly, policymakers and educators recognize that separate educational programs for students with disabilities may not be in the students' best interest, nor are separate programs an effective or efficient use of scarce educational resources.⁷ Students with disabilities fall into multiple categories and levels of need. For example, states report to the U.S. Department of Education (ED) that 11 percent of students with disabilities in the United

States also qualify as English language learners; in some states, the proportion is higher than 25 percent.⁸ In many cases, students have needs unrelated to their disability and, alternatively, students without any identified disability may benefit from the supports and services that special education programs provide. Student-focused systems of support assign services to children based on need rather than program eligibility and allow for a range of services, from those spanning multiple programs over long time periods to discrete academic interventions for short durations.

Rather than providing students with services from multiple and largely siloed programs or providers, state policy can encourage student-focused systems of support that are aligned holistically with student needs.

Leverage flexibility in how federal and state special education funds are used.

Efforts to implement coordinated and flexible service delivery models that encourage student-focused systems of support and MTSS frameworks can clash with federal and state policies that restrict how special

4 Hattie, J. (2008). *Visible learning*. Routledge.

5 Choi, J. H., McCart, A. B., & Sailor, W. (2020). Achievement of students with IEPs and associated relationships with an inclusive MTSS framework. *The Journal of Special Education*. doi:10.1177/0022466919897408; Sailor, W., McCart, A. B., & Choi, J. H. (2018). Reconceptualizing inclusive education through multi-tiered system of support. *Inclusion*, 6, 2–18. doi:10.1352/2326-6988-6.1.3

6 Guralnick, M. J. (2011). Why early intervention works: A systems perspective. *Infants & Young Children*, 24, 6–28.

7 Choi, J. H., Meisenheimer, J. M., McCart, A. B., & Sailor, W. (2017). Improving learning for all students through equity-based inclusive reform practices: Effectiveness of a fully integrated schoolwide model on student reading and math achievement. *Remedial and Special Education*, 38(1), 28–41. <https://doi.org/10.1177/0741932516644054>

8 Data retrieved on May 3, 2020, from <https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html>

education funding and funding for other students with different learning needs can be used.⁹

Contrary to popular belief, states have the opportunity to leverage federal and state funding for special student programs, including special education, within the broader funding system for comprehensive education programs. States have the following three distinct opportunities to both remain in compliance with federal regulations and apply flexibility and leverage policies toward improving systems:

» **Allocate funds for broader use in supporting students.**

States determine not only the amount of state funds made available for special education but also how those funds will be divided among school districts and other agencies. Without increasing or decreasing the overall amount of state funding made available for special education, states can prioritize comprehensive systems by considering the basis on which funds are divided and whether that division reflects the increasingly complex needs of students, including students for whom the state is funding interventions under multiple programs.

One of the strongest arguments against revisiting the allocation of state special education funds is based in the MFS requirement: “A state must not reduce the total amount of state financial support for special education and related services for children with disabilities, or otherwise made available because

of the excess costs of educating those children, below the amount of that support for the preceding fiscal year” (34 CFR 300.163(a)). However, ED guidance confirms states have flexibility in defining supports “made available” for special education and related services,¹⁰ and states may consider including funds made available to ensure that those services are provided in a coordinated system as part of the excess cost of educating students with disabilities.

To reduce potential harm to students with disabilities, the MFS requirement is meant to ensure that consistent funding is set aside for special education, but MFS does not require states to limit the use of those state funds allocated for special education to the same narrow use that is required for federal IDEA funding. States may want to first consider increasing flexibility in the use of funds currently counted as made available in order to avoid unnecessarily increasing the threshold for the MFS requirement by counting additional funds toward the requirement.

» **Integrate funding distribution and planning policies.**

In addition to deciding how funds will be allocated and divided, states establish mechanisms for distributing funds to local agencies responsible for education programs. Distributing different kinds of funds through separate systems reinforces segregated administration of programs in districts and schools. In many states, funds distribution is also

9 Cioffi, A., & Ryan, J. (2011, Winter). Race and response-to-intervention in special education. *Howard Law Journal*, 54(303); Sparks, S. D. (2011, February 28). Districts must walk a fine line to fund RTI programs. *Education Week*. <https://www.edweek.org/ew/articles/2011/03/02/22rti-bureaucracy.h30.html>

10 Office of Special Education and Related Services. (2009). *Maintenance of state financial support under the Individuals with Disabilities Education Act*. U.S. Department of Education. <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osep10-05maintenanceoffinancialsupport.pdf>

dependent on the submission of a plan establishing eligibility for programmatic funds and describing how those funds will be used; coordinating or consolidating those criteria and plans is another way that state policy and procedures can be updated to prioritize coordination across programs for integrated systems of support.

In addition to directing the coordination of state funds, states can provide supports to districts and incentives for schools that consolidate funds under federal programs (e.g., programs for students identified as English learners, students living in poverty, students with disabilities) through establishing consolidated plans with a common cost objective for all students.

» **Establish and reinforce expectations for expenditures.**

The third opportunity available to policymakers is to reconsider restrictions on or requirements for the use of funds. States have broad flexibility in stipulating the requirements for how state funding is used, but many states have incorporated, in whole or in part, federal requirements into their own regulations, including requirements that strongly limit how state special education funding can be used. To allow a more holistic approach to serving struggling students, revisions that create more flexibility in using state funds can be expanded and broadened; reporting requirements for how funding is used can be revised concurrently to reduce barriers to consolidating funds across federal and state sources.

States do not need to adopt restrictive federal definitions and allowable-use contingencies for state funding. In

addition, states can provide clear guidance on flexibilities in federal funds and can remove administrative hurdles placed on districts for taking advantage of those flexibilities, including clarifying for districts and schools what “incidental benefit” is and clarifying how students who are not found to be students with disabilities but do demonstrate similar needs may benefit from programs funded through federal and state special education allocations.

Crafting coherence

In this time of budget crisis, any effort that attempts to curtail existing spending without making changes both to practice and to funding policy amounts to tinkering at the fiscal margin. Rather, charting a new course will entail that state policymakers rethink existing policy frameworks for allocating and distributing state funding. Instead of staying the course with what now consists of multiple, separate programs, state policymakers can establish expectations and procedures for coordinating the use of state funding and coordinating the support provided to struggling students, those with and without disabilities.

States may benefit from looking for ways to reform policy and practice, repackage resources, and reform the funding systems that pay for these resources to facilitate change, but providing flexibility in how state and federal funding can be used is not likely to go far enough to promote systems change in schools. By matching funding policies with policies that promote early intervention and integrated service delivery, policymakers can also provide guidance to and expectations for local educators to take advantage of flexibilities and redesign their service delivery systems.

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