

DOCUMENT RESUME

ED 413 714

EC 305 988

TITLE The Special Education Accountability Commission. Final Report to the Legislature, Governor [and] State Board of Education [of Nebraska].

INSTITUTION Nebraska Special Education Accountability Commission.

PUB DATE 1996-09-01

NOTE 236p.

PUB TYPE Reports - Evaluative (142)

EDRS PRICE MF01/PC10 Plus Postage.

DESCRIPTORS *Accountability; *Disabilities; *Educational Change; Educational Innovation; Elementary Secondary Education; Outcomes of Education; *Prevention; *Program Costs; School District Spending; *Special Education; State Aid; State Programs

IDENTIFIERS *Nebraska

ABSTRACT

This final report of the Nebraska Special Education Accountability Commission presents recommendations for reforming the state's special education system. The tasks of the commission were to develop recommendations for a new funding system for special education which would be identification and placement neutral, to encourage preventive services, to assure adequacy of funding to meet the needs of student with disabilities and those needing support services, to ensure equity in services available to students across the State, and to contain costs. The commission was also required to develop accountability recommendations. Final recommendations include: (1) a new funding system that integrates special education funding for school age and transportation programs into the State's general education equalization funding program; (2) placement of special education under the same budget limitation provision as general education; (3) tighter department definitions of educational benefit; (4) closer review and approval of the service of their party contractors; (5) new criteria for related services: (6) improved interagency cooperation in providing services for students ages 14-21; (7) having school districts set standards for student performance for all students; (8) providing appropriate modifications and accommodations for students with disabilities; (9) improved training of teachers in servicing students with more diverse needs; and (10) reporting of student outcome data. (CR)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

ED 413 714

**FINAL REPORT
OF THE
SPECIAL EDUCATION ACCOUNTABILITY COMMISSION**

**TO THE
LEGISLATURE
GOVERNOR
STATE BOARD OF EDUCATION**

SEPTEMBER 1, 1996

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

EC 305988

SPECIAL EDUCATION ACCOUNTABILITY COMMISSION ROSTER

NAME	PHONE/FAX	ADDRESS	REPRESENTS
Doug Ackles	308/754-4433(W)	St. Paul Public School 1305 Howard Ave. St. Paul, NE 68873	Administrator or staff member not in special education
Keith Bartels	402/423-7256(H) 402/472-3025(W) FAX:402/472-3093	3706 Wildbriar Lane Lincoln, NE 68516	School Board
Margene Beatty	308/386-4529(H) 308/284-8481(W) FAX:308/284-8483	P.O. Box 128 Sutherland, NE 69165	Governor's Office
Ken Bird	402/399-0289(H) 402/390/2106(W) FAX:402/390-2120	Westside Com. Schools 909 So. 76th St. Omaha, NE 68114	Administrator or staff member not in special education
Robert A. Cannon	402/421-3042(H) 492/475-7011(W) FAX:402/475-8912	1000 NBC Center Lincoln, NE 68508	Parent
Lisa Fricke	402/373-4930(H) 402/373-4800(W) FAX:402/373-2712	119 South Crown Pt. Box 213 Bloomfield, NE 68718	At-large
Joseph Gaughan	402/557/2410(W) FAX:402/557/2509	Omaha Public Schools 3215 Cuming Omaha, NE 68131-2024	Administrator or staff member
Sandra Haughton	402/453-8418(H) 402/557-2753(W) FAX:402/557/2509	4922 Pratt Street Omaha, NE 68104	At-large
Velda Lambert	308/345-7507(H) 308/345-2072(W) FAX:308/345-2511	Route 3, Box 45 McCook, NE 69001	Public school special education teacher
Max McFarland	308/324-5375(H) 308/865-8508(W) FAX:308/865-8157	Dept. of Counseling & School Psychology Founders Hall, Rm. 2102 UN-K Kearney, NE 68849	Postsecondary special education
Nicolas Reyes, Jr.	308/635-2818(H) 308/630-5473(W) FAX:308/632-3820	2514 Broadway Ave. Scottsbluff, NE 69361	At-large
Richard Schoonover	402/293-5005(W)	Special Services Annex Bellevue Public Schools 2221 Main St. Bellevue, NE 68005	Special education administrator
Jean Sigler	402/551-0543(H) 402/346-0525(W) FAX:402/346-5253	Nebraska Parent Center 3610 Dodge Omaha, NE 68131	Parent

NAME	PHONE/FAX	ADDRESS	REPRESENTS
Patricia Thundercloud	402/878-2597(H) 402/878-2231(W) FAX:402/878/2881	P.O. Box 684 Winnebago, NE 68071	At-large
Sally Tremain	402/564-7966(H) 402/246-2075(W) FAX:402/564-5209	2619 21st St. Columbus, NE 68601	Public school classroom teacher
Bob Waite	402/644-2505(W)	Norfolk Public Schools P.O. Box 139 Norfolk, NE 68701	School business official
Daniel Weidner	402/444-6557(W)	Alpha School 1615 So. 6th St. Omaha, NE 68108	Private schools

STAFF MEMBERS:

NAME	PHONE/FAX	MAILING ADDRESS
Larry Scherer Commission Consultant/ Coordinator	402/476-7101 (H) 402/476-7701 (W) FAX (call ahead): 402/476-7701	3706 M Street Lincoln, NE 68510
Don Anderson, Administrator Special Populations Dept. of Education	402/471-2471 (W) FAX: 402/471-0117	P.O. Box 94987 Lincoln, NE 68509
Pam Duncan, Office Manager Special Populations Dept. of Education	402/471-4302 (W) FAX: 402/471-0117	P.O. Box 94987 Lincoln, NE 68509

TABLE OF CONTENTS*

ACKNOWLEDGMENTS

EXECUTIVE SUMMARY

INTRODUCTION

PART A INITIAL REPORT
PART A1 CONCEPT PAPER

PART B PILOT PROGRAM REPORT
PART B1 PILOT PROGRAM MATERIALS

PART C FINANCE REPORTS
PART C1 COST CONTAINMENT RECOMMENDATIONS
PART C2 NEW FUNDING SYSTEM RECOMMENDATIONS
PART C3 DRAFT LEGISLATION AND SUMMARY

PART D ACCOUNTABILITY REPORT
PART D1 ACCOUNTABILITY RECOMMENDATIONS
PART D2 DRAFT LEGISLATION AND SUMMARY

CONCLUSION AND NEXT STEPS

ACKNOWLEDGMENTS

This report of the Special Education Accountability Commission would not have been possible without the contributions and assistance of many people. The Commission would like to acknowledge all who played a role and offer our gratitude.

First, the Commission benefited from the presentations and support of several professionals in the State Department of Education, including Gary Sherman, Don Anderson, John Clark, Elaine Bahr, Linda Schafer, Barb Schliesser, Pete Biaggio, Margaret Worth, Beth Weirda, Annie Bird, Ginny Wright, Russ Inbody, Pam Roth, Dennis Pool and Tim Kemper. We also thank Shannon Borgman for her able assistance in keeping members and staff of the Commission in contact with educators, parents and members of the public.

We are indebted to Cliff Dale and the Lincoln Public Schools for hosting Commission meetings and several subcommittee meetings.

We offer thanks to Ken Bird, Steve Milliken and many others at Westside Community Schools for hosting meetings of the Commission, for implementation of a very promising pilot program and for offering information and tours of the Westside program for members of the Commission. Likewise we are grateful to Jim Werth, Grand Island Public Schools, for his excellent suggestions and pilot program efforts. Both schools are truly on the cutting edge of thoughtful reforms in special education in Nebraska.

The Commission is grateful to Tammy Barry, Legal Counsel for the Legislature's Education Committee and Carolyn Loop, Legislative Aide for Senator McKenzie and the Legislature's Select Committee on Special Education, as well as Trent Nowka and Tim Erickson, of the Governor's Office, for their able guidance, support and assistance.

Many others made presentations to the Commission and offered valuable information which was enlightening and useful to the Commission. We offer thanks to all these individuals, including: Robert DiFerdinando, Burlington Vermont Public Schools, on the Vermont block grant program and student assistance teams; Thomas Parrish, Center for Special Education Finance, on

trends in special education finance in the states; Kim Davis, Legislative Staff, on prior special education studies by the Legislature, Sandy Sostad, Legislative Fiscal Office, on financial trends in special education; Jack Gilsdorf, Nebraska Schools Accountability Commission, on the work of that Commission; Richard Schoonover, Bellevue Public Schools and George Spilker, Papillion Public Schools on the budget process; Mike Remus, ESU #7, on the ESU special education programs and budgeting; Mary Ann Losh, Nebraska Department of Education, on the Comprehensive System of Personnel Development; Linda Gabriel, Creighton University on occupational therapy; Dr. Wayne Stuberg, University of Nebraska Medical Center, on physical therapy; Dr. Joe Gaughan, Omaha Public Schools on the history of special education in Nebraska; Susan Reiman-Garland, Omaha Public Schools, and Kathy McFarland, Grand Island Public Schools, on the Class Within a Class model; Tom Berquist, Legislative Fiscal Office, on the implications of State entitlement programs; Donna Moss, Millard Public Schools, on the work of metro-area schools; Mert Smith and Marilyn Peterson, Nebraska Department of Education, on the Title I/ special education relationships; Jim Impara, University of Nebraska-Lincoln, on statistical analysis of special education funding and program variables; Chuck Lassiter and Tracy Lourds, Office of Special Education, on U.S. Department of Education waiver policies; Robert Runkel, Montana Department of Education, on that state's block grant program; Lois Adams and Kay Cessna, Colorado Department of Education, Steve Jones, from Colorado's Mountain BOCES, and Rod Scofield, of Harrison Colorado Public Schools, on Colorado inclusion programs; Doug Christensen, Commission of Education, on general school reform strategies; Kathleen Severens, Office of Dispute Resolution, on Special Education Mediation; Eric Richards of the ARC of NE, on parent/advocacy group forums; Randy Bolt, Blue Cross, Dr. Gregg Wright, University of Nebraska-Lincoln, Mary Jo Iwan, Department of Social Services, Judy Quest, parent, John Rink, Department of Insurance, Sandra Peterson, ESU #3 and Dr. Stacie Bleicher, MD., on methods to control medical or health related special education costs; and Cherie Roberts, Grand Island Public Schools, on student assistance team reforms in that district.

In addition, scores of parents, educators and advocacy group representatives spoke out at public hearings of the Commission. Their input was appreciated and useful.

The Commission thanks members of the Nebraska Association of Special Education Supervisors for their assistance in completing survey questionnaires, answering interview questions and offering independent solutions for funding changes and cost containment. Dennis Flood, Steve Milliken and Barb Elliott were instrumental in these efforts.

To those who served on Commission subcommittees, the Commission is especially appreciative of their hard work, including: Cliff Dale, Lincoln Public

Schools; Gary Hammack, Kearney Public Schools; Duane Stehlik, Falls City Public Schools; and Richard Galusha, Omaha Public Schools.

The Commission wishes to offer special thanks and appreciation to Former Senator Jessie Rasmussen, whose legislation created the Commission , for her early advice and support in the Commission's work and to Senator Janice McKenzie, who expanded the charge of the Commission, supported the Commission's work and participated in Commission activities.

Finally, the Commission, could not have functioned without the work and organization of Larry Scherer, the Commission's consultant and coordinator, Don Anderson, the primary liaison with the Department of Education and Pam Duncan, of the Special Populations Office, who was also instrumental in Commission mailings, meeting arrangements, accounting and report preparation.

EXECUTIVE SUMMARY

FINAL REPORT

SPECIAL EDUCATION ACCOUNTABILITY COMMISSION

September, 1996

The Special Education Accountability Commission was created by the Legislature through LB 520 in 1993 to make a comprehensive study of special education in Nebraska. The primary goal of the Legislature for the Commission, at that time, was to identify strategies for cost containment so that the costs of special education would grow no faster than the costs of general education. (State appropriations for special education had been growing at a rate of between 10% and 11% annually for the preceding five years while the expenditures for schools overall had been increasing at a rate of 5.5%.)

The other original mission of the Commission was to develop accountability recommendations for special education including broad program frameworks, a system for assessing student outcomes and a system to monitor and manage special education costs. To help accomplish this mission, the Commission was given the authority to select pilot program sites which could document cost containment while maintaining quality services for children with disabilities. Pilot programs would be exempted from restrictive State statutes and regulations.

In 1995, the Legislature, through the enactment of LB 742, significantly altered the mission of the Commission to include development of recommendations for a new funding system for special education and "support services" which would meet legislative criteria. Those included: movement toward a funding system which was identification and placement neutral; encouragement for preventative services; assurance of adequacy of funding to meet the needs of students with disabilities and those needing support services; assurance of equity in services available to students across the State; and cost containment for special education at the same level as general education. The Legislature in LB 742 also capped the growth of State appropriations for special education at 2.5% for 1996-97 and 3% for 1997-98.

Members of the Commission were appointed in the fall of 1993 and an organizational meeting of the Commission was held in January of 1994. With the development of operating procedures and hiring of a consultant/staff coordinator, the Commission set to work drafting a concept paper which would

lay out the Commission's vision for appropriate reforms of special education and guide its selection of pilot program sites. An initial report, which recommended legislation to extend the pilots for a three year period and allow for block grant funding of the pilots, was also completed in 1994. (See Part A of the Final Report.)

In 1995, an Ad Hoc Committee on Special Education Funding, which included members of the Commission, members of the School Finance Review Committee, representatives of the State Department of Education and representatives of the Education Committee of the Legislature, was created to develop a new funding system model. A draft was circulated for public discussion in the fall.

Also in 1995, a Committee on pilot programs developed selection criteria and interviewed pilot applicants. In August, the Commission selected Grand Island Public Schools for a demonstration of the impact of tightened verification criteria. Westside Public Schools was selected as a demonstration site to study the impact of comprehensive unification of special education programs. The Westside pilot allowed flexible use of funding through waiver of statutes and rules in areas such as teacher certification and endorsement requirements and caseload requirements. The pilots were approved for three school years, 1995-96 through 1997-98. (See Part B of the Final Report.)

In the spring of 1995, an Accountability Subcommittee was established and began development of draft policy statements for a new accountability system for special education. In July of 1996, the Accountability subcommittee circulated draft recommendations which were discussed at a statewide videoconference public hearing. The Committee recommendations were adopted by the full Commission with some modifications, (See Part D of the Final Report.)

Also in 1996, the Ad Hoc Committee on Special Education Funding received the proposals provided by several education groups and individuals, addressing a new funding system. Taking those proposals into consideration, the Committee circulated a draft proposal of a new funding system for public discussion at a statewide videoconference public hearing. Following the public hearing, the Committee's final recommendations on a new funding system for special education were presented to the full Commission. The Commission adopted most of the Committee's draft plan in May and submitted a funding report to the Legislature in June. (See Part C2 of the Final Report.)

During the spring and summer of 1996, a Data/Funding Subcommittee of the Commission submitted cost containment recommendations most of which were adopted by the Commission in July. (See Part C1 of the Final Report.)

Finally, in August of 1996, the Commission reviewed the progress of the two pilot programs and recommended continuation of the pilots for two additional school years with monitoring and final evaluation under of the State Department of Education.

A Time Line, which shows the activities of the Commission chronologically is included in the Introduction to the Final Report.

Over the three year life of the Commission, a few principles emerged which may be seen as unifying themes throughout the several reports and recommendations of the Commission. These include:

1. Special education must be viewed as an integral part of the whole school system, not a separate, stand alone, component. Programmatically and financially, special education must become more integrated with general education.
2. Equitable access to quality education services is important for all students. The funding system must insure that adequate resources are available so that all school districts can provide these services.
3. A stronger emphasis on prevention and intervention, through the collaborative efforts of well prepared and well trained staff, is essential. Much more must be done to break down the barriers so that students with special needs can be served at the point of need without the prerequisite for identification and verification.
4. As the entire K-12 school system moves towards accountability through performance based standards and student outcomes, special education must be a part of that movement. In the transition, however, crucial input and process requirements must be maintained to assure that services to students with disabilities continue to remain available as guaranteed under the Individuals With Disabilities Education Act.

While the recommendations of the Commission for reform of the current system are too extensive to be listed in this summary, the major policy shifts suggested for special education funding and accountability may be summarized as follows:

The proposed funding system: The new funding system recommended by the Commission is integration of State special education funding for school age and transportation programs into the State's general education equalization funding program. This integration will provide identification and placement

neutrality, allow for State funding to be used for preventative programs for students needing support services without the requirement for identification or verification, assure that there is adequacy of funding and equity in special education programs across districts through the equalization formula which distributes aid based on district needs and financial capacity and will promote cost containment through appropriations which will grow at the same rate as aid for general education.

In conjunction with the integration of special education into the general education funding program, the Commission recommended several ideas which may help school districts control costs at the local level. These include: placement of special education under the same budget limitation provisions as general education, tighter Department definitions of "educational benefit" (as distinguished from medical or health benefits), closer Department review and approval of the services of third party contractors, new Department criteria for related services, such as physical therapy, and improved interagency cooperation in providing services for students ages 14 to 21.

The proposed accountability system: Accountability recommendations also recognize that special education must be considered part of general education, not as a separate program. Standards for student performance should be set by all school districts for all students. Appropriate modifications and accommodations must be made for students with disabilities, and those needing support services, in instruction, curriculum and assessment. Improved training of teachers in serving students with more diverse needs is essential to the new accountability and preventative service model, which will include reforms such as enhanced student assistance teams. Student outcome data, which illustrates student progress while in school and following exits from school, will be reported to the State and included in aggregate local and State reports on the effectiveness of special education and support service programs.

The Commission commends this Final Report to the Legislature, Governor and State Board of Education for their serious review and consideration. Draft legislation is included in the hope that the document can be translated into policy reform.

As designed by the Legislature, the Commission terminated September 1, 1996. However, individual members of the Commission have indicated their willingness to meet with interested persons and groups to explain Commission recommendations, to assist the Department in monitoring of the pilot programs, and to assist in the development and enactment of legislation, rules and other policies which would fully implement the recommendations of the Commission.

INTRODUCTION

The Special Education Accountability Commission was created by the Legislature in 1993 through LB 520. The purpose of the Commission was threefold: (1) to suggest strategies for containment of special education costs at the same level as general education costs, (2) to make recommendations for an accountability system for special education which included student outcomes and monitoring of costs and (3) to use pilot programs to study methods by which costs could be contained while maintaining access to effective services.

Initial recommendations for statutory changes in the funding mechanism were included in the initial report, which was completed as due November 1, 1994. That report also included a Concept Paper which discussed some of the Commission's views on reform trends in special education. Proposed legislation submitted with that initial report included a method for funding the pilot programs through a block grant mechanism, extension of the pilot programs and the Commission for a full three year period and clarification of the Commission's duties regarding accountability recommendations. Part A includes a copy of the initial report and concept paper.

In 1995, the Legislature enacted major legislation, LB 742, which impacted State funding for special education and the role of the Commission. The Legislature did extend the life of the pilot programs, clarified the funding for the pilots and modified the accountability recommendations due from the Commission. In addition, the Legislature added a major new responsibility for the Commission, in collaboration with the School Finance Review Committee, the Department of Education and the Education Committee of the Legislature, to develop recommendations for a new funding system for special education. The new funding system was to be based on a series of criteria established by the Legislature, including especially identification and program neutrality, student equity and cost containment. LB 742 also capped State appropriations for special education for the 1996-97 and 1997-98 school years at 2.5% and 3% respectively and repealed the existing funding system effective in the fall of 1998.

The second report, which was due June 1, 1996, included the Commission's recommendations for a new funding system for special education. The Commission made a presentation of this report to Education Committee of the Legislature in June. Part C2 is a copy of the Funding Report.

Section 79-3368(3) requires a final report from the Special Education Accountability Commission which shall include "the Commission's evaluation of the pilot programs, recommended legislation to implement a funding system and recommendations for accountability measures for

special education." Part B is the preliminary report on the Commission approved pilot projects. This report will also include recommendations for cost containment strategies pursuant to the original legislative priority for the Commission. (These recommendations will be found in Part C1 of this report.) Part D of the report includes the Commission's accountability recommendations. Draft legislation for implementation of the new funding system, cost containment strategies and accountability measures are found in Parts C and D.

In summary, the Commission's responsibilities have evolved from the time of the enactment of the original legislation creating the Commission in 1993. The work and priorities of Commission have also evolved. This evolution is reflected in a Commission's Working Time Line, which follows.

Final Time Line

- I. ORGANIZATION---September, 1993 to March, 1994
- II. GOALS, MODELS, DRAFT CONCEPT PAPER
---April to September, 1994
- III. PUBLIC INPUT ON CONCEPT PAPER
COST FACTORS/FUNDING SIMULATIONS
---September to October, 1994
- IV. INITIAL REPORT, DRAFT LEGISLATION
COST FACTORS/FUNDING SIMULATIONS
---October to December, 1994
- V. PILOT SELECTION

The Pilot Selection Committee

1. Draft and approve pilot selection procedures -- September through December, 1994.
2. Approve and circulate procedures and request for proposals -- January and February, 1995.
3. Screen and select applications -- March through July, 1995.
4. Approve selected pilot applications -- August, 1995.

VI. PILOT EVALUATION

The Pilot Evaluation Committee

1. With pilot schools, establish evaluation process and criteria -- September, 1995 through January, 1996
2. Arrange visits for observation/discussion -- Spring, 1996
3. Pilot presentations to Commission -- August, 1996
4. Develop recommendations for inclusion in Final Report -- July and August, 1996.
5. Inclusion of recommendations in Final Report -- August, 1996

VII. DEVELOP ACCOUNTABILITY RECOMMENDATIONS

The Accountability Subcommittee

1. Develop Possible Policy Statements -- March, 1995 through July, 1996.
2. Circulate and Revise Possible Policy Statements -- November 1995 through June, 1996.
3. Public hearing of the Commission on Accountability Policy Statements, June, 1996.
4. Revised recommendations on Accountability, submitted for approval of Commission -- July, 1996.
5. Inclusion of recommendations in Final Report -- August, 1996

VIII. DEVELOP FUNDING RECOMMENDATIONS

The Data/Funding Subcommittee and the Ad Hoc Committee on Special Education Funding

1. Develop Funding Options Discussion Draft -- June, 1995 through October, 1995.
2. Circulate and revise Funding Options Draft -- November, 1995 through January, 1996.

3. Funding proposals from outside groups presented January 15, 1996. Public hearing of Education Committee and the Special Education Accountability Commission to receive funding proposals on January 23, 1996
4. Develop recommendations for a new funding system -- February through April, 1996.
5. Public hearing of the Commission on new funding system recommendations -- May, 1996.
6. Revised recommendations submitted for approval of Commission -- May, 1996
7. Second Commission report on a new funding system presented to Legislature, Governor and State Board of Education -- June 1, 1996.

IX. DEVELOP COST CONTAINMENT RECOMMENDATIONS

The Data/Funding Subcommittee

1. Develop draft options on other cost containment strategies -- January through June, 1996
2. Circulate the draft -- April, 1996
3. Hold a public hearing to discuss the draft options with interested parties -- May, 1996.
4. Revises recommendations submitted for approval of Commission -- July, 1996.
5. Inclusion of recommendations in Final Report -- August, 1996.

X. FINAL REPORT

Chair of Commission and Chairs of Subcommittees to function as as a draft review committee

1. Draft outline (Introduction and Table of Contents) presented - -July, 1996.
2. First rough draft Developed by Consultant -- July, 1996.
3. Draft review and revisions -- August, 1996.
4. Second rough draft presented for approval at a public meeting of the Commission --August, 1996.

5. Originals of report to Legislature, Governor and State Board of Education -- September 1, 1996.
6. Printing and distribution of Final Report -- September and October, 1996

PART A

INITIAL REPORT

November, 1994

TABLE OF CONTENTS

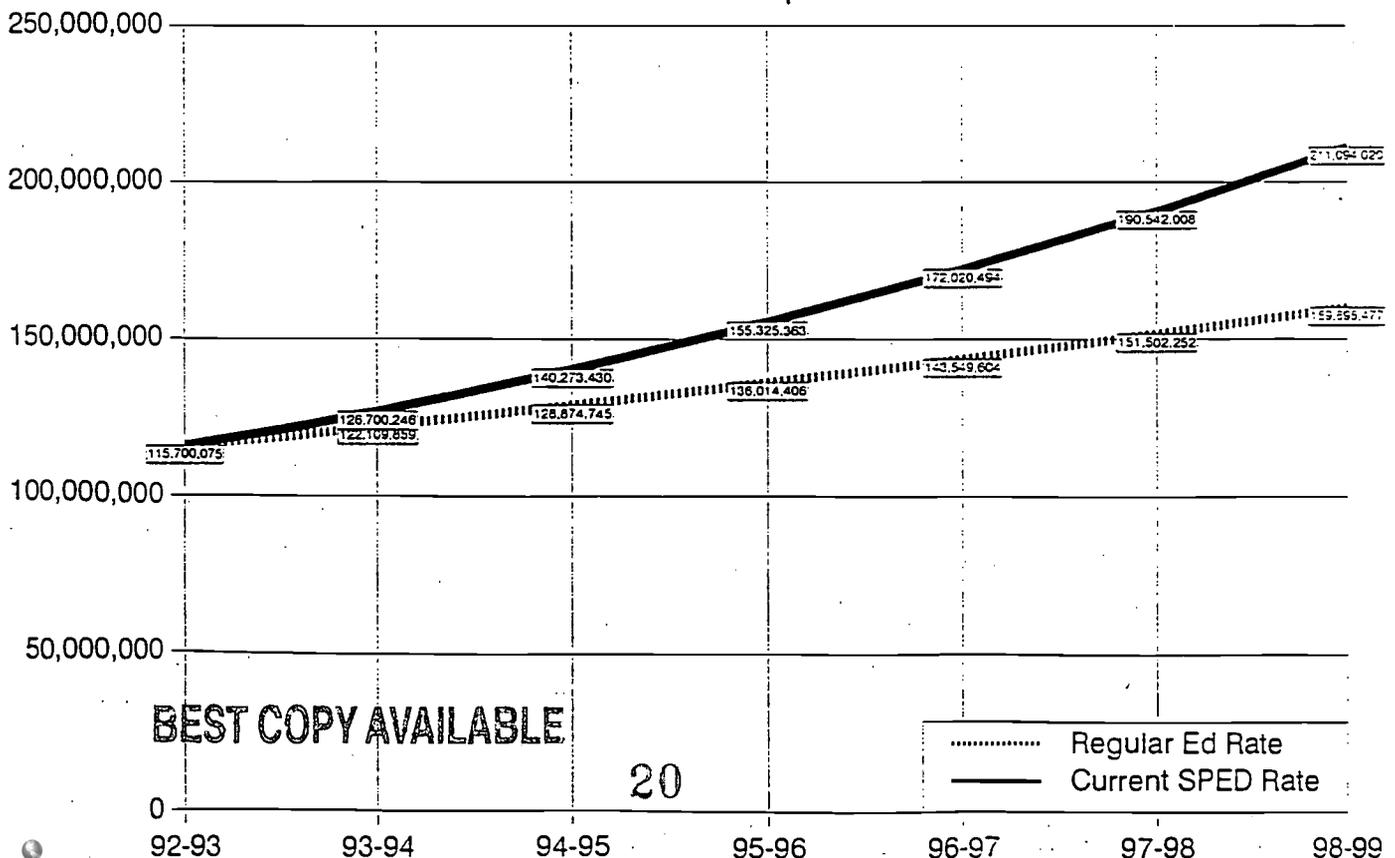
- I. INTRODUCTION: THE GOALS OF THE COMMISSION
- II. ORGANIZATION, TIMELINE AND ACTIVITIES
- III. CONCEPTUAL BASIS FOR PILOT PROGRAMS
- IV. RECOMMENDATIONS FOR INITIAL CHANGES IN FUNDING SYSTEM
- V. CONCLUSION
- VI. APPENDICES
 - A. COMMISSION MEMBERSHIP ROSTER
 - B. WORKING CONCEPT PAPER
 - C. ATTORNEY GENERAL'S OPINION
 - D. DRAFT LEGISLATION

I. INTRODUCTION: THE GOALS OF THE COMMISSION

The Special Education Accountability Commission was created by the 1993 Legislature to explore cost containment and develop an accountability system for special education in Nebraska. Commissioner members representing each of the areas of expertise specified in LB 520, the authorizing legislation, were appointed in the fall of 1993. (Appendix A is the membership roster of the Commission.)

"The primary goal of the Special Education Accountability Commission" as stated in the authorizing legislation is to *"identify strategies for accomplishing cost containment in special education that will result in the average special education costs increasing as a rate no greater than the average annual education growth rate"*. R.R.S. 79-3367 (1994 Supp.). Based on the information gathered to date, it appears to members of the Commission that significant changes in special education finance may be necessary accomplish this goal. Figure A, below, illustrates the magnitude by which projected growth in special education appropriations (at the current 10% growth rate) exceed the projected growth for general education of 5.4% (not including special education expenditures).

Special Education Reimbursement
Rate of Increase Comparison



BEST COPY AVAILABLE

	92-93	93-94	94-95	95-96	96-97	97-98	98-99
Regular Ed Rate	115,700,075	122,109,859	128,874,745	136,014,406	143,549,604	151,502,252	159,895,477
Current SPED R	115,700,075	126,700,246	140,273,430	155,325,363	172,020,494	190,542,008	211,094,020

To accomplish the primary goal of cost containment as set by the Legislature, without other changes in the special education system, could require reductions in the special education reimbursement to school districts of over \$4 million the first year and nearly \$50 million after five years. But much of special education spending is driven by State and local mandates outside the control of the local schools. Thus, the task of cost containment illustrated by the chart above is even more monumental because the Commission's charge includes containment of total special education costs of STATE AND THE SCHOOLS, not solely containment of State appropriations and State aid. Figure B, which lists the total cost of funding for special education from 1977-78 to 1991-92, indicates that the estimated State share is currently only 60% of the total bill**or special education.

TOTAL FUNDING FOR SPECIAL EDUCATION

FY 1977-78 TO FY 1991-92

	<u>Handicapped Student Count*</u>	<u>Est. Total Special Educ. Budget**</u>	<u>Estimated Local Share</u>	<u>Percent</u>	<u>Actual State Share</u>	<u>Percent</u>	<u>Actual Federal Share</u>	<u>Percent</u>	<u>% Increase Total Budget</u>
1977-78	28,602	32,067,042	12,589,836	39.3	17,417,109	54.3	2,060,097	6.4	
1978-79	31,145	37,552,629	13,950,808	37.1	19,664,406	52.4	3,937,415	10.5	17.1
1979-80	28,763	45,376,757	13,840,654	30.5	28,597,729	63.0	2,938,374	6.5	20.8
1980-81	30,991	50,923,229	13,650,827	26.8	31,328,090	61.5	5,944,312	11.7	12.2
1981-82	31,716	58,949,426	17,041,309	28.9	35,257,770	59.8	6,650,347	11.3	15.8
1982-83	30,695	63,880,739	16,905,254	26.4	40,485,218	63.4	6,490,267	10.2	8.4
1983-84	30,450	70,381,398	19,450,119	27.6	43,411,540	61.7	7,519,739	10.7	10.2
1984-85	30,734	77,838,044	22,363,758	28.7	47,313,903	60.8	8,160,383	10.5	10.6
1985-86	30,943	84,554,345	23,954,913	28.3	52,454,880	62.1	8,144,552	9.6	8.6
1986-87	30,696	87,704,665	23,071,913	26.3	56,137,851	64.0	8,494,901	9.7	3.7
1987-88	31,015	93,356,852	25,800,268	27.6	58,518,661	62.7	9,037,923	9.7	6.4
1988-89	30,358	102,869,967	29,264,121	28.5	63,920,355	62.1	9,685,491	9.4	10.2
1989-90	31,845	113,569,672	34,378,885	30.3	68,557,205	60.4	10,633,582	9.3	10.4
1990-91	32,796	124,658,335	36,192,325	29.0	76,492,886	61.4	11,973,124	9.6	9.8
1991-92	34,172	139,817,449	42,387,603	30.3	83,552,873	59.8	13,873,973	9.9	12.2

Thus, the Commission faces a quandary in developing its cost containment strategy.

*** Limiting the State reimbursement will mean a shift in the cost burden to the schools and the already burdened property tax; or

*** Limiting State reimbursement will also mean a reduction in services for students, in effect shifting the cost burden to parents and the students with disabilities.

An alternative and hopefully better alternative for all concerned is to try to identify methods by which the current system can be made more efficient and effective. At this point the Commission is unsure what those efficiencies are and whether they are of sufficient magnitude to close the large and growing cost gap between special education and general education.

A more thorough investigation of these cost containment strategies lies before the Commission. The impact of any one or combination of strategies on the State, districts, and most important the students who must be served, must and will be weighed and measured as the Commission pursues its primary charge.

Another obstacle, over which the State has little actual control, is the myriad of federal rules for categorical programs which also serve students with special needs, such as Chapter I and English as a Second Language (ESL). The classic example is the difficulty faced by schools in developing cooperative programs between special education and Chapter I. There are limits on using federal Chapter funds to serve students who are also eligible for special education because of the federal rule that Chapter programs must supplement and not supplant state programs. Because of the open-ended nature of an excess cost funding formula, it is difficult to make the argument that Chapter funds can ever be used to support students who are special education eligible. Similar restrictions apply in other federal special needs programs such as English as Second Language and Migrant Education.

The Commission has also been directed to "*develop an accountability system which adequately measures efficiency and effectiveness of special education programs in a cost-effective manner*". Section 79-3368, R.R.S. 1943 (1994 Supp). In accomplishing this goal the Commission is to:

- (1) Review applicable federal and state laws;
- (2) Examine the current funding mechanism;
- (3) Review proposed regulatory or procedural changes to determine compatibility with existing law, fiscal impact, and impact on students outcomes;
- (4) Review findings of previous committees which have conducted similar studies;
- (5) Develop broad frameworks for special education program standards;
- (6) Establish a system for assessing student outcomes;
- (7) Establish a system to monitor and manage special education costs; and
- (8) Develop procedures and processes to select and evaluate pilot programs which might demonstrate cost savings while maintaining appropriate programs.

Section 79-3368, R.R.S. 1943 (1994 Supp.)

The Commission has devoted considerable efforts to an historical review of items listed in numbers (1) through (4) and is exploring alternatives to seriously address numbers (5), (7) and (8). Information describing these activities may be found in a copy of the Commission's briefing notebook which accompanies this report and in section II of this report.

Many Commission members are concerned that successful efforts to contain costs and enhance accountability in special education be part of a comprehensive approach to a complex set of problems. Performance outcome goals and program models should be driven by what is most effective and responsive to the needs of all students. Programs

should drive funding, not vice versa. Therefore, the Commission has spent considerable time during its first year exploring theoretical models in order to better understand how special education should fit in the context of the overall k-12 system of education in the State and how the school system as a whole can operate more efficiently and effectively to serve students with special needs whether or not those students have been labelled as "disabled". The Commission has also begun to explore the practical application of different service models in Nebraska school districts.

LB 520 gave the Commission the authority to select and evaluate pilot programs which can document cost containment while maintaining appropriate services to children with disabilities. Pilots are to be exempt from the statutory provisions of the Special Education Act but must still comply with the federal Individuals with Disabilities Act. Appendix B is a working draft of a Commission concept paper for pilot programs which elucidates some of the Commissions thoughts about special education *outcomes, program models, funding system components and assessment*. We hope that this paper will encourage discussion and guide schools in developing pilot programs. The Commission will be focusing its future efforts on developing procedures and criteria for a pilot selection process and is hopeful that the selection process can begin this January.

The remainder of this progress report is divided into sections describing the organization of the Commission, its timeline, some of its major activities to date, the thrust of the concept paper and recommendations for initial legislative funding changes. At this point the Commission will confine itself to those recommendations necessary to implement the pilot programs anticipated in LB 520. Final recommendations responding to concerns about the funding of special education and creation of an accountability system for special education will follow evaluation of the pilot programs.

II. ORGANIZATION, TIMELINE AND ACTIVITIES

Members were appointed to the Commission in the fall of 1993 and the first meeting official meeting of the group was held in January of this year. Members of the Commission represent the Governor's Office, public school classroom teachers, school administrators not involved in special education, special education administrators and special education teachers, parents of students with disabilities, postsecondary special education, school boards, and the public at large (not related to the administration, delivery, or receipt of special education services. Section 79-3366, R.R.S. 1943 (1994 Supp) In getting organized, the Commission has developed operating procedures, selected a Chair and hired a contract consultant/coordinator. The Commission has met at least monthly since January 1994 and received background reports and presentations from a number of individuals and groups including:

***Presentation on Vermont Act 230 (Instructional Improvement Teams) by a representative of the Burlington Vermont School District.

(December 2, 1993 informal meeting)

***Presentation on trends in special education finance by Thomas Parrish, of the Center for Special Education Finance.

(December 2, 1993 informal meeting)

***Presentation on Rule 51 and the Special Education Act, federal rules and the Individuals with Disabilities Education Act, and state level special education finance data by Don Anderson, from the Special Education Office of NDE, Sandy Sostad of the Legislative Fiscal Office and Kim Davis of Sen. Gerald Matzke's Office.

(February 15, 1994)

***Presentation of a report on the Activities of the Nebraska Schools Accountability Commission by Jack Gilsdorf of NDE.

(March 11, 1994)

***Presentation on the Activities of the School Finance Review Committee by Tim Kemper, Russ Inbody and Pam Roth of the School Finance Office of NDE.

(March 11, 1994)

***Information showing the breakdown of school district costs for owned programs was presented by Don Anderson from the Special Education Office of NDE

(March 11, 1994)

***Presentation on physical therapy training and resources in Nebraska by Wayne Stuberg from the Meyer Rehabilitation Institute of the University of Nebraska Medical Center.

(March 25, 1994)

***Presentation on speech therapy training and resources from John Bernthal, of the University of Nebraska-Lincoln.

(March 25, 1994)

***Presentation on occupational therapy training and resources from Linda Gabriel of Creighton University.

(March 25, 1994)

***Presentation on special education staff development opportunities through the Comprehensive System of Personnel Development (CSPD) by Mary Ann Losh from NDE's Office of Instructional Strategies and Development

(March 25, 1994)

*****Presentation on the school district special education budgeting and reimbursement process by Richard Schoonover of Bellevue Public Schools and George Spilker of Papillion-LaVista Public Schools.
(March 25, 1994)**

*****Presentation on the budgeting and reimbursement process for Educational Service Units.
(March 25, 1994)**

*****Presentation on the general education budgeting process and the role of special education in that process by Cliff Dale.
(March 25, 1994)**

*****A panel presentation on the history of special education in Nebraska by Larry Scherer, Commission consultant, Joseph Gaughan from the Omaha Public Schools, Gary Sherman, Administrator of NDE's Special Education Office and John Clark, Public Information Officer for NDE.
(April 21 and 22)**

*****A representative of the Nebraska Association of Special Education Supervisors (NASES) presented the Association's Vision for Special Education in Nebraska.
(May 26 and September 16, 1994)**

*****Presentation on Westside Community School's proposed innovative project requesting waiver of NDE rule by Steve Milliken.
(June 30 and September 16, 1994)**

*****Presentation on the application of the Class Within a Class Model (CWC) by Kathy McFarland of the Grand Island Public Schools and Susan Reiman-Garland of Burke High School in the Omaha Public School System.
(June 29, 1994)**

*****Report on the results of a survey of Commissioners and members of the NASES organization regarding desirable characteristics in a special education funding formula by Larry Scherer.
(June 30, 1994)**

*****Report on funding and program models used in other states and recommended by national groups by Larry Scherer.
(June 30, 1994)**

*****Presentation on Attorney General's Opinion by Larry Scherer and Don Anderson, NDE.
(June 30 and August 8, 1994)**

***Update report on the activities of the Nebraska Schools Accountability Commission and the School Finance Review Committee by Larry Scherer
(June30, 1994)

***Report on potential Special Education Innovative Project areas noting areas waivable under NDE rule and those which could be exempted under Commission authority by Don Anderson of NDE.
(August 8, 1994)

***Report on NDE Innovative Educational Projects initiative by Anne Bird of NDE (August 8, 1994)

***Report on resources available from the National Center for Educational Outcomes (NCEO) for special education by Larry Scherer.
(August 8, 1994)

***Report on data needed to project impacts under various funding formulas by Larry Scherer.
(August 8, 1994)

***Report on data available for funding simulations and development of cost indices for special education costs by Larry Scherer.
(September 16, 1994)

***Report on special education as a State "entitlement" program and the impact on the rest of the State budget by Tom Berquist of the Legislative Fiscal Office.
(September 16, 1994)

Minutes of the meetings and copies of written reports are included in the briefing notebook which accompanies this report.

Considerable time has been devoted to exploring and expanding Commission members' understanding of the variety of issues which are implicit in the legislative charge to the Commission and which are being discussed nationally and locally in the field of special education. A part of this exploration has included a discussion of the beliefs of individual members of the Commission regarding special education and special education reform. Among other activities the Commission conducted a limited survey which asked respondents to rate the importance of various characteristics in a funding formula for special education. Both the Commissioners and members of the Nebraska Association of Special Education Supervisors, who participated in a similar survey, rated program neutrality, adequacy, student equity, flexibility and training support as the most important characteristics in an ideal funding system. Also, it appears from the surveys that many believe that substantial improvements in the current system could be made by enhancing administrative efficiency (paperwork reduction. etc.) and allowing for integrated funding

with other programs serving students with special needs such as Chapter I and ESL eligible students.

The Commission has begun to look more closely at the components of special education which influence costs. This work is taking two tracks. **First**, the Commission is working with a small group of representative schools, ESUs and cooperatives to examine the cost elements in local special education budgets. Here the focus is on attaching costs to service settings (resource rooms, special classrooms, integrated regular classrooms etc) as well as staffing. The ultimate goal is to be able to construct some cost indices which will identify the costs of different types of service and program models. In addition, the Commission hopes to be able to identify those elements in the special education programs that are driving costs up more rapidly than in the general education part of the budget. **Second**, the Commission is looking at available state level data to attempt to identify factors associated with high per pupil spending for special education, such as poverty, population sparsity or density, incidence rates, time spent in special education, salary levels and district wealth (property valuation per pupil). Based on information gathered in both these efforts, we hope to be able to address the issues of cost containment specifically in those areas where special education growth exceeds that of general education. The development of cost data will continue throughout the next several months.

To date, the Commission's work in exploring accountability issues has been limited primarily to studying the work of the Nebraska Schools Accountability Commission in developing outcome measures and a statewide assessment system for the public schools. The Commission has only begun to wrestle with how standard setting and assessment of students with disabilities will fit into a statewide accountability system. The Commission would like to meet with members of the Nebraska Schools Accountability Commission as soon as possible to discuss issues of common interest. Issues such as the extent to which students with disabilities achieve what they are capable of achieving, the extent to which students are being prepared for life after school and the extent to which the special education system and its current practices actually produce intended student outcomes have been raised by the Commission in its concept paper but have not yet been addressed. The Commission is aware that it will need to spend much more time addressing these and other accountability issues in the coming years and months.

Considerable time has also been devoted to the development of a concept paper (Appendix B) which describes the Commission's initial expectations for pilot programs which are authorized by the Legislature. The Commission is now soliciting public input on the concept paper and encouraging interest in pilot programs. A public video conference forum was held October 27th to engage in discussions with educators, parents, service providers and policy makers regarding reform in special education. The Commission will now reconsider and refine its expectations for pilot programs and continue to research those areas of special education where cost containment and program enhancement is most needed.

The Commission is developing the procedures and criteria for selection and evaluation of pilots programs. The Commission had hoped to begin looking at pilot programs during the 1994-95 school year but was stymied by many of the obstacles which are discussed in Section IV of this report. The Commission has come to realize that pilot programs will not begin until the 1995-96 school year if the issues addressed in Section IV of this report are addressed by the Legislature in early 1995 so that selection of programs and program planning can occur during the spring and summer of next year.

A serious question must also be raised whether one school year is a long enough pilot period. Commission members believe that a pilot period of two or three years would be more meaningful because the impacts of the changes in the program model and funding system may not be truly reflected after only one school year. In addition, because of start up costs and the costs of evaluation, pilot program costs will vary considerably over the life of a pilot program. It would have been ideal to begin the pilots the 1994-95 school year to provide for two years of data to analyze. However, neither the schools or the Commission were in a position to begin the pilots this year due to the obstacles discussed in Section IV of this report.

An optimistic projection would permit evaluation of one year-long pilot programs and formulation of Commission recommendation for changes in statute and Department of Education rules to occur during the summer and fall of 1996. However, many members of the Commission believe that the Commission's ultimate recommendations may have significant ramifications on special education, on general education, and on the taxpayers of this State. As such, those recommendations should come out of careful study and thoughtful debate among all interested persons, not out of the rush to meet an impossible deadline. For that reason, the Commission has made the recommendations set forth in Section IV of this report.

III. CONCEPTUAL BASIS FOR PILOT PROGRAMS

The Commission has recently released for public comment and discussion a document entitled "Concept Paper: Commission Goals for Pilot Programs". (See Appendix B.) The concept paper reflects the belief of many Commission members that cost containment, which is the overriding charge of the Legislature to the Commission, should be approached systemically, building cost containment into an overall strategy for improvement of services for all students with special needs. It would be relatively simple to contain State costs by reducing the rate of reimbursement for example. However, the lower funding level would essentially shift the cost burden to the schools. The Commission has rejected this tunnel vision approach.

The Commission believes that improved program effectiveness and efficiency are the real keys to cost containment, as opposed to merely modifying funding formulas or shifting the costs of programs from the State to local school districts. Therefore, the

concept paper describes what the Commission believes about effective and efficient programs for students with special needs. The paper also relates the Commission's initial expectations for pilot programs. The Commission has heard most of the philosophical debates about "full inclusion" of students with disabilities in the general classroom. While there is some discussion of inclusion in the document, the Commission is not locked into that concept or any other particular type or program model. We hope that the concept paper elicits comments, interest, and ideas from educators, parents, advocates, and policy makers.

IV. INITIAL FUNDING SYSTEM RECOMMENDATIONS

Section 79-3368 requires that the Commission to make annual reports to the Education and Appropriations Committees of Legislature and State Board of Education. The first report, due November 1, 1994, is to include "initial recommendations for statutory or procedural changes in the funding mechanism ". As noted previously, the Commission feels that major changes in the funding system should await the evaluation of the pilot programs which are to test various program models and cost containment methodologies as anticipated by the subsection (1) (h) of section 79-3368. The Commission sees a number of obstacles to a successful pilot testing of different cost containment strategies. The rough draft legislation is intended to address these obstacles. The Commission's recommendations will be limited to remove those obstacles to implementation of the pilot process. The recommendations which follow are embodied in draft legislation which is attached as Appendix D. The Commission recommends enactment of such legislative changes.

A. RECOMMENDATIONS TO THE LEGISLATURE

RECOMMENDATION ONE: Provide separate statutory authorization for the financial support of pilot projects through a funding mechanism which will be program and placement neutral. The Commission suggests simply giving the pilots the same amount of aid as received the average of the three previous years increased by a factor which is the same as the percentage increase in the general education budget of the sponsoring school district, ESU or cooperative. This method of funding pilot programs is in harmony with the charge of the Commission to contain costs increases for special education at the same level as costs of general education. The funding would be paid in lieu of the excess cost reimbursement. This would represent redirected funds for the state and the pilot sponsor, not a new expenditure for either.

While the legislation creating the Commission makes all pilot programs selected by the Commission exempt from the provisions of the Special Education Act, there is no authorization for the funding of pilot programs except through the excess cost reimbursement provisions in the Special Education Act which still apply to the State

Department of Education and the school district, ESU or cooperative which sponsors the pilot program. (See Appendix C, Attorney General's Opinion to the Commission.)

Because of the lack of a separate funding mechanism for the pilot programs, there are no clear financial incentives for schools to enter into pilot programs. At best, pilot programs must limit spending to the prior year's budget plus a "normal increase" equal to the general education budget increase. At worst, a pilot program could actually decrease cost reimbursement funding. For example, under excess cost funding, any pilot program which reduces the number of students served in special education or the services provided by special education (through preventative and collaborative services in the regular classroom) will eventually lose state aid regardless of whether the pilot program proves successful and effective or unsuccessful or imprudent. The Commission feels that this creates a real financial disincentive for a school district to participate in a pilot program, a disincentive which could be reduced by a separate funding mechanism for the pilot programs.

RECOMMENDATION TWO: Authorize the Commission to waive education statutes or regulations, in areas other than the Special Education Act, which will impede the successful implementation of a pilot program.

A major potential obstacle faced by pilot programs is the web of statutes and NDE rules which bind school districts outside of the Special Education Act. For example, the requirements for teacher certification and school accreditation may limit the ability of a pilot to use regular classroom teachers and special education teachers in cooperative arrangements, especially in cases where the special education teacher may be working with non-special education students. In order for approaches such as the unified school model or inclusion model to be tested there needs to be greater flexibility provided in the regulatory framework in which schools must operate.

RECOMMENDATION THREE: Extend the time frame for pilot projects to continue for three full school years, beginning with the 1995-96 school year and extending through the 1997-98 school year.

The Commission believes that a successful and thorough pilot program process will require more than the one school year (1995-96) which is currently available to the Commission. In order to plan the pilot, train staff, work out implementation problems, and evaluate some of the impacts of the pilots, a period of at least three years is necessary. The Commission is cognizant of the budget pressures currently facing the Legislature. As noted, we have heard the report of the Legislative Fiscal Office, illustrating the budgetary pressures caused by the three major State entitlement programs which includes special education. However, the Commission has rejected short-term quick fixes which tend to only shift the cost of the services required under federal law and regulations to schools or

parents. Pilots which can truly test whether there are efficiency and effectiveness gains to be made are complex and require time to develop and fairly evaluate.

RECOMMENDATION TO THE STATE BOARD OF EDUCATION

RECOMMENDATION FOUR: Utilize existing authority it has through statute, the Nebraska Constitution and its own rule structure to provide waivers of NDE regulations, in special education and other areas, needed to permit experimental programs through which reforms in special education can be fairly evaluated.

Just as the Commission has recommended to the Legislature that it be given the flexibility to waive statutes or regulations which impede the implementation and evaluation of pilot programs, it also recommends to the Department of Education that it use its powers to waive such requirements in appropriate cases to permit schools and service providers to explore more efficient and effective ways to deliver special education services to those in need. The study and thought which the subject requires are not solely the province of this Commission. There should be an ongoing debate and study of this subject at all levels of education in the State.

The Commission is in the process of designing pilot program procedures. The Commission is cognizant of the Department of Education's Innovative Projects Initiative, as authorized by the State Board of Education through Rule 51. The Commission hopes to see a close collaborative relationship with NDE's Innovative Projects Initiative with overlapping membership of selection committees and similar procedures to avoid unnecessary duplication in application paperwork. Some programs might utilize both the Commission's pilot procedures and the Department's Innovative Projects procedure. Because the focus of the Pilot Program is cost containment and the focus of the Innovative Project Initiative is program enhancement, some programs may opt to utilize only one of the procedures.

In addition to special education rules and statutes, however, there are other regulatory statutes and rules administered by the Department (such as teacher certification and school accreditation). The Commission is interested in giving pilot programs the maximum flexibility allowable under State statute and rule to create collaborative, preventative programs for students with special needs.

V. CONCLUSION

This report is primarily a progress report to the Legislature, Governor, State Board of Education and the people of the State of Nebraska to show how the Commission has organized itself to wrestle with the thorny and perennial issue of cost containment in special education. However, there is still a long way to go and we will be

looking for more answers from local schools, parents, service providers and others both within and outside the State.

With the adoption of the suggested legislation, we hope that some of the disincentive to participation in pilots will be eliminated. The Commission's long term plan is to investigate additional changes in the finance structure which could reduce or eliminate other disincentives and create positive incentives for change. The Commission will closely watch the progress of reforms enacted in Vermont, Pennsylvania, Montana, Oregon, and other states as well as reforms proposed in Michigan and Illinois. There is clearly a powerful tide of reform in special education which is sweeping the nation.

The orderly and reasoned process of reform which the Legislature envisioned when it created the Commission puts Nebraska in the enviable position to learn from the reforms currently being implemented across the nation. Nebraska has one of the best and most comprehensive special education systems in the nation. The time it will take to test some reform strategies for cost containment and program improvement is time well spent.

In the mean time, the Commission will continue to explore cost containment strategies which will be presented in the final report. We stand ready and willing to provide advice and counsel which is needed and requested by State policy makers during the interim period prior to the final report.



Office of the Attorney General

APPENDIX C

2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

I 94-028
L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

June 27, 1994

Joe E. Lutjeharms
Commissioner
Nebraska Department of Education
301 Centennial Mall South
Lincoln, NE 68509-4987

Keith Bartels
Chairman
Special Education Accountability Commission
301 Centennial Mall South
Lincoln, NE 68509-4987

Dear Commissioner Lutjeharms and Chairman Bartels:

This opinion is written in response to an inquiry received by the Attorney General's Office on June 14, 1994. The inquiry, submitted jointly by each of you on behalf of the Nebraska Department of Education ["NDE"] and the Special Education Accountability Commission ["Commission"], has posed several questions regarding the scope of the Commission's authority as set forth in Neb. Rev. Stat. § 79-3366 - § 79-3370 (Supp. 1993). Primarily, you have sought our interpretation of Neb. Rev. Stat. § 79-3368 which provides, in pertinent part, that the Commission shall

[s]elect demonstration sites for the purpose of pilot implementation of program models which can document cost containment while maintaining appropriate services to children with disabilities. Demonstration sites shall be exempt from the provisions of the Special Education Act but shall comply with the federal Individuals with Disabilities Education Act, as amended, 20 U.S.C. 1400 et seq. The State Department of Education shall monitor each demonstration site to determine how such site would differ if it were not exempt from the Special Education Act.

Neb. Rev. Stat. § 79-3368(1)(h).

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Lisa L. Cabral
Laurie Smith Camp
Delores N. Coe-Barbee

Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Mary L. Hewitt
Lauren Lee Hill
Jay C. Hinsley

Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Joseph P. Loudon
Charles E. Lowe

Lisa D. Martin-Price
Lynn A. Melson
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Paul N. Potadle
James H. Spears

Mark D. Starr
John R. Thompson
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper



BEST COPY AVAILABLE

The questions which you have submitted are discussed below.

1. Subsection (1)(h) of section 79-3368 seems to exempt pilot programs selected by the Commission from all the provisions of the Special Education Act. Another interpretation is that the Commission may selectively waive specific provisions of the Act? Which interpretation is correct?

In responding to this question, we are guided by the canon of statutory construction which provides that "[w]here the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning." *Gillam v. Firestone Tires Rubber Co.*, 241 Neb. 414, 418, 489 N.W.2d 289, 292 (1992) (quoting *County of Douglas v. Bd. of Regents*, 210 Neb. 573, 577-78, 316 N.W.2d 62, 65 (1982)). Neb. Rev. Stat. § 79-3368 clearly provides that "[d]emonstration sites shall be exempt from the provisions of the Special Education Act. . . ." We construe this provision to mean that the pilot projects implemented at demonstration sites selected by the Commission need not comply with the requirements of Neb. Rev. Stat. § 79-3301 through § 79-3370 (1987 & Cum. Supp. 1992 & Supp. 1993 & Laws 1994, LB 858, § 12, § 13).

2. Does the subsection's exemption also apply to Nebraska Department of Education regulations developed by the Department under the authority of the Special Education Act? As a corollary, the Act creating the Commission does not give the Commission explicit statutory authority to promulgate regulations. Does the authority to select demonstration sites carry with it the authority to waive NDE regulations or must the Department, through the State Board of Education, also take some affirmative action to waive regulations?

In enacting the Special Education Act, the Legislature authorized the NDE to promulgate regulations necessary for the complete operation and enforcement of the law. Those regulations are embodied within 92 NAC 51 and 92 NAC 55. Since the Legislature has directed that demonstration sites shall be exempt from the provisions of Neb. Rev. Stat. § 79-3301 through § 79-3370, the demonstration sites are also exempt from the regulations promulgated pursuant to those statutes.

3. The primary question is whether the Department of Education may utilize funding mechanisms for payment/reimbursement of funds to school districts with pilot programs which are different than those existing in the Special Education Act (specifically sections 79-3325, 79-3332, 79-3333, 79-3335, and 79-3336)? In the alternative, is legislation required to establish the basis for funding pilot projects which the Commission selects?

As noted in your question, contained within the Special Education Act are specific statutes which direct how the NDE is to

reimburse school districts for the costs which are incurred in the provision of special education services:

- Neb. Rev. Stat. § 79-3325 (1987) requires the NDE to provide grants to school districts for either 90 percent or 100 percent of the cost of programs provided to children who are less than five years old. The statute specifies the manner in which the NDE is to make these grant payments.
- Neb. Rev. Stat. § 79-3332 (1987) mandates that the NDE "shall reimburse each school district an amount equal to ninety percent of allowable excess cost for all services and programs other than [services provided to students who require an aggregate of not more than three hours per week of special education services]." The statute further specifies the manner in which the NDE is to make reimbursement payments.
- Neb. Rev. Stat. § 79-3333 (Laws 1994, LB 858, § 12) directs that monies appropriated by the Legislature to fund special education services shall be channeled through and expended by the NDE.
- Neb. Rev. Stat. § 79-3335 (1987) provides that the State of Nebraska shall pay for the ordinary and reasonable cost of residential care whenever a child must temporarily reside in a home or facility in order to receive an appropriate special education program. The statute specifies that such costs will only be paid if a residential placement was made 1) by a resident school district with the NDE's prior approval, or 2) pursuant to an order issued as a result of conducting a special education due process hearing.
- Neb. Rev. Stat. § 79-3336 (Cum. Supp. 1992) requires a county superintendent of schools to "use nonresident high school tuition money to provide educational opportunities . . . for handicapped high-school-age students residing in districts not maintaining a high school." Due to the enactment of LB 858 during the 1994 legislative session, this statute will be repealed effective July 16, 1994. See Laws 1994, LB 858, § 13.

As we concluded in response to question #1, the Legislature has exempted pilot projects which are implemented at demonstration sites selected by the Commission from the requirements of the Special Education Act, including the funding mechanisms contained within the above-listed statutes. See Neb. Rev. Stat. § 79-3368(1)(h) (Supp. 1993). Contained, however, within each of these statutes are duties imposed upon both the NDE and school districts. We do not interpret the exemption granted in § 79-3368(1)(h) as an abrogation by the Legislature of the NDE's funding duties under the Act. We find support for this conclusion in the Legislature's direction to the Commission to make "initial recommendations for

statutory or procedural changes in the funding mechanism . . . on or before November 1, 1994." Neb. Rev. Stat. § 79-3368(2) (Supp. 1993). Therefore, without further direction from the Legislature, the Commission cannot abrogate duties of the NDE which exist under current law.

4. We assume that some pilots may be located within school buildings within larger, multi-building school districts. Would it be permissible for the Department to continue to use the current excess cost formula (sections 79-3305, 79-3306, 79-3308, and 79-3332) to reimburse school districts for prior year's cost while at the district level pilot school buildings are funded with a different funding formula (a forward funded block grant, for example)?

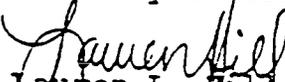
It is difficult for us to more fully address this question without further information regarding funding mechanisms which the Commission may envision. Given our response to the previous question, we conclude that the NDE has not been authorized by enactment of § 79-3368 to utilize a reimbursement formula other than that prescribed under current law.

5. Some pilot programs may be able to test cost containment strategies without any changes in the funding mechanism. Would legislation be necessary in such cases?

We interpret your question to be whether further legislation would be necessary to implement pilot programs which are funded under current law. Additional legislation would not be required to implement such pilot programs.

Sincerely,

DON STENBERG
Attorney General


Lauren L. Hill

Assistant Attorney General

24-33-14.1

cc: Margaret Worth, NDE
Legal Counsel

Don Anderson, NDE
Office of Special Education

Larry Scherer
Special Education Accountability Commission

BEST COPY AVAILABLE

NOTE: This rough draft legislation is intended to allow the Commission and the Department of Education to waive statutes in addition to those in the special education law which might interfere with pilots and to establish a formula for the Department to fund pilots based on prior year costs plus a growth factor equal to the rate of increase in the overall budget of the district, ESU or cooperative. Pilots would continue and be eligible to receive funding for up to three school years. New language is underlined and deleted language is in brackets. The draft includes an emergency clause so that the legislation could be used immediately upon enactment.

A BILL FOR AN ACT to amend the special education act; to change provisions regarding the authority of the Special Education Accountability Commission; to clarify provisions for reimbursement of pilot programs; to amend section 79-3368 and repeal the original section; and to declare an emergency.

SECTION 3. Amend section 79-3366 RRS. 1943, 1993 Supplement, as follows:

79-3366. There is hereby created the Special Education Accountability Commission. The Commission shall consist of thirteen members as follows: One representative from the Governor's Office, one public school classroom teacher not in special education, one public school special education teacher, one administrator or administrative staff member not involved in special education, one special education administrator or administrative staff member, two parents, one representative of postsecondary special education, one school board member, and four representative not directly related to the administration, delivery, or receipt of special education services, all appointed by the Governor with the consent of the majority of the Legislature upon the recommendations of associations and organizations representing parents, teachers, school administrators, and school board members. Members shall be appointed no later than September 1, 1993, and shall serve for one [three] five year term. A vacancy shall be filled by the Governor for the remainder of the term. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 88-1177.

SECTION 2. Amend section 79-3368 RRS. 1943, 1993 Supplement, as follows:

79-3368 (1) The Special Education Accountability Commission shall develop an accountability system which adequately measures efficiency and effectiveness of special education programs in a cost effective manner. The Commission shall:

- (a) Review all applicable federal and state laws;
- (b) Examine the funding mechanisms;
- (c) Review any regulatory or procedural changes to determine compatibility with existing law, fiscal impact, and impact on student outcomes;
- (d) Review findings of previous committees which have conducted similar studies;
- (e) Develop broad frameworks for special education program standards;
- (f) Establish a system for assessing student outcomes; and
- (g) Focus efforts on the establishment of a system for the management and monitoring of special education costs and their impact on total education costs.

(2)(a) select demonstration sites for the purpose of pilot implementation of program models which can document cost containment while maintaining appropriate services to children with disabilities. Demonstration sites may continue for up to three school years and shall be exempt from the provisions of the Special Education Act but shall comply with the federal Individuals with Disabilities Act, as amended, 20 U.S.C. 1400 et seq. The Commission may also waive the application of any provision in Chapter 79 of these Statutes and regulations promulgated thereunder when application of such provisions would directly limit the ability of the pilot program to accomplish its stated goals. The Commission shall assist the [The] State Department of Education in monitoring and evaluating [shall monitor] each demonstration site to determine how such site would differ if it were not exempt from the Special Education Act or other provision in Chapter 79 waived pursuant hereto.

(b) In lieu of any payments or reimbursement from the State Department of Education authorized pursuant to sections 79-3325, 79-3332, 79-3333, 79-3335 or 79-3336, school districts, Educational Service Units or cooperatives of school districts operating demonstration sites may, upon the approval of the Commission, receive from the State Department of Education a special needs block grant, for support of an approved pilot program, of up to the amount it received as special education payments or reimbursement for the prior school year plus an additional amount based on the percentage increase in the general fund budget of expenditures of the school district, Educational Service Unit or cooperative of school districts for the ensuing school year. Costs of the pilot programs shall be considered as allowable costs, upon approval of the Commission, and shall be included in the final financial report of school districts, Educational Service Units or cooperatives of school districts for purposes of reimbursement of district, Educational Service Unit or cooperative programs in subsequent years. Pilot programs may include a portion or all of the students with disabilities served at a demonstration site. If a portion of the students are included in the pilot program, the total block grant will reflect only the proportion of students included compared to the total costs of the program for all students served at the demonstration site. Pilot programs may receive funding for up to three school years.

[(2)] (3) The Commission shall annually report its activities and recommendations to the Education Committee of the Legislature, the Appropriations Committee of the Legislature, and the State Board of Education and shall make its final report on or before September 1, [1996] 1998, except that initial recommendations for statutory or procedural changes in the funding mechanism shall be made on or before November 1, 1994.

Section 3. Amend section 79-3370, RRS. 1943, 1993 Supplement, as follows:

79-3370 The Special Education Accountability Commission shall terminate September 1, [1996] 1998.

Section 4. Repeal the original section 79-3366, 79-3368 and 79-3370.

Section 5. Declare an emergency.

PART A1

COMMISSION CONCEPT PAPER

September, 1994

SPECIAL EDUCATION ACCOUNTABILITY COMMISSION

CONCEPT PAPER: COMMISSION GOALS FOR PILOT PROGRAMS

**(A WORKING DRAFT FOR PUBLIC DISCUSSION)
SEPTEMBER 27, 1994**

INTRODUCTION: WHY CHANGE?

Many believe that special education stands at a cross-roads in the State of Nebraska. Intense State budget pressure and recent fundamental changes in the financing of k-12 education have escalated the level of scrutiny on cost increases for special education programs; cost increases which have outpaced growth in nearly all other areas of the State and school district budgets for more than a decade. (For example, while the total increase in special education expenditures for the years 1978 to 1993--using federal, State and local funds--averaged 10.82%, the total expenditures for regular education averaged 6.65%.) Combined with these powerful forces for cost containment are some real questions about the effectiveness of current special education programs in improving the life chances of children with disabilities. Not unlike "regular education", there is little data available at the State level to show that special education results in successful student outcomes--in academic achievement, vocational training and jobs, social integration or life skills. What national data is available paints a rather dismal picture of the success of students with disabilities as demonstrated by above average drop out rates, below average grades and job placement and difficulties in the transition to the world of work or into adult services for the more severely disabled. (National Longitudinal Transition Study of Special Education, SRI, 1991.)

Many educators in Nebraska and nationally believe that one of the roots of special education's problems with costs and outcomes is the separation, and often isolation of students with disabilities, from the rest of education. Separate goals for students with disabilities (through the IEP process) may create lower expectations and achievement. Special education programs, teachers and administrators march to the beat of a different drummer, legitimately more concerned about finding the services for verified students with disabilities as prescribed in the IEP than with the learning problems of students who find themselves on the other side of the verification line dividing special education services from regular education services. And the current special education funding system creates incentives for identification and placement which may not be in the best educational interest of all students with special needs. A whole separate special education bureaucracy has been institutionalized with its own set of rules, procedures, hierarchy of administration

and service providers and value system. The duality of the special education/regular education system has created roadblocks to collaboration among teachers who must work with the same students.

But there is very much that is right with Special Education in Nebraska. Special education in Nebraska ranks very high in terms of access to programs and program quality and near the top nationally when it comes to funding adequacy. Nebraska was one of the first states, in 1974, to guarantee services to all students with disabilities, ages five through twenty-one and then, in 1978, to extend services to the birth to age five group. The Legislature has never failed to fully fund the special education year in arrears excess cost formula. A network of hard working, conscientious and caring special educators from schools, ESUs, cooperatives and private providers has provided access to individualized instruction and related services for students with disabilities across the State. Student and parent rights are well protected by Due Process procedures and advocacy groups. Leaders in special education in Nebraska are leaders in special education in the Nation. There is truly much to be proud of when it comes to special education programs in Nebraska.

Neither the Legislature, reform minded special educators, nor this Commission are suggesting that the current system should be totally discarded or that the level of services or federally guaranteed rights for students with disabilities should be diminished. But the problems with costs and outcomes cannot be ignored either. The question is really how the current system can be made more efficient and effective.

The primary goal of the Commission, as specified in the legislation creating the Commission, is to "identify strategies for accomplishing cost containment that will result in average special education costs increasing at a rate no greater than the average annual education growth rate". The Commission is also directed to (1) propose "an accountability system which adequately measures efficiency and effectiveness of special education programs"; (2) "develop broad frameworks for special education program standards"; (3) "establish a system for assessing student outcomes"; and (4) "focus efforts on the establishment of a system for the management and monitoring of special education costs". This is a tall order for the Commission given available time and resources as well as the likely resistance of many who are happy with the present system. Fortunately, the Legislature had the foresight to authorize the Commission to accomplish its ambitious mission by means of selection, monitoring and evaluation of "demonstration sites for the purpose of pilot implementation of program models which can document cost containment while maintaining appropriate services to children with disabilities." Demonstration sites shall be exempt from the provisions of the Special Education Act but shall comply with the federal Individuals with Disabilities Act". (Pilots are also exempt from the provisions in NDE regulations authorized by State Statute.)

The purpose of this paper is to provide information to educators who may be interested in developing pilot programs. This concept paper outlines the basic conceptual components which the Commission would like to see tested in order to make final

recommendations back to the Legislature regarding cost containment and program effectiveness. This Commission has always started with what is best for students and then looked at programs which will meet their needs in the most effective and efficient manner and would hope that pilot programs also have a similar child centered focus. Hence, while the overall goal is cost containment, the pilot programs must be tied to program goals which lead to effective programs and outcomes.

The pilot programs are currently anticipated to begin in the 1995-96 school year. At this point the focus of the pilots are the school age special education programs. It is also anticipated that pilot programs will be operated by school districts (either at the building level or district wide) or on a regional basis by cooperatives or ESUs.

The preliminary thoughts reflected in this paper arise as the result of discussions among Commission members at several meetings during which national reform trends, cost data and budgeting procedures (among many other topics) were considered. This paper is organized around Commission goals for (1) student and system outcomes; (2) program elements; (3) funding components and characteristics; and (4) an assessment system which Commission members discussed at previous meetings. In forming its goals, the Commission recognizes the ongoing efforts of two other statutory bodies: the School Finance Review Committee and the Nebraska Schools Accountability Commission. Within the general area of school finance and the general area of student outcomes and assessment, the Commission wishes to make its conceptual goals for the pilot programs as consistent as possible with the goals of the other two bodies. Therefore, the concepts discussed in this paper will continue to evolve as the discussions with the Finance Committee and Accountability Commission continue.

I. PERFORMANCE OUTCOMES

In this section, the Commission is primarily concerned with student outcomes: i.e., what happens to students in school and following exit from k-12 education as a result (at least partially) of special education and regular education services provided. Pilot programs will, of course, strive to help students meet whatever performance standards are forthcoming from the State Board of Education and the Legislature as a result of the recommendation of the Nebraska Schools Accountability Commission. This Commission is more concerned with the individualized goals set locally as part of pilot programs established at the building level. And the Commission looks at performance standards in a broader context than just making a grade above a minimum cut-off on a written test or a performance test (although these are important indicators which clearly have a place within a Statewide assessment system for all Nebraska public schools and students).

The Commission will consider pilots which establish outcomes at the demonstration site (most likely building level or below). In addition, pilots will generally include outcome elements consistent with the following concepts:

- A. All students in the pilot are expected to meet State wide or district wide minimum performance standards applicable to all Nebraska students unless individual student performance goals are modified by an IEP.
- B. Outcome standards will include those related to academic achievement, vocational skills and employment, independent living skills and the capacity to participate in society to the maximum extent possible.
- C. Individualized student performance goals are established for each student with a disability and those students failing or at risk of failing with the full involvement of parents, teachers, support staff and administrators. Strategies for full collaboration among regular classroom teachers and special education teachers are demonstrated in this goal setting process.
- D. For students with disabilities, the individualized goal setting process is meshed with the IEP process. The IEP will address how to accommodate special needs and abilities of students and will describe how outcomes will be attained using special education as a support service.
- E. There is a local, building level and district level monitoring and reporting of whether students are meeting State level minimum standards and locally established standards (including those set through the IEP process) and parents are provided a satisfactory explanation of why students are not meeting such minimum standards.

II. PROGRAM MODELS AND ELEMENTS

The Commission does not have in mind one particular program model for service delivery to the exclusion of all others. There is pioneering work being done by a number of states, school districts and schools across the Nation, including some here in Nebraska. (For example, an Ad Hoc Committee of NDE's Special Education Advisory Council has recently issued a report endorsing "Inclusive High Performance Learning for ALL Students".) Improvements and enhancements in special education programs is a goal shared by all. The key to a successful pilot program will be the strategy of improving the outcomes for students with verified disabilities while also improving or at least not damaging students without verified disabilities (including those with learning problems not presently served by the system).

The bottom line is that successful pilots will demonstrate improved outcomes occurring as a result of program model which also contains costs at no greater rate of increase than regular education. The current tide of special education reform in Nebraska and the nation will likely mean that the Commission will consider a number of pilot proposals which fall under the general label of "inclusion". "Inclusion" models fall in wide range of program types and structures. Since this is a term which often confuses as much as it edifies, a few words of definition may be in order:

INCLUSION is a term used rather loosely to refer to the strategy of providing instruction for students with disabilities in the regular classroom using special education as a support and accommodation to meet the special learning needs of students. The Special Education Advisory Council defines inclusion as follows: "The providing of educational services for students with disabilities in schools with nondisabled peers, in age-appropriate general education classes under the direct supervision of general education teachers, with special education support and assistance determined through the individual education planning process."

Dr. Floyd Hudson of the University of Kansas has included many of the elements of inclusion in his **Class Within a Class Model**. The classroom has integrated the services of special education into those of regular education with collaborative planning and teaching between the regular classroom teacher and the special education teacher. Teaching and learning strategies are matched to the learning strengths and problems of individual students regardless of whether or not the student is identified and classified as "special education". Responsibility for students with disabilities no longer is shifted to a separate system known as special education. Responsibility is shared. The school system as a whole is responsible, with the student and parents, for the learning of students. There is an effort also to include students with disabilities in their neighborhood school for the social integration of students into their communities. However, under inclusion the school does not place every student with disabilities in the regular classroom every hour of every day. As required under federal and state law, the school maintains a full service continuum of services which allows placement of students in resource rooms, special classes, separate facilities, hospitals and homes moving away from the integrated classroom on an incremental basis, as need justifies for special learning problems and more serious disabling conditions. The presumption with inclusive models is that all students should be included in the regular classroom setting unless there are circumstances which dictate some other course of action. Under the current system, the presumption is often to take the child out of the regular classroom in order to find the additional services needed.

FULL INCLUSION means that all students with disabilities receive all services within the regular classroom with age group peers and at the neighborhood school with very few exceptions. Basically children with disabilities are scattered throughout the classrooms in a school in an attempt to create a microcosm of society in each for the social integration of students. The responsibility for students with disabilities has completely shifted to regular education. Special education teachers and specialists come into the classroom to provide consultative and collaborative support.

UNIFIED SYSTEM is a concept which focuses on the merger or unification of the separate governance, funding, services, outcomes, locations of programs and teacher training which now exists. A unified system blurs the lines between regular education and special education, Chapter I, bilingual education, gifted and at risk programs. The focus is to create a full service school which has the flexibility and the resources to provide services (as opposed to programs) where and when they are needed by students. As

wholistic model, a unified system broadens the concept of inclusion to the organizational level. The Special Education Advisory Council defines a unified school system as a "A true High Performance Learning System that does not differentiate between special education and regular education, but focuses on providing education to all students".

The Commission at this point, is more disposed to support sound and practical inclusionary practices than the concept of full inclusion. The Commission is not convinced that full inclusion models can provide adequate safeguards for students with disabilities, that classroom teachers currently have the training to address the needs of all students with disabilities and that adequate support services will be available to assist the general education classroom teacher. However pilots may convince the Commission full inclusion is feasible.

The concept of a unified system, which seems promising, ties together the funding, programs, outcomes and assessment of special education and regular education. If the unification is really feasible it holds the promise of addressing the primary goal of the Commission which is to provide cost containment. By definition, under a truly unified system (including unified budgets), the rate of increase in costs would be the same for special education and education generally. Further, unification could make local schools more accountable in providing equitable services to all students, regardless of the type of special need which students have.

Regardless of the moniker attached to a pilot program, the Commission will be interested in the program elements which approximate many of the program goals which it has discussed, including:

- A. Special education and support services are available at the point and time of need; the system is proactive, preventative and service oriented rather than bureaucratic and program oriented.
- B. Efforts are made to integrate the services of special education with those of regular education so that two separate systems do not exist. Responsibility for students with special needs is shared rather than shifted to a separate system. There is unification of duties at the administrative and teaching levels.
- C. Collaborative teaching and planning between regular classroom teachers and special education teachers is essential.
- D. Services are made available to meet the learning needs of individual students without the need for expensive and time consuming evaluation, identification and verification as "special education". Proactive and preventative programs utilize appropriate pre-referral teaching and learning strategies such as an expanded or emphasized Student Assistance Team (SAT).

E. Enhanced staff training is provided to teams of educators and support staff at the school level to help educators meet the special needs and address the learning problems of students.

F. The need for lengthy evaluation periods is reduced for most students. Special instruction and support services are available at the point and time of need. In addition, to the extent allowed under federal law and regulations, the three year re-evaluation is made realistic and practical to meet the needs of students with disabilities while limiting unnecessary costs to districts.

G. Procedural safeguards and due process rights of students are maintained. For example, parents will retain the right under federal law to request a hearing any time they believe that their children are not receiving appropriate educational services.

H. Paperwork and reporting requirements of the State and school districts are reduced to allow for a more flexible design and provision of services. [We note again that pilot programs are exempt from State special education statutes and regulations. Due process and federal procedural protections cannot be waived or exempted.]

I. Monitoring and adjustment are built into the program to allow for continuous adaptation of the program if outcome goals are not achieved.

J. A full array of services is available to meet the special needs of all students. Emphasis is placed on serving students in the most inclusive setting possible moving incrementally (through appropriate adjustments in the IEP goals and objectives for students already in special education) towards placements in separate and more restrictive settings as the needs and circumstances dictate.

K. Arrangements for collaborative services among agencies, providers and the community are available. The system is sensitive to the strengths and needs of students and families.

III. FUNDING COMPONENTS AND CHARACTERISTICS

As noted previously, the primary goal of the Commission, as specified by the Legislature, is cost containment to bring special education costs in line with those of general education. There is a consensus among Commission members that the funding formula should not create incentives for the placement of students in particular types of programs or setting. Placements should follow from individual student needs and learning problems and collaborative strategies to address those needs and problems so that students can meet outcome goals. To the extent that resources are adequate, funding formulas should not drive program; services for students with special needs should be driven by outcomes and student needs.

By the same token, pilot programs should not be penalized financially to the point where adequate resources are not available (I.e., pilots which actually succeed in reducing the number of students identified as special education through proactive pre-referral activities or short-term provision of special education services should not lose State funding as a consequence.) In order to provide some incentives for schools to enter into pilot programs there needs to be some relaxation of rules and assurances of State responsibility for the special education mandate. Incentives will include greater flexibility in determining program, staffing and funding to meet the needs of students with special needs in a more effective and efficient manner as well as reasonable and predictable growth in State funding. [Note that independent State financial support of pilot programs outside of the current excess cost formulas will likely depend on enactment of legislation (substantive and appropriation) by the 1995 Legislature. (Opinion of the Attorney General dated June 27, 1994)] On the other hand, the system must maintain some fiscal accountability and controls and assure that services are provided as required by law.

There is also some support for tying funding to performance to reward schools that have demonstrated progress in meeting student outcome goals. Pilot programs which produce positive results should be rewarded accordingly. However, at this point the Commission does not propose a performance incentive system because of the many technical difficulties involved in defining standards of performance and measuring performance. The Commission plans to revisit this issue in the future.

Components and characteristics of a funding system for pilot projects will include the following elements:

- A. Funding for pilot programs will be placement neutral. Funding should be provide to schools which meet the needs of students regardless of the type of program in which the student is served.

- B. Special education funds may be used to provide services to meet the special needs of students with learning problems regardless of whether such students have been identified and verified as "special education". At the building level, schools may merge *special education funds* with *other* categorical funds (Chapter I, Medicaid, ESL, etc.) to serve students holistic learning needs. (Utilization of federal categorical funds in a blended pool of funds will depend on the approval of appropriate federal and State officials.)

- C. Each pilot program demonstration site will receive from the State a "Special Needs Block Grant" equal to the average amount it received as special education funding under the excess allowable cost reimbursement formula for the prior three school years (base amount) plus an additional amount equal to the percentage increase in the school district's budget for the ensuing school year multiplied by the base amount. The block grant payment would be in lieu of the usual excess cost

payment for services provided at the demonstration site. During the pilot program period, the school district in which such demonstration site is located will not include costs from the demonstration site in its excess cost reporting in the year subsequent to the pilot year. The intent is that the Special Needs Block Grant will provide the financial support from the State for special education services for students with mild to moderate disabling conditions. Support for more severely disabled students at demonstration sites would continue to be supported by the State through the excess cost formula to the extent that such students were served in programs not a part of the pilot program.

For example, suppose that school District A received an average of \$100,000 in excess cost reimbursement for a demonstration site school during school years 1992-93, 1993-94 and 1994-95 for resource room and related services for students with speech and language disabilities and learning disabilities and \$50,000 for contract services for severely involved developmentally disabled students. Suppose further that District A will increase its general education budget 5% in the 1995-96 school year. In lieu of excess cost reimbursement for services provided at the demonstration site, District A would receive a \$105,000 block grant (the three year average reimbursement or base amount plus an increase equal to the same increase as the current year general education budget) as a current year payment. These block grant funds could be used to serve identified and non-identified students who were served in the regular classroom using collaborative regular education and special education teachers and specialists during the 1995-96 school year. In addition A would receive a \$50,000 excess cost, year in arrears payment for the contract services provided to serve the more severely disabled students based on services provided in the 1994-95 school year. As long as the pilot program and current year block grant funding continues, District A would not include any of the costs it incurred to serve the special education needs of the speech or learning disabled students at the demonstration site(s).

An alternative to using prior cost history to establish the base amount for the block grant is to provide a set number of dollars per student (probably the average State or "tiered"* cost per student for the education of students with disabilities) times a specified percentage of total enrollment (based on the national, state or "tier"* historical average of special education students in the general population). Allowances will be made for the special circumstances of both rural districts (where smaller numbers may make uniform percentages less accurate) and urban districts (which may act as service centers in meeting the social and educational needs of families from across the State).

D. Pilot programs are encouraged to collaborate with other service agencies to provide a full range of health, social and correctional services which are required by special needs students. Block grant funding may be used to support such collaborative services. Legislation, rule changes or special approvals may be required to permit other service agencies to use their funding sources in the public

schools. For example, the Medicaid in the Public Schools (MIPS) program requires schools to apply for Medicaid funding for certain related services. The Commission is supportive of broadening the MIPS program to include other related services such as hearing examinations, nursing services, and psychological counseling services to access non-education sources of funding for medical or social services. Another example would be agreements with vocational rehabilitation to provide vocational services to students during the transition years. Schools are urged to enter into service partnerships with non-school agencies only to the extent that there is true mutuality in support for the collaborative programs.

E. Pilot programs will include an ongoing evaluation component to measure success in meeting previously established outcome goals.

F. Funding for staff training is included in pilot programs. A specific earmarked amount or percentage of total block grant funds is determined. Training and staff development needs and programs are determined collaboratively at the building level by regular education and special education teachers.

*Tiers are defined in the Tax Equity and Educational Opportunity Act to include districts of comparable enrollment size. Tiers are use to establish an assumed student need or expenditure level.

IV. ASSESSMENT AND EVALUATION

The Commission believes that the Statewide assessment system proposed by the Nebraska Schools Accountability Commission should apply to all students unless a particular disabling condition makes the assessment impossible, unrealistic or unfair. The severity of the disability will be a consideration both in the methods used to assess students and in the establishment of performance standards. In addition schools should strive to develop measurements of the progress of students with disabilities in meeting personalized goals. In both cases, there needs to be better recording and reporting of how students with disabilities fare both in school and after exiting the k-12 education system.

While this Commission defers generally to the assessment system proposed by the Nebraska Schools Accountability Commission there are a few areas which the Commission would like to see pilot programs address, including:

A. When more personalized learning goals are set for students with disabilities (through the IEP process), assessment will provide data about whether or not individual goals are achieved. Such individual assessment of progress can assist in developing alternatives strategies for working with these students. Assessment serves as a key feedback link for the monitoring and adjustments in the programs and IEPS of students with special needs.

B. In addition to the statewide testing system proposed by the Nebraska Schools Accountability Commission, additional techniques which schools might use to assess progress in meeting goals include surveys of consumer satisfaction (students, parents, employers, subsequent service providers, etc.), follow-up studies for tracking student progress after exiting school, internal teacher reviews and external peer reviews. [Data from pilot programs will be compiled and summarized at the State level by the Department of Education to produce an annual report of indicators of student progress.]

C. System goals which the Commission believes are important to monitor include the level of parental involvement, adequacy of staff training, the availability of support and accommodation in the classroom and the level of collaboration between regular education and special education teachers. Establishment of objective indicators and standards of success will be necessary prerequisites to monitoring these goals.

D. Assessment of progress towards meeting outcomes should function at four levels:

State level: The State Board of Education will set broad guidelines for what is to be assessed, by whom, and compared to what, and the State Department of Education should support an indicator system to measure aggregate student progress.

District level: School boards will establish district goals for student progress and reporting indicators of progress to the State.

Building level: Parents, teachers and support professionals will establish individual student performance goals in conjunction with the IEP process. The building principal will report to the district on aggregate student progress.

Individual Student level: Teachers report to parents on the progress of individual students in meeting performance goals.

Pilot programs will address the assessment of students at the building and individual level and will cooperate with district and state officials with regard to assessment of aggregate student progress in meeting State or district level performance standards.

E. All assessment shall fully comply with the requirements of the Americans with Disabilities Act in assuring reasonable accommodations so that tests given to students with impaired sensory, manual or speaking skills will accurately reflect

student progress in achieving state, district, building, or individual learning goals, rather than reflecting the student's impaired sensory, manual or speaking skills.

CONCLUSION

The object of this paper has been to elucidate the conceptual basis of the Commission's goals for pilot programs which will be observed and evaluated by the State Department of Education and the Commission in order to make final conclusions and recommendations to the Legislature, State Board of Education and Governor regarding modification of State funding for special education. As noted at the outset, the primary statutory goal of the Commission is to identify strategies for cost containment which will not undermine access and quality of programs. For the Commission, the goal of program effectiveness and accountability may have an even higher priority. The Commission is comprised of individuals who believe strongly in the concept of a unified education system and its promise for all students. There is a strong desire to identify methods that will improve the effectiveness of special education services, leading to better life opportunities. Through a unified service system schools will more efficiently and effectively serve all students including those who do not meet the formal requirements for special education but who nonetheless need help with learning problems.

Therefore pilots will not be judged successful by the Commission unless they meet both goals----funding increases at a rate no higher than education generally and enhanced program effectiveness. The next phase of the Commission's activities will include establishment of formal criteria for selection, a selection process, evaluative standards and processes and a more concrete timeline for the pilot program process.

At this point, the Commission is seeking reaction to this paper, both formal and informal. It is the Commission's intent to use the months of September and October to solicit public input from parents, educators, policymakers and the general public. That input will aid the Commission in making a preliminary report to the Legislature, drafting necessary legislation to implement the funding portion of the pilot programs and in crafting the particulars of the pilot program processes.

PART B

PILOT PROGRAM REPORT

August, 1996

COMMISSION PILOT PROGRAMS

PRELIMINARY REPORT Pilot Evaluation Subcommittee

adopted
August 23, 1996

INTRODUCTION

The Commission was given the authority and responsibility to select demonstration sites for the purpose of pilot implementation of program models which can document cost containment while maintaining appropriate special education services to children with disabilities. Demonstration sites may continue for up to three school years and shall be exempt from the provisions of the State special education statutes but not from those provisions required under Federal law or regulation. In addition, the State Board of Education may waive Department of Education regulations which would limit the pilot programs. The Commission is to assist the State Department of Education in monitoring and evaluating pilot programs.

The Commission received seven proposals for pilot program status during 1994 and 1995. A Selection Subcommittee reviewed applications and met with promoters to discuss each proposal. From this group two proposals were put forward to the full Commission for action. Two pilot programs were selected by the Commission in August of 1995, one from the Grand Island Public School system and one from the Westside Community Schools. Both pilots were approved by the Commission for three school years: 1995-96 through 1997-98.

A Pilot Evaluation Committee has begun to examine some preliminary data from the two pilot programs. Following is a report which summarizes the proposals, evaluation criteria and preliminary results of the two pilot programs. Recommendations sections follow for each pilot program. Applications and data for each pilot are found in the Appendix which follows this report.

I. Grand Island

A. The proposal

In response to a gradual increase in the number and percentage of students qualifying for mildly handicapped services (Specific Learning Disability or LD, Speech/Language Impairment, or S-LI , and Attention Deficit Disorder, ADD), Grand Island proposed a change in the verification criteria for eligibility for services. Under the current verification criteria there are two standard measures: 1) an ability score and 2) an academic achievement score or language score. There must be a discrepancy of at least 20 point or 1.3 standard deviations between the two. In addition, the achievement score must be at or below 90 standard score points. Grand Island proposed to lower this achievement score nine points to an 81. The final proposal was to apply the tightened criteria to only new referrals. Grand Island projected that if the change were applied to existing students, there would be reductions of 15% (114 students) in SLD students, 11.3% (46 students) in S-LI students and 51% (or 25 students) in ADD students resulting in a possible 5.5 FTE staff reduction and one year savings of up to \$165,000 These numbers would apply if all students, including three year re-tests of those currently verified, were included in the pilot. Actually, the pilot only applies to students newly evaluated for special education.)

B. Evaluation criteria

Grand Island agreed to examine, after one year of implementation (spring, 1996), the following data to data from the prior year: 1) the number of new referrals qualifying; 2) adult/student staffing ratio in mildly handicapped services; 3) projected application of the changed criteria to all students in the programs; and 4) costs and cost savings.

C. Preliminary results

In response to a request from the Evaluation Committee Jim Werth, Director of Special Education at Grand Island and pilot designer, provided written information last December showing that the lower cut scores for LD, S-LI and ADD on the verification criteria had only impacted one student, who would have otherwise been included in special education via a new referral and

evaluation. In addition, Jim Werth provided informal information and impressions to the Pilot Evaluation Committee for a July 22 meeting. Jim noted that for the whole year only a few students had been impacted. (Exact numbers will be provided.) For students not meeting criteria and not included in special education, progress was to be monitored through Student Assistance Teams (SAT) and accommodation plans. The small impact was attributed primarily to a restructuring of the District's SAT process. The SAT teams were felt to be more effective in helping borderline students through improved accommodations at the building level so that there were fewer numbers of these students referred on to evaluation for sped. Jim expressed the opinion that it would take a larger change in the criteria to make a significant monetary impact on the district.

D. Recommendations and conclusions

Grand Island would like to continue the pilot for another year to get a better evaluation of the impact of the pilot and the SAT changes. This would allow Grand Island time to develop a method to screen students who might have qualified under the old criteria. These students could then be tracked to see what happens to them— later referral, Title services, etc.

Follow-up information has been requested on the SAT process now used by GI which apparently has been successful with borderline students.

In addition, information on the numbers of referrals to sped evaluation was requested and the percentage of those evaluated who were verified, before and after the new SAT. (Data from the Sandhills Coop shows less referrals for evaluation but a higher "hit rate", or percentage of those referrals which actually are verified.)

Finally, the Committee requested data which shows what happens to those not referred to MDT in terms of test scores or other outcome data.

There was somewhat of a consensus that the SAT process changes may have contaminated the data with regard to the lower verification criteria. However, the experience with the upgraded SAT appears to substantiate the literature, which generally shows the effectiveness of pre-referral, prevention efforts.

It is recommended that the Grand Island pilot should be continued for the 1996-97 and 1997-98 school years, with the current waiver of the verification criteria specified in the pilot application, pending receipt of the data requested by the Commission and the Department of Education and an agreement to continue evaluation of the pilot project under the direction and with the cooperation of the State Department of Education.

II. Westside

A. The proposal

Westside proposed a comprehensive, district wide, pilot program with components for programmatic changes including a prevention emphasis (enhanced SAT), flexible staffing, in-service training, staff collaboration and outcome based assessment. The goals were to 1) blur the lines between special education and regular education by offering a variety of experiences for all students and giving teachers more flexibility; 2) reduce the number of students identified as having a disability while maintaining, if not improving, quality outcomes for all students and 3) reduce the growth of the Westside special education budget to no increase more than 2.5% for the 1996-97 year and 3% for the 1997-98 school year.

The pilot was necessary to secure waivers from verification criteria, staff certification requirements, caseloads and funding restrictions.

B. Evaluation Criteria

1. The number of students identified at each building site (waiver of verification criteria);
2. Growth of the budget of special education in line with the percentage caps on State appropriations as per LB 742.;
3. Changes in caseloads (caseload waiver)
4. Application to students with disabilities of district-wide outcomes, as described in the Outcomes Education and Assessment Plan of the School;
5. Flexible staffing (waiver of certification endorsement regulations);
6. Increased parental participation;
7. Increased staff collaboration;
8. Enhanced staff development.

C. Preliminary results

With regard to the Westside pilot, the Committee has engaged in fruitful discussion with Steve Milliken, Director of Special Education and pilot coordinator. Budget, child count, and staffing information has been provided. It was clarified that some of the budget data included contract students which did reduce the District's overall sped budget. However, the budget showed very limited growth (and current year reduction) with the contract portion removed. The school district will provide budget figures with the coop portion shown separately. The child count data showed lower growth rates in Westside than the State at large. Significantly lower growth rates were seen in LD, S-LI, and OHI (ADHD). These budget and child count figures were attributed to greater use of SATs, principals expectations (contrary to labeling if possible), staff development and collaboration and flexible staffing.

Waivers had allowed for re-assignment of staff and more effective use of existing staff. As an example, at Swanson elementary, total FTE sped staffing was down while reading (Title) and support service staff was up. As another example, school psychologists are now located at building sites where their role is more support, instructional planning and consultant rather than the traditional "tester". The district is attempting to provide inclusive settings and a range of support services (continuum of services) and to save money, primarily through efforts to reduce labeling, maximize services and enhance prevention strategies.

In response to a question about outcomes and district benchmarks, it was indicated that the district did include sped students in its portfolio assessment process and was pleased with the results. Other outcome data included positive parental satisfaction and an observed reduction in the number of complaints to the superintendent from parents.

In response to a question about replication of Westside's principals' philosophy that all students can be successful, Steve indicated that this attitude could be replicated if the Westside pilot showed positive results.

Westside also provided a parent and staff satisfaction survey concerning the Westside special education programs and a videotaped testimonial from staff regarding the reforms included in the pilot program. In addition, members of the Commission and staff had an opportunity to visit school buildings in the Westside school system, hear descriptions of first year implementation of the pilot from different site locations, raise questions and discuss issues with members of Westside staff participating in the pilot.

Additional data requested by the Committee includes: 1) Data on how kids who do not get into sped are doing after intervention strategies are

implemented (e.g. curriculum based assessment, grades, etc.; 2) comparison of the numbers of referrals to sped evaluation and the hit rate of those evaluated who actually are verified both before and after the pilot was implement; 3) Budget numbers with the coop program (contract students) shown separately; and 4) A narrative description of an implemented or planned non-sped intervention strategy and flexible staffing.

D. Recommendations and conclusions

It is recommended that the Westside pilot be continued for the 1996-97 and 1997-98 school years, under the waivers specified in the pilot application, pending receipt of the requested information by the Commission and Department of Education and an agreement to continue evaluation of the pilot with the cooperation and under the direction of the State Department of Education.

PART B1

PILOT PROGRAM MATERIALS

Pilot program applications

Evaluation questions

Evaluation Data

Pilot Evaluation Committee Summary

Special Education Accountability Commission Pilot Programs Proposal

A. PROGRAM GOALS AND PURPOSE

Since 1986, we have noticed a gradual increase in the percentage and number of students qualifying for mildly handicapped services (Specific Learning Disability and Speech/Language), without a significant increase in the total school population. This increase might, in part, be due to the inception by the Nebraska Department of Education of a new verification criteria that relies on a 'discrepancy model' to determine which students qualify for service. This qualification is partly based on two standard measures: 1) an ability score, and 2) an academic achievement or language score. The student qualifies if the latter score is below 90 and 20 standard score points (1.3 standard deviations) below the former.

The goal of the present proposal would be to reduce the increase in students qualifying for mildly handicapped services by modifying entrance criteria as dictated by Title 92, NAC, Chapter 51. It is anticipated that a reduction in numbers of students served will result in a concurrent reduction in program costs.

B. PROJECTED OUTCOMES

Although we would propose applying the modified criteria only to new referrals, analysis of records of students currently enrolled in programs in CNSSP would indicate a reduction of 15% or 114 students in the category of SLD (Specific Learning Disability), 11.3% or 46 students in Sp/L (Speech/Language), and 51% or 25 students with medical diagnosis of Attention Deficit Disorder and placed in the educational category of OHI (Other Health Impaired). This total of 185 students represents approximately 12% of the students served by CNSSP, and further represents approximately 5.5 F.T.E. in direct instructional positions. This translates to a one year dollar savings of approximately \$165,000.

C. DESCRIPTION OF PROGRAM MODEL

We would propose in the current pilot program to restrict the entrance criteria for new students being evaluated in three areas: the before-mentioned SLD and Sp/L, as well as the area of Other Health Impaired (OHI). We would describe this restriction by modifying criteria language in NDE Rule 51, Section 006 as follows:

006.04J4c (SLD) The results of the child's assessed ability level. The child's standard score in one or more major areas(s) must be at least 1.3 standard deviations below the child's assessed ability level (20 standard score points). In addition, the standard score in the major area which is used to establish the qualifying discrepancy shall fall at or below 90 ~~81~~ standard score points regardless of the discrepancy between assessed ability level and the major area. Discrepancies shall be verified in terms of standard score units rather than age or grade equivalents. The major areas are oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation and mathematics reasoning.

006.04K4b(4) (Sp/L) The student's communication which shall consistently score greater than 1.3 standard deviations (20 standard score points) below the student's overall ability level and it shall affect communication in the classroom, at home, or with peers. Prognosis, the student's motivation, dialect and cognitive abilities must all be considered and may effect the student's eligibility. Documentation may be reported by informants such as parents or teachers or in the form of language samples. At least one form of the assessment instruments used must yield a standard score. At least one standard score on a test of composite expressive or receptive language skills shall be 81 or below.

006.04I3c (OHI) The child's adversely affected development or educational performance. For students with a medical diagnosis of ADHD, adversely affected educational performance shall mean a standard score of 81 or below in a major academic area (refer to 006.04J4c).

The standard score of 81 is not arbitrary. A standard score of 81 is the rough equivalency of the tenth percentile. 1 in 10 is probably the most widely accepted incidence rate for students with disabilities. OHI is included since many of the students diagnosed as ADHD are appearing in this category.

For students referred and evaluated but not qualifying for service under the revised criteria, the MDT report will contain recommendations for SAT intervention. It will be suggested that the SAT closely monitor student progress and report continuing or further problems to the special educational consultant.

D. PROJECTED BUDGET

Since the current proposal only entails modification of entrance criteria no funding would be required through the commission.

E. STAKEHOLDER PARTICIPATION

The current proposal was presented to the CNSSP Advisory Board on 5-24-95. Discussion is recorded in the minutes of that meeting. Various CNSSP personnel involved in the diagnostic process have been involved in the proposal or consulted regarding the impact.

F. RATIONAL FOR EXEMPTION FROM STATUTES AND REGULATIONS

Self evident—refer to C. above.

G. ASSESSMENT AND EVALUATION PLAN

After the first year of implementation (Spring 1996) the overall impact will be assessed as follows:

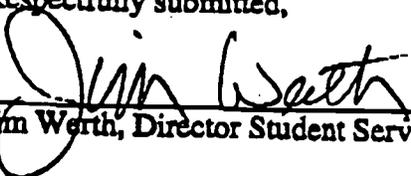
- 1) The overall number of new referrals qualifying will be compared with previous year's data.
- 2) The adult/student ratio in mildly handicapped services will be compared to previous year's data.
- 3) Data will be maintained and analyzed relative to tri-annual evaluations as to the projected impact of more global application of the modified criteria.
- 4) The above information will be used to project cost savings.

In addition, longitudinal data will be maintained to determine if the students not qualifying are referred at a later date and results of any later evaluation.

H. POTENTIAL FOR REPLICATION

Since the current proposal only involved modification of state-level entrance criteria, replication should not be difficult.

Respectfully submitted,



Jim Werth, Director Student Services/CNSSP

Approved,



Dr. Lane Plugge, Superintendent School District of Grand Island

Dr. Lane Plugge, Superintendent School District of Grand Island

BEST COPY AVAILABLE

SPECIAL EDUCATION ACCOUNTABILITY COMMISSION

TO: Jim Werth, Director of Student Services
Central Nebraska Support Services Program

FROM: Jean Sigler, Chair Subcommittee on Pilot Evaluation
Special Education Accountability Commission

RE: Evaluation of pilot programs

DATE: November 22, 1995

The Special Education Accountability Commission and the Department of Education are jointly responsible for the monitoring and evaluation of pilot programs which have been approved by the Commission. The Commission has taken the position that the pilot schools have the primary responsibility to establish evaluation criteria and conduct follow up evaluation studies of their pilots. However, because the Commission has given the pilots significant waivers from State statutes and regulations, it does have some responsibility to monitor the programs and to make sure that the pilot schools are evaluating the programs as they said they would in their pilot application.

At this point the pilot is well into its school year of implementation. It seems appropriate to ask some questions concerning your district's progress in operationalizing the evaluation criteria which were included with the approval of your pilot program. Those criteria included:

1. Number of new referrals qualifying for special education compared to prior year.
2. Adult/student staffing ratios in mildly handicapped services compared to prior year.
3. Estimates of the numbers of students who would not be included in special education assuming the pilot verification criteria were used (The Grand Island pilot only applies the lower test scores to new referrals.)
4. Projected cost savings.
5. Longitudinal tracking of students not qualifying under the pilot criteria to determine whether students are later referred or verified and the success of such students in Grand Island's curriculum based assessment.*
6. Implementation of efforts to serve students not included under the pilot verification criteria through SAT planned interventions (and through a Section 504 plan type interventions for diagnosed ADHD students).*

Criteria numbers 1 through 4 will form the basis for the quantitative evaluation of the pilot. How is the district collecting and analyzing data on those evaluative criteria?

In regard to criteria number 6, the Committee is especially interested in how the District has geared up the SAT process and 504 planning to assure that the needs of students are met who are not included in special education under the pilot criteria. This was an important issue to the Pilot Selection Committee and the full Commission in its discussions of the Grand Island pilot.

The Committee is also very interested in satisfaction with the pilot among parents, teachers and others affected. Would the District consider some type of satisfaction survey of impacted persons?

Criteria 5 gets at outcomes. What happens to students who would have qualified under the old criteria but not under the pilot? What can the general education assessment process tell us about these students progress? The Committee has also expressed a special interest in this area.

Please let us know what your plans are for conducting the evaluation of your pilot. We recognize that good evaluation activities are hard work and resource consuming. The Committee stands ready to meet with you to discuss how we can assist you in the evaluation process.

*The examination of what happens to students not included in special education, as measured by curriculum based assessment and the special efforts to assist students through SAT or 504 designed interventions, were not specifically included in the written application. These items were suggested by the Pilot Selection Committee or the full Commission in making the decisions to approve the pilot.

Copies: Pete Biaggio and Don Anderson

To: Jean Sigler, Chair Subcommittee on Pilot Evaluation
Special Education Accountability Commission

From: Jim Werth, Director Student Services
School District of Grand Island/CNSSP

Date: 12-29-95

Re: Evaluation of pilot program

At this point in time an assessment of the pilot program would indicate that the impact on students, staff, and budget has been minimal to say the least.

A summary of assessment activities in the mildly disabled area is as follows:

	No. Evaluations	No. Not Qualifying NDE 51 Criteria	No. Not Qualifying Pilot Criteria
Re-evaluations	104	19*	3**
New Referrals	44	20	1
Total	148	39	4

*Tested out of program
**Still receiving services

Please note that only one student has been impacted by the pilot project at this time. This student is a 12 year old male from outside of Grand Island. He received an ability score of 105 and a score of 85 in written language on the Woodcock Johnson which would have just made the minimum qualification under NDE 51 criteria. All other achievement scores were at or near the ability score. It is questionable whether or not it would have been advisable to initiate Special Education programming for this student even under NDE 51 criteria. The course of action that resulted— referral back to the SAT with plans for implementing an accommodation and monitoring procedure—is likely more practical than Special Education placement. I would also hesitate to refer to this as a '504' procedure since I am not sure this particular student would be considered 'handicapped' even under 504.

That basically summarizes what we have found thus far. I am somewhat disappointed. We serve 2500 students per year. The impact thus far is non existent.

To attempt to answer your specific questions:

- 1) The number of new referral qualifying as a percentage of all referrals has not changed. The overall number of referrals is slightly off of last year's pace.
- 2) There is no change in adult/student ratio as a result of the pilot program.
- 3) Refer to opening comments for numbers of students.

- 4) At this point no cost savings has been realized. I would refer you to the projected outcomes (B) of the original proposal (attached). As I explained to the commission last summer, the data assumes application to students over a potential period of 21 years. To realize the savings in the future, based only on new referrals, would in theory take 21 years.
- 5) The student(s) will be monitored for progress through SAT and accommodation plans.
- 6) I don't understand this question. If by 'not included under pilot verification criteria' you mean not qualifying then the answer is the same as 5). ADHD students not qualifying under the pilot criteria or under NDE 51 are provided with an accommodation plan through the SAT. At a minimum such a plan would include medication monitoring and feedback to medical personnel, as well as regular classroom modifications necessary to address any academic or behavioral needs.

As a side bar I think it needs to be said that I would question whether the 'pilot group' (if one ever shows up) should be categorized as disabled under any criteria even 504. These are students that can readily be accommodated in the regular program. To categorize and thus segregate these students (I am not necessarily referring to physical segregation) may be doing them a disservice.

At the current time we are entering all student evaluations into a data base detailing scores and qualification information. We will continue to monitor numbers through this system. Unless the impact becomes more of a factor I will not be gathering more data.

CC: Don Anderson
Pete Biaggio
Cherie Roberts

BEST COPY AVAILABLE

To: Special Education Accountability Commission

From: Jim Werth, Director Student Services
School District of Grand Island/CNSSP

Date: 8-23-96

Re: Evaluation of pilot program update

A summary of assessment activities in the mildly disabled area is as follows:

Aug. 95–May 96	# Evaluations	# Not Qualifying NDE 51 Criteria	# Not Qualifying Pilot Criteria
Re-evaluations	265	56*	16**
New Referrals	174	63	8
Total	439	110	24

*Tested out of program

**Still receiving services

During the first year of implementation of the pilot criteria, 8 students fell between the NDE standard score cutoff of 90 and the pilot criteria cutoff of 81 (4.6% of the new referrals). The 24 total potential not qualifying represents approximately 5.5% of the total evaluated by CNSSP in the mildly disabled area. This is considerably less than the predicted rate of 12% originally derived from analyzing records of students currently enrolled in programs. Hastings Public Schools also analyzed the scores of students evaluated this year. Interesting, out of the 64 students evaluated, 8 or 12.5% would not have qualified by the pilot criteria. This figure is very close to our original estimate even though the sample size is somewhat small.

If modifying the criteria, at least in the manner of this pilot and based upon one years implementation, is looked upon to reduce special education cost maybe we should look elsewhere. Ultimately cost may be reduced but only after several years.

A seemingly more promising avenue for our program might be found in the Student Assistance Team process. Concurrent with implementation of the pilot criteria a more structured SAT process was initiated. The revised process had two major changes: 1) It demanded more of the SAT team and teaching staff by requiring the inclusion of building level intervention strategies for specific periods of time, and 2) It provided a consistent SAT procedure over the roughly 50 attendance centers served by CNSSP. Preliminary assessment of referral data indicates an approximate 30% reduction in referrals (683, Aug. 94 to Apr. 95 vs. 475, Aug. 95 to Apr. 96). Although I would not expect this rate to continue, the implication of this reduction is potentially more beneficial than changing criteria. We have been concerned about the low 'hit rate' of students qualifying for SpEd services relative to the number of referrals coming from the SATs. In some areas the qualifying rate has been as low as 25%. If we can demonstrate that the reduced number of referrals results in a higher hit rate, it might be possible to reduce costs without changing criteria or reducing service to qualified students. We are currently gathering this information. On an hourly basis diagnostic costs are the most expensive aspect of our program. Much of the effort involves simply 'legitimizing' service and has little direct impact on the student's program or the content of the service. Reduction of cost in this area, by making the procedure more efficient would not impact students or services.

GRAND ISLAND PUBLIC SCHOOLS
STUDENT ASSISTANCE TEAM REQUEST FOR ASSISTANCE

Person(s) Making Request _____

Date of Request: _____

Student Name: _____ Residence School: _____

Grade: _____ Birthdate: _____ Age: _____ Attendance School: _____

Parent's Name: _____ Home Phone: _____

Address: _____ Work Phone: _____

Language Spoken at Home: _____

Parent contacted about this SAT information on _____ by _____
(date) (phone, conference)

Presenting Problems

1. Describe the student's assets:

2. Describe what educational skills this student needs to develop (academic, behavioral, social, speech, language, motor, etc.)

BACKGROUND INFORMATION:

(Most recent scores)

1. Relevant Test Scores
 - (a) Group Ability Test _____ Score _____
 - (b) Group Achievement or Readiness Tests (Attach a copy)

Total Reading %ile: _____	Chapter I Scores: _____
Total Math %ile: _____	Vocabulary: _____
Total Language %ile: _____	Comprehension: _____
Other (Specify): _____	Math: _____
PSAT _____	Chapter Gain: _____

2. INSTRUCTIONAL METHODS OF YOUR CLASSROOM (ELEMENTARY AGE ONLY):

***BASAL READER** _____

Test Scores: Mag I _____ %
Mag II _____ %
Mag III _____ %

Check all that apply:

- Visual Phonics
- Phonetic
- Linguistic (sight word/word family)
- Whole Language/Language Experience

- ECRI
- ESL
- Chapter I
- Other _____

***BASAL MATH TEXT** _____

Check all that apply:

- DAP
- Touch Math
- Unifix Cubes
- Other _____

3. Below, please explain any specific difficulties this student/child is exhibiting which may be evidence of a handicapping condition.

(a) Pre-Academic/Academic Areas (i.e., Letters, Reading, Numbers, Math Following Directions)

(b) Communication Areas (i.e., Articulation, Language, Voice, Written Language)

(c) Behavior Area (i.e., Behavior Problems, Aggressive, Distractible, Peer Relations)

(d) Medical/Physical Area (Please check areas that apply)

- (1) Suspected or confirmed hearing or vision loss (Specify) _____
- (2) Fears or physical symptoms associated with school or personal problems
- (3) Motor Coordination
- (4) Physically overactive or physically aggressive
- (5) Medical and/or physical conditions that appear to be adversely influencing behavior and/or learning (briefly describe conditions and any medications being used to control or alleviate conditions: _____

(e) Other Areas not listed above: (Briefly Describe)

Please indicate if the items below are applicable to this student's current or past situation using the following indicators: C = currently; P = previously.

- | | |
|--|---|
| <input type="checkbox"/> (a) Enrolled in pre-school | <input type="checkbox"/> (e) Enrolled in a Chapter I Reading Program |
| <input type="checkbox"/> (b) Enrolled in Head Start | <input type="checkbox"/> (f) Enrolled in Chapter I Math Program |
| <input type="checkbox"/> (c) Evaluated or served by CNSSP | <input type="checkbox"/> (g) Enrolled in English as a Second Language |
| <input type="checkbox"/> (d) Evaluated or served by a non-CNSSP special education program agency or professional (specify name): _____ | <input type="checkbox"/> (h) Suspended/expelled |
| | <input type="checkbox"/> (i) Received failing grades recently (specify subjects): _____ |
| | <input type="checkbox"/> (j) Retained (specify grades): _____ |

Strategies attempted by the classroom teacher prior to referral to SAT:

METHODS TO MODIFY INSTRUCTION:

- Teacher meets weekly with parent(s) to discuss assignments and progress
- Teacher meets daily with student to discuss assignments and progress
- Individually explain purpose of each assignment
- Praise and encourage success
- Reinforce oral directions with visual cues
- Reinforce visual directions with auditory clues
- Confine instruction to basic processes
- Give assignments in sequential small portions
- Develop special instructional packet
- Make alternative assignments
- Provide study guides or supplements to notes
- Meet daily or weekly to review assignments & progress
- Allow student a longer period of time to complete tasks
- Clarify directions. Display a finished product
- Provide consistent format for papers & assignments
- Use short one-concept statements
- Correct spelling but do not penalize
- Relate abstract ideas to concrete examples
- Reduce tension and pressure in any way possible
- Students may tape lectures, have them read, or use tape materials
- Peer tutor
- Cooperative Learning
- 4 MAT
- Outside Agency Counselor
- Other _____

METHODS TO MODIFY EVALUATION:

- Verbal testing-read or have tests read to student
- Open book tests
- Shortened tests and assignments
- Student tape record tests
- Levels of questions adjusted
- Frequency of tests
- Extend length of time for completion
- Completion of special instructional packet
- Cooperative Testing
- Course projects
- Observations
- Lab experience (hands-on only)
- Percentage score required adjusted (Grades)
- Other: _____
- _____
- _____
- _____

Consultation: Please describe any consulting with teachers, principals, doctors, parents, etc. that you have done:

SAT SUGGESTED INTERVENTIONS:

Short Term Objectives	Brainstorming Suggestions	Measurement Procedures	Date Instruction Began	Date Objective Reviewed

As a result of the Intervention strategies listed above the Student Assistance Team recommends:

- Continuation of current SAT intervention
- Try other strategies
- Increase parental involvement
- Referral to school counselor
- Consultation with ESL personnel
- Consultation with Chapter I personnel
- Consultation with school nurse
- Consultation with CNSSP personnel
- Development of Accommodation Plan
- Contact Ed. Consultant for referral to CNSSP for an evaluation
- Parent informed of this referral to CNSSP on _____ date

Dates of SAT Meetings _____

SIGNATURES:

_____ SAT Chairperson
 _____ Principal
 _____ Team Member
 _____ Team Member
 _____ Team Member

***A copy of the SAT MUST be attached to all referrals to Special Education for evaluation.**

APPROVED BY: _____

REFERRAL TO STUDENT ASSISTANCE TEAM FROM MULTI-DISCIPLINARY TEAM

ATTENTION SAT CHAIR _____:

_____ has been evaluated by the Special Education Diagnostic Team. The MDT found that _____ does not have a verifiable handicapping condition (Rule 51 regulations). Therefore, this student is being referred back to the SAT for further problem solving assistance or development of an accommodation plan.

_____ MDT Representative

_____ Date

If an accommodation plan is developed, the following MDT recommendations should be considered:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

WESTSIDE COMMUNITY SCHOOLS

SPECIAL SERVICES

PILOT PROJECT PROPOSAL

Special Education in the State of Nebraska has evolved into a highly complex and regulated bureaucracy. It has grown into a system that thrives on the identification of students as disabled and the subsequent specialization of staff to serve these students. As it has grown it has become more and more regulated and less flexible. The Nebraska Legislature between 1983 and 1994 passed a number of different legislative bills dealing with special education. Many of these bills resulted in expanded regulatory and services requirements for students with disabilities and ultimately the identification of more students as being eligible for special education services. As a result of such bills and the interpretation of them, the number of students identified for special education services continues to be on the rise.

Westside Community Schools has found it necessary to begin to streamline the special education bureaucracy and cut some of the costs. Our goal is to blur the lines between special education and regular education programs by offering the same opportunities and curriculum to both groups whenever possible. Special educators are working in much more nontraditional kind of roles. As they are actively involved in prereferral intervention teams, nontraditional assessment processes and more nontraditional kind of delivery methods, we are beginning to see a reduction in the number of students who are identified for special services. As special services staff work in these nontraditional roles, we are beginning to work with wider range of students—not just those with disabilities. Through this kind of model, we believe that fewer students will be identified but more students will receive necessary support.

In order for us to continue and expand these services, it is necessary for us to begin to look to the state for leadership and support in waiving current requirements which seem to be restricting our progress. As we gain approval for such waivers, we believe that this type of programming can extend across the State of Nebraska as more flexible services become the norm rather than the exception.

BEST COPY AVAILABLE

PROGRAM GOALS

Westside Community Schools is currently trying to streamline the special education bureaucracy and reduce some of the costs. In order to do so, we have set the following goals:

- Goal #1 Blur the lines between special education and regular education programs by offering a variety of opportunities for all students and giving all teachers more flexibility.
- Goal #2 Reduce the number of students identified as having a disability while maintaining, if not improving, quality outcomes for all students.
- Goal #3 Reduce the growth of the Westside Community Schools special education budget so as to not increase more than 2.5% for the 1996-97 fiscal year and 3% growth for the 1997-98 fiscal year.

PROJECTED OUTCOMES

Westside Community Schools has developed clear cut outcomes for all students with or without disabilities. We have included that information with this document.

PROGRAM MODEL

Greater flexibility in the way we use staff needs to be granted in order for us to proceed successfully. This flexibility must take place at all phases of the educational process: The Preventative Phase, The Assessment Phase and The Delivery Phase.

I. PREVENTATIVE PHASE - Alternative Student Assistance Teams

The restructuring of the education process for all students requires a change in the basic procedure through which students' needs are identified and then addressed. Although the current student assistance teams generally work well for most students, we will focus on the following issues in order to enhance the effectiveness of preventative interventions:

- a) considerable flexibility in the use of staff or special expertise must be allowed
- b) we will significantly increase parental participation and collaboration during this preventative phase.
- c) the shared model and understanding of terms must be created between special and regular educators

II. ASSESSMENT PHASE - Alternative Evaluation Procedures

Within most school districts today there is little consensus regarding what schools should be evaluating and what evaluation process should be used. The assessment plans are often nebulous and usually directed by state mandates. The evaluation team at Westside Community Schools needs to enhance the flexibility in order to appropriately assess students. The following necessary steps will be taken on each individual evaluation as is appropriate:

- 1) Review (of records, cumfolders, samples, health records, etc.)
- 2) Interviews (teachers, parents, students, playground, etc.)
- 3) Observations (student peers, student teachers, parent, child, etc.)
- 4) Testing (intellectual, personality, behavior ratings, achievements, curriculum based, etc.)

III. DELIVERY PHASE - Alternative Delivery Systems

Effective, efficient delivery of instructions best achieved when teams of professionals at the building level collaborate and make daily decisions based on individual students needs and progress.

In this proposal, Westside Community Schools needs to continue using the flexibility of all available resources including materials and staff in order to design the best possible plan for a student based on information revealed through the alternative student assistance team and the alternative eligibility process. Educational planning teams in each individual building need to determine the most appropriate staff based on student needs and staffs' expertise. Services need to be delivered in the most appropriate location with the most appropriate materials and staff. Educational plans for all students receiving support would be developed and documented by a collaborative team including the parents. Each plan would include a system of monitoring the student outcomes on an ongoing basis. Possible methodologies that results from this flexible approach include:

- special education staff teaching lessons, units in regular classrooms
- regular education staff working individually or in small groups with students outside of the regular classroom
- trial intervention by special education staff to determine the appropriateness and effectiveness of intervention strategies
- Special education and Title I staff working in more collaborative roles
- special education staff collaborating with other regular education staff at similar grade levels and at significantly different grade levels resulting in situations that would involve class-wide peer tutoring and cross-age peer tutoring
- service would be maintained by special education staff for those students who no longer qualify under verification guidelines but need the support

BEST COPY AVAILABLE

- early interventions would be established for at risk primary students
- regular education teachers would use the most appropriate curriculum for individuals, small groups, and whole classrooms based on the needs of the students involved

Staff Development

Westside Community Schools staff development has become a critical component as we implement change in the way we deliver special services. The first phase of our staff development has been to assist staff in understand the reasons driving the changes in special services. The benefits to students, parents and staff as well as the entire community would be emphasized. The next phase is to recognize the vast variety of knowledge, skills and expertise already existing among the school staff. Collaborative techniques are developed through staff development training in order to maximize that talent. The third phase, and a continuous phase, would include the development of new strategies and techniques based on needs and requests identified by the building level teams. District staff, outside consultants as well as workshops and conferences would be utilized to meet the staff development needs.

Technical Assistance

Dr. Margaret McLaughlin, Associate Director of the Institute for Exceptional Children and Youth at the University of Maryland College Park has identified the Westside Community Schools as one of five sites in the United States to conduct research related to major special education reform and restructuring. Dr. McLaughlin and Associates will continue to work with us for the next three years as we pursue necessary waivers for the purpose of improving the educational outcomes for all students with or without disabilities. Dr. McLaughlin previously directed a national center for policy options in special education which investigated critical issues and policy implications related to school restructuring and students with disabilities. She has written extensively in the area of special education and teaches graduate courses in disability policy at the University of Maryland.

PROJECTED BUDGET

Consistent with the need for flexibility, Westside Community Schools would welcome a block grant funding system. It is our goal to allot to each building site a certain amount of dollars i.e., block grant for special services and allow building flexibility. The building sites could have the flexibility to use the money based on student needs and expertise in the building. Rather than the current reimbursement system, this potential system of funding could assist us in implementing the program we have described.

As we see the number of students with disabilities decline, it is important that we do not lose valuable resources based on caseloads and the current reimbursement system. Our dollars will be used in more flexible manner but we believe we can minimize the overall growth of special

education in this district.

Consistent with LB 742, Westside Community Schools believes through greater flexibility and a blending of programs that we can limit the growth of special education to 2.5% to 3% annually. Thus, we project for the fiscal year 1996-97, our budget would be at 2.5% over the fiscal year 1995-96. For the fiscal year 1997-98, we project a 3% growth increase over fiscal year 1996-97. This projection is consistent with LB 742.

RATIONALE FOR EXEMPTION FOR STATUTES AND REGULATIONS

CASELOAD REQUIREMENTS

We are currently making the effort to blur the lines between special education and regular education. Special education staff are working in many more nontraditional roles. As they are actively involved in prereferral intervention teams, we are beginning to see a reduction in the number of students who are identified for special services. As they work in more collaborative roles with regular education staff, they continue to work with a large number of students—many of whom may not be identified with a disability. It is our hope that in this model fewer students will be identified with a disability, but a wider range of students will receive necessary support. Thus, as identified numbers are reduced it is necessary for the Westside Community Schools to be exempt from Rule 51 caseload requirements.

PROGRAM FLEXIBILITY

Additionally, in order to implement the program described, there would need to be flexibility across programs such as Title, Special Education and so forth. Restrictions on who and when certain staff can work with certain students need to be waived. If it is necessary for a Title I teacher to intervene with a special education student, due to expertise, it is hoped that we can implement such delivery systems. The same applies for special education teachers to work with Title students and any other blending of programs which would need to happen for implementation of services.

STAKEHOLDER PARTICIPATION

An identified group met for almost eighteen months, at different times, to identify needs which would enhance quality special education reform in the Westside Community Schools. The stakeholders group was represented by parents and teachers, both special education and regular education, building administrators and representatives from the Nebraska Department of Education.

Additionally, we brought in Dr. Margaret McLaughlin from the University of Maryland to work with a group of stakeholders made up of three representatives from each building and administrators from the central office. Dr. McLaughlin spent a full day with this group discussing

special education reform and identifying very specific needs that they saw with a set of action plans for each need. All of this information has been implemented into the enclosed Pilot Site Project proposal.

POTENTIAL FOR REPLICATION

There is no question that the program model in the pilot project can be replicated across the State of Nebraska. We believe that regardless of the size of the district, the preventative programs that we describe can be advantageous to any district. It would seem to be most advantageous to those districts that are growing rapidly and that are showing a large increase in the number of students with disabilities. If flexibility can be granted to other districts, then the potential is for a large state-wide reduction in the number of students identified with disabilities.

PROGRAM EVALUATION

Dr. Margaret McLaughlin and staff at the Institute for Children and Youth at the University of Maryland College Park will assist in the evaluation of our reform efforts. We will closely monitor the number of students identified with a each building site. Although child count data does not demonstrate that students are achieving desired results, we will work with Dr. McLaughlin and her staff to implement a consistent set of accountability procedures for all students. As we take steps toward a new and inclusive accountability system, we will look at the following:

1. Alternative approaches to accountability
2. Data needed to demonstrate that education is working for students with disabilities
3. Barriers to the collection of this data

SPECIAL EDUCATION ACCOUNTABILITY COMMISSION

TO: Steve Milliken, Director of Special Education
Westside Community Schools

FROM: Jean Sigler, Chair, Subcommittee on Pilot Evaluation
Special Education Accountability Commission

RE: Evaluation of pilot programs

DATE: November 22, 1995

The Special Education Accountability Commission and the Department of Education are jointly responsible for the monitoring and evaluation of pilot programs which have been approved by the Commission. The Commission has taken the position that the pilot schools have the primary responsibility to establish evaluation criteria and conduct follow up evaluation studies of their pilots. However, because the Commission has given the pilots significant waivers from State statutes and regulations, it does have some responsibility to monitor the programs and to make sure that the pilot schools are evaluating the programs as they said they would in their pilot application.

At this point the pilot is well into its school year of implementation. It seems appropriate to ask some questions concerning your district's progress in operationalizing the evaluation criteria which were included with the approval of your pilot program. Those criteria included:

1. The number of students identified at each building site (waiver of verification criteria).
2. Growth of the budget of special education in line with the percentage caps on State appropriations in LB 742.
3. Changes in caseloads (waiver of regulation)
4. Application of district-wide outcomes, as described in the "Outcomes Education and Assessment Plan" of the Westside Community Schools to students with disabilities.
5. Flexible staffing (waiver of endorsement regulation).
6. Increased parental participation.
7. Increased staff collaboration.
8. Services for students no longer qualifying for special education using special education staff.
9. Enhanced staff development.

These are the very general criteria which were stated or implied in your written application (and supplemental letter to the Commission). In addition, your application indicated that the District would work with Dr. Margaret McLaughlin to design more specific outcomes and verification criteria. What can you tell us about your progress in this regard?

Criteria numbers 1 through 3 may form the basis for a quantitative evaluation of the pilot. How is the district collecting and analyzing data on those evaluative criteria? What progress is the District making in operationalizing these and the other more qualitative criteria in numbers 4 through 9?

The Commission was concerned about assuring that support services will continue for students no longer qualifying for special education. Criteria number 8 gets to this issue. How is the District accomplishing this goal?

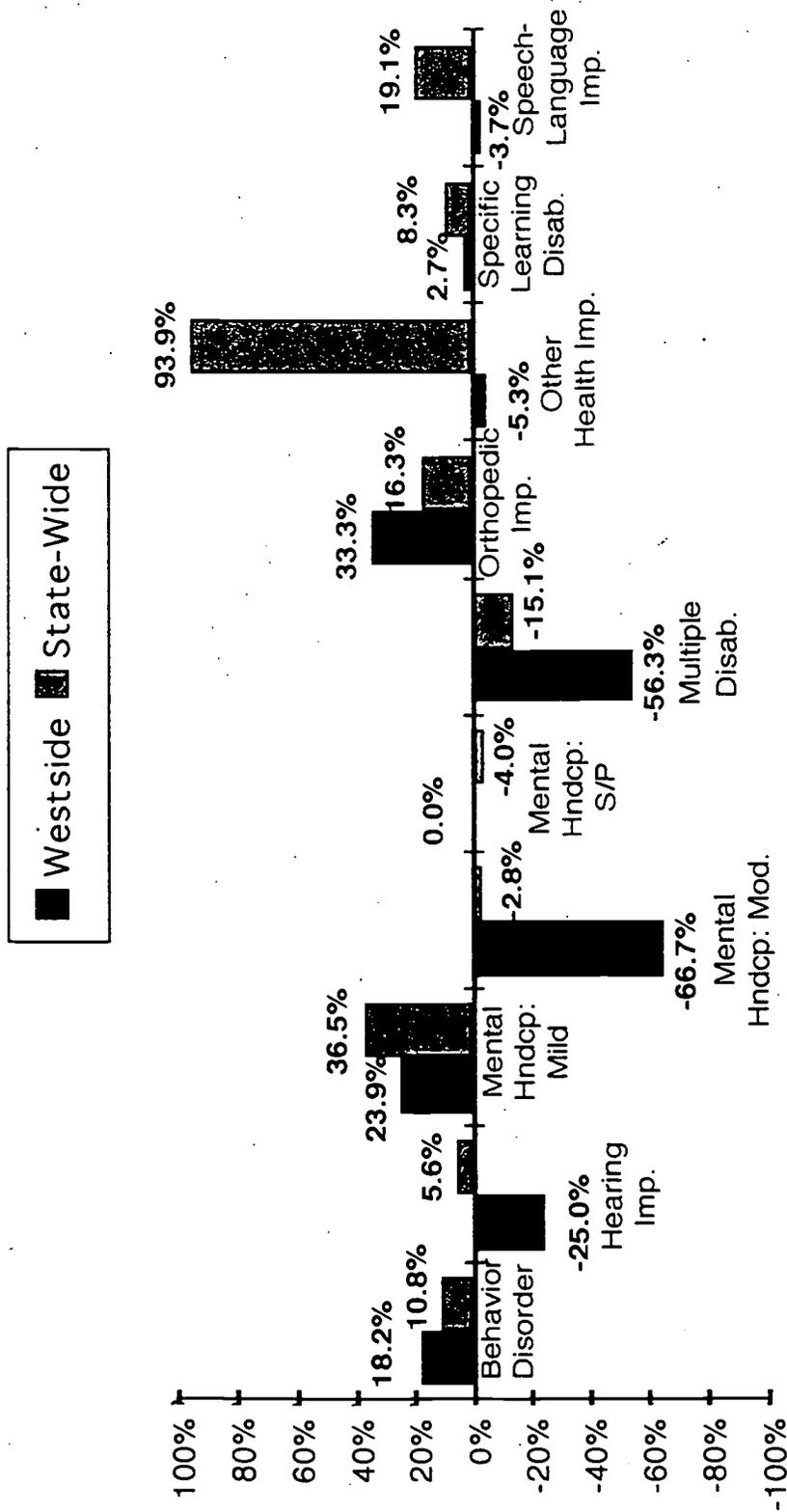
The Committee is also very interested in satisfaction with the pilot among parents, teachers and others affected. Would the District consider some type of satisfaction survey of impacted persons?

Please let us know what your plans are for conducting the evaluation of your pilot. We recognize that good evaluation activities are hard work and resource consuming. The Committee stands ready to meet with you to discuss how we can assist you in the evaluation process.

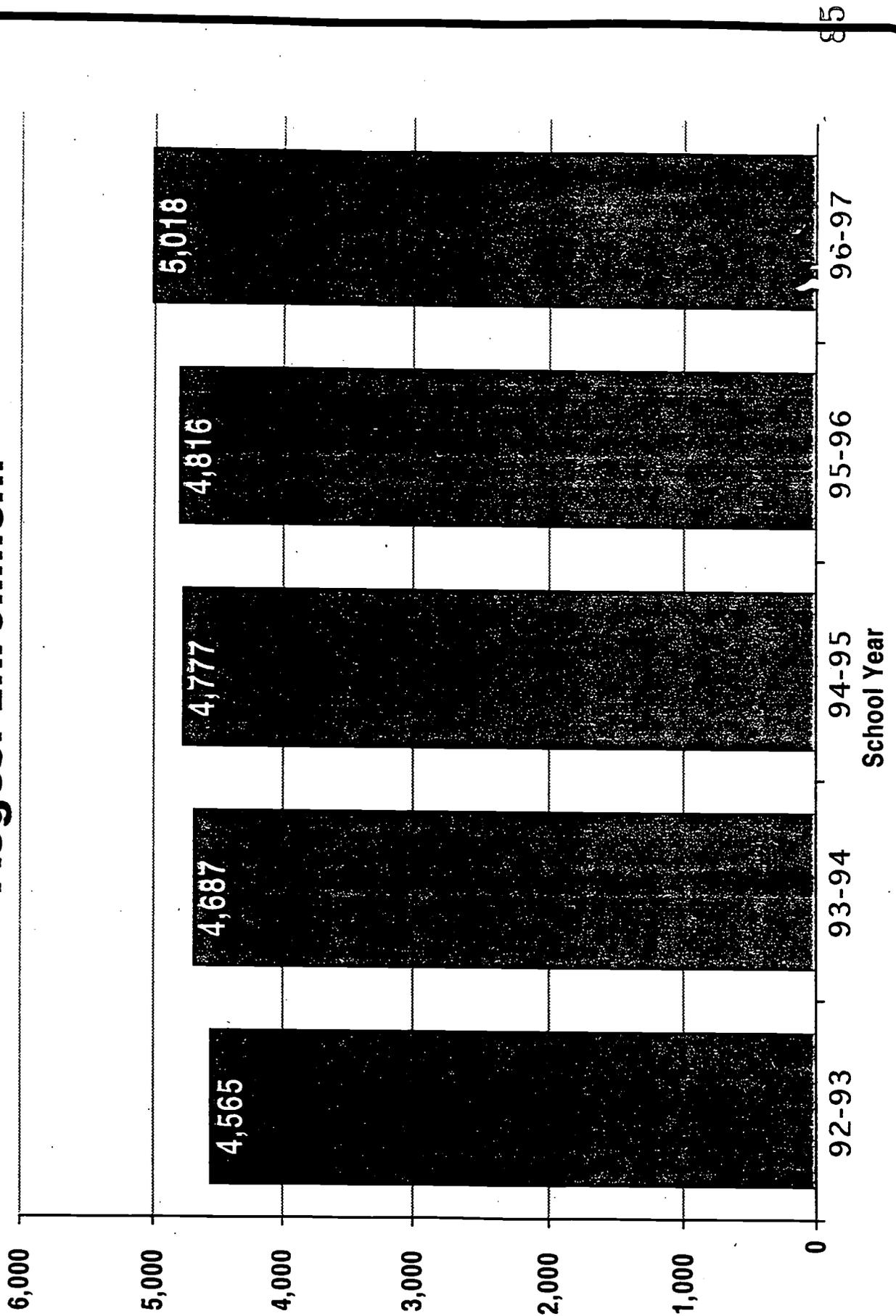
SPECIAL SERVICES: WESTSIDE COMMUNITY SCHOOLS

The following chart displays the five-year variance in the number of students identified in ten disability categories. The chart compares total State numbers to local district numbers during the last five years.

5-Year Percentage of Change



Westside Community Schools August Enrollment



DISTRICT-WIDE CHILD COUNT
Westside Community Schools



STUDENT COUNT

Disability	STUDENT COUNT										# Change		% Change	
	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1 Yr	6 Yr	1 Yr	6 Yr	1 Yr	6 Yr	1 Yr	6 Yr
Behavior Disorder	41	44	41	51	55	52	-3	11	-5.5%	26.8%				
Deaf/Blindness	0	0	0	0	0	0	0	0	0%	0%				
Hearing Impairment	26	36	41	37	30	27	-3	1	-10.0%	3.9%				
Mental Handicap:Mild	44	46	41	51	53	57	4	13	7.6%	29.6%				
Mental Handicap:Moderate	61	48	41	31	25	16	-9	-45	-36.0%	-73.8%				
Mental Handicap:Severe/Profound	22	24	22	21	19	24	5	2	26.3%	9.1%				
Multiple Disabilities	34	32	35	30	23	14	-9	-20	-39.1%	-58.8%				
Orthopedic Impairment	10	12	13	16	17	16	-1	6	-5.8%	60.0%				
Other Health Impairment	22	19	23	20	20	18	-2	-4	-10.0%	-18.8%				
Specific Learning Disability	191	188	203	215	207	193	-14	2	-6.7%	1.1%				
Speech-Language Impairment	88	82	102	92	87	79	-8	-9	-9.2%	-10.2%				
Visual Impairment	6	4	5	3	3	2	-1	-4	-33.3%	-66.7%				
Autism	---	---	---	5	8	9	1	NA	-12.5%	NA				
Traumatic Brain Injury	---	---	---	1	4	4	0	NA	0%	NA				
TOTAL	545	535	567	573	551	511	-40	-34	-7.3%	-6.2%				

STATE-WIDE CHILD COUNT
Nebraska Department of Education

Disability	STUDENT COUNT						# Change		% Change	
	1991-92	1992-93	1993-94	1994-95	1995-96	1 Yr	5 Yr	1 Yr	5 Yr	
Behavior Disorder	2599	2693	2760	2817	2879	62	280	2.2%	10.8%	
Deaf/Blindness	5	4	3	6	5	-1	0	-16.7%	0%	
Hearing Impairment	628	680	684	687	663	-24	35	-3.5%	5.6%	
Mental Handicap:Mild	3429	3714	4030	4369	4681	312	1252	7.1%	36.5%	
Mental Handicap:Moderate	892	846	840	861	867	6	-25	0.7%	-2.8%	
Mental Handicap:Severe/Profound	250	259	298	266	240	-26	-10	-9.8%	-4.0%	
Multiple Disabilities	557	519	446	459	473	14	-84	3.1%	-15.1%	
Orthopedic Impairment	669	772	791	836	778	-58	109	-6.9%	16.3%	
Other Health Impairment	928	1089	1273	1560	1799	239	871	15.3%	93.9%	
Specific Learning Disability	14261	14555	14948	15231	15444	213	1183	1.4%	8.3%	
Speech-Language Impairment	9698	10255	10753	11216	11552	336	1854	3.0%	19.1%	
Visual Impairment	256	282	273	264	263	-1	7	-0.4%	2.7%	
Autism	---	---	48	83	136	53	NA	63.9%	NA	
Traumatic Brain Injury	---	---	70	108	146	38	NA	35.1%	NA	
TOTAL	34172	35668	37199	38763	39926	1163	5754	3.0%	16.8%	

	S/A PROGRAM	S/A TRANSP	COOP PROG	COOP TRANSP	TOTAL SCHOOL AGE
92-93	\$3,243,142	\$176,975	\$1,907,569	\$135,900	\$5,463,586
93-94	\$2,837,559	\$161,095	\$1,921,615	\$139,991	\$5,060,260
94-95	\$2,985,033	\$157,040	\$1,526,615	\$145,270	\$4,813,958
95-96	\$3,316,317	\$153,462	\$1,195,116	\$140,250	\$4,805,145
96-97	\$3,273,218	\$157,357	\$1,114,184	\$146,530	\$4,691,289
	0.93%	-11.09%	-41.59%	7.82%	-14.14%
Formula used sum of (96-97 - 92-93) divided by 92-93					
	BAF PROGRAM	BAF TRANSP	TOTAL BAF	GRAND TOTAL	
92-93	\$374,149	\$52,500	\$426,649		\$5,890,235
93-94	\$414,883	\$75,500	\$490,383		\$5,550,643
94-95	\$428,935	\$75,500	\$504,435		\$5,318,393
95-96	\$419,811	\$69,000	\$488,811		\$5,293,956
96-97	\$399,541	\$69,000	\$468,541		\$5,159,830
	6.79%	31.43%	9.82%		-12.40%

93

92

BUDGET INFORMATION

There has been a great deal of attention and concern both at the federal and local levels regarding the increase in special education costs. In the past five years, Nebraska's special education expenditures increased by fifty percent (50%). Due to those concerns, a local challenge for District 66 was to control spending while offering quality, state-of-the-art services to all students. With flexible and creative use of staff, supplies and school facilities, Westside Schools has decreased their special education budget by 12.4% over the same time period.

YEAR	SCHOOL AGE	PRESCHOOL	SCHOOL AGE & PRESCHOOL GRAND TOTAL
92-93	\$5,463,586	\$426,649	\$5,890,235
93-94	\$5,060,260	\$490,383	\$5,550,643
94-95	\$4,813,958	\$504,435	\$5,317,393
95-96	\$4,805,145	\$488,811	\$5,293,956
96-97	\$4,691,289	\$468,541	\$5,159,830
	- 14.14%	9.82%	-12.40%

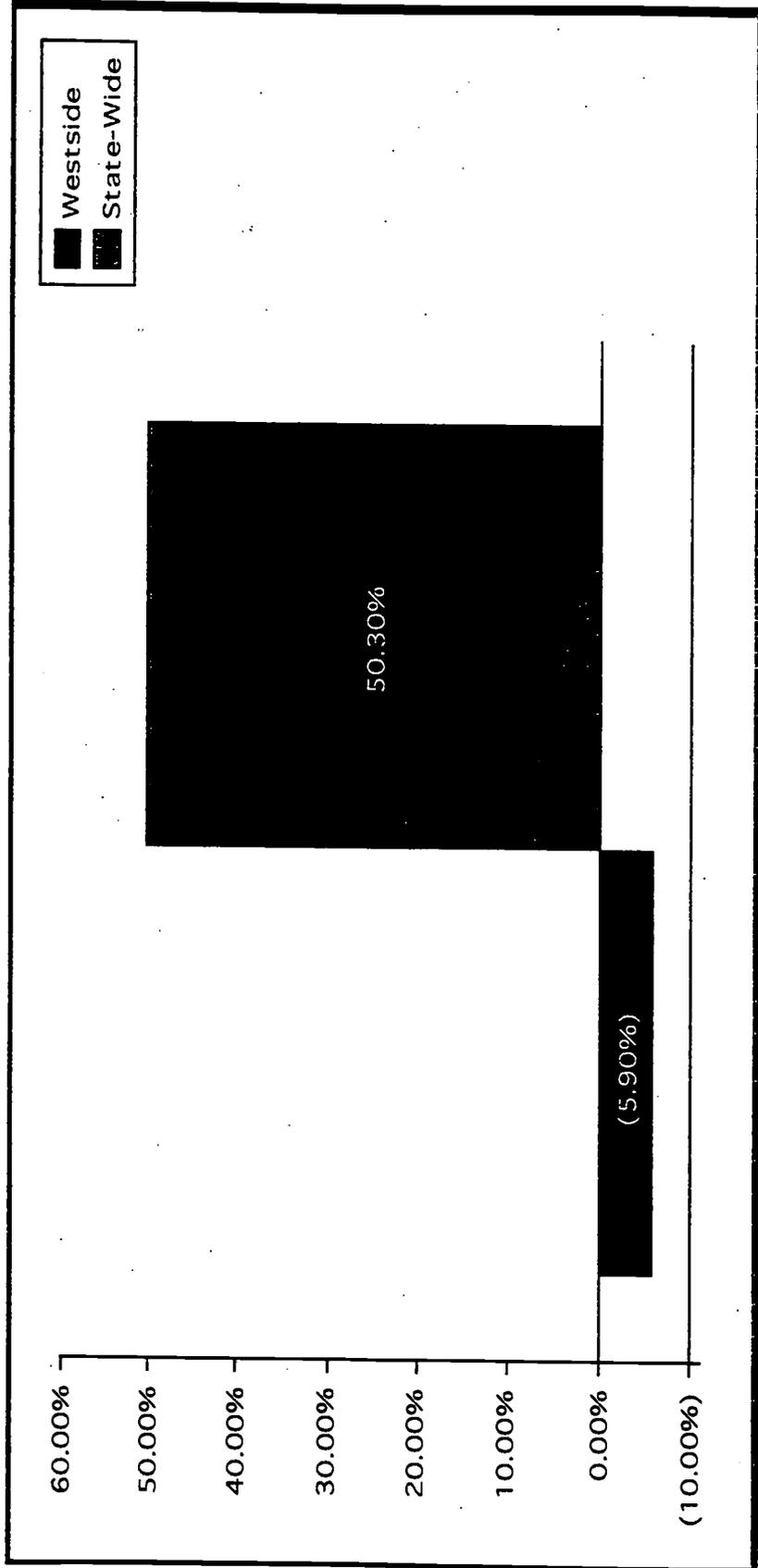
The figures above indicate the special education budget approved by the Westside Board of Education prior to the start of each school year. The actual expenditures may vary slightly in each program.

SPECIAL SERVICES: WESTSIDE COMMUNITY SCHOOLS

The following chart displays the five-year budget changes in School-age Special Education programs. The chart compares total State expenditures to local district expenditures during the last five years

Year	Westside \$	% Change	State-Wide \$	% Change
90-91	\$3,867,246.00	0.0%	\$102,128,359.00	0.0%
91-92	\$3,945,901.00	2.0%	\$113,864,814.00	11.5%
92-93	\$3,817,828.00	-3.2%	\$128,175,063.00	12.6%
93-94	\$3,892,856.00	2.0%	\$138,656,545.00	8.2%
94-95	\$3,637,243.00	-6.6%	\$153,492,795.00	10.7%

▲ Projected



**STAFF OVERVIEW
1995/96**

Building	Total Enrollment	Special Needs Students	SPED Instructional Staff	SPED Ratio	SPED Teacher Assistant Hours
Hillside	405	38	3.25	11.6:1	24
Loveland	281	17	1	17:1	6
Oakdale	280	31	2	15.5:1	15.25
Paddock Road	241	35	2	17.5:1	31
Prairie Lane	174	25	2.5	10:1	31
Rockbrook	264	32	3.0	10.6:1	40.25
Sunset Hills	132	10	.5	10:.5	6.5
Swanson	286	20	1.5	13.3:1	13
Underwood Hills	211	16	1.5	10.6:1	7.5
Westgate	266	47	4.0	11.7:1	31
Westside Middle	752	106	6	17.6:1	74
Westside High	1510	134	13	10.3:1	119

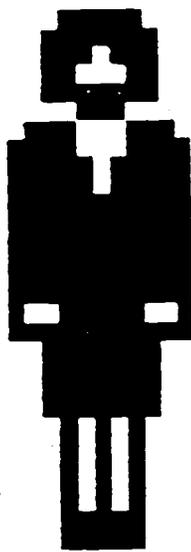
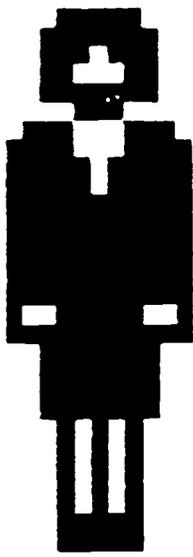
Swanson School's Innovative Building Project For Serving Academically and Socially Diverse Students

- I. Problem Solving Teams/Swanson Assistance Team (SAT)
 - A. Meets the needs of students at both ends of the spectrum as well as the range in the middle
 - B. Solicits parental involvement
 - C. Supports involvement of special area teachers
 - D. Develops written plans for all students receiving support services

- II. Student Assessment/Swanson Needs Assessment Profile (SNAP) ✓
 - A. Considers information regarding multiple intelligences
 - B. Documents strengths and deficits
 - C. Uses assessment information from a variety of sources

- III. Delivery Systems
 - A. Proposes a staffing plan to maximize the use of staff expertise
 - B. Investigates scheduling options to facilitate delivery of student services
 - C. Implements class peer tutors and cross-age tutors
 - D. Increases team teaching and collaboration

- IV. Staff Development
 - A. Coordinates with the existing building plan
 - B. Develops an understanding of multiple intelligences
 - C. Provides training in team building skills and curriculum adaptations
 - D. Coordinates with the Swanson Continuous Quality Improvement (CQI) Team

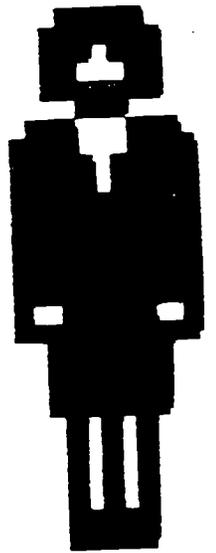
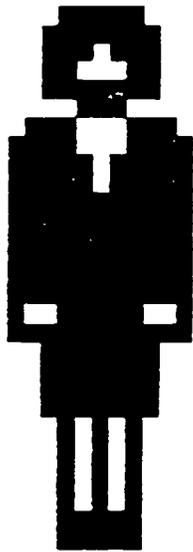
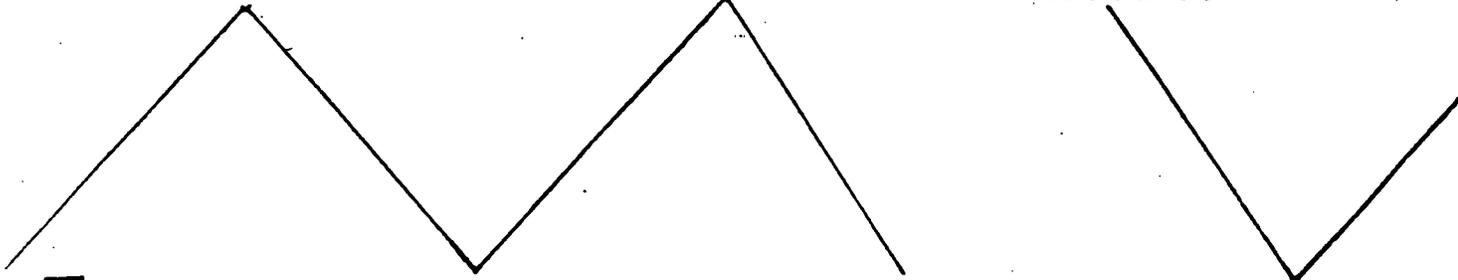


4th Grade Teacher
1/2 day/week EY

Full time
Resource

1/2 time
Resource

1/2
Rea



1/2 Time
Support Services

4th Grade

1/2 Time
Support Services

Full Time
Support Services

TO: Pilot Evaluation Subcommittee (Jean Sigler, Chair, Max McFarland and Velda Lambert)
FROM: Larry Scherer
RE: 7-22 meeting summary, materials
DATE: July 23, 1996

At the 7-22 telephone meeting, members reviewed the status of the Grand Island and Westside pilot programs, past efforts at evaluating the programs and plans for future evaluation efforts. Jean, Max, myself, Don Anderson and Steve Milliken were on the line. Jim Werth was unavailable.

1. Grand Island

With regard to Grand Island, it was noted that Jim Werth had provided information and impressions via E Mail earlier in the day. Jim had also sent information last December showing that the lower cut scores for LD, S-LI and ADD on the verification criteria had only impacted one student, who would have otherwise been included in special education via a new referral and evaluation. Jim noted that for the whole year only a few students had been impacted. (Exact numbers will be provided.) Those students' progress was being monitored through an SAT and accommodation plans. The small impact was attributed primarily to a restructuring of the District's SAT process. The SAT teams were felt to be more effective in helping borderline students through improved accommodations at the building level so that there were fewer numbers of these students referred on to evaluation for sped.

Jim would like to see the pilot continue for another year to get a better evaluation of the impact of the pilot and the SAT changes. Jim would like to develop a method to screen students who might have qualified under the old criteria. These students could then be tracked to see what happens to them-- later referral, Title services, etc. Jim expressed the opinion that it would take a larger change in the criteria to make a significant monetary impact on the district.

I have requested follow-up information on the SAT process now used by GI which apparently has been successful with borderline students. In addition, Max requested information on the numbers of referrals to sped evaluation and the percentage of those evaluated who were verified, before and after the new SAT. (Data from the Sandhills Coop shows less referrals for evaluation but a higher "hit rate" (%) of those referrals which actually are verified.) Jean would like to see what happens to those not referred to MDT in terms of test scores or other outcome data.

There was somewhat of a consensus that the SAT process changes may have contaminated the data with regard to the lower verification criteria. However, substantiation of the literature, which generally shows the effectiveness of pre-referral, prevention efforts would be worthwhile information from the pilot.

2. Westside

With regard to the Westside pilot, the Committee engaged in fruitful discussion with Steve Milliken. Information provided in the past was reviewed. (Additional copies are attached). It was clarified that some of the budget data included contract students which did reduce the District's overall sped budget. However, the budget showed very limited growth (and current year reduction) with the contract portion removed. Steve will provide budget figures with the coop portion shown separately. The child count data showed lower growth rates in Westside than the State at large. Significantly lower growth rates were seen in LD, S-LI, and OHI (ADHD). These budget and child count figures were attributed to greater use of SATs, principals expectations (contrary to labeling if possible), staff development and collaboration and flexible staffing.

Waivers had allowed for re-assignment of staff and more effective use of existing staff. As an example, at Swanson elementary, total FTE sped staffing was down while reading (Title) and support service staff was up. As another example, school psychologists are now located at building sites where their role is more support, instructional planning and consultant rather than the traditional "tester". In response to a question, Steve responded that the district was providing inclusive settings, a range of support services (continuum of services) and saving money, primarily through efforts to reduce labeling, maximize services and strong prevention.

In response to a question about outcomes and district benchmarks, it was indicated that the district did include sped students in its portfolio assessment process and was pleased with the results. Other outcome data included positive parental satisfaction and an observed reduction in the number of complaints to the superintendent from parents.

In response to a question about replication of Westside's principals' philosophy that all students can be successful, Steve indicated that this attitude could be replicated if the Westside pilot showed positive results.

Additional data requested included: 1) Data on how kids who do not get into sped are doing after intervention strategies are implemented (e.g. curriculum based assessment, grades, etc.); 2) comparison of the numbers of referrals to sped evaluation and the hit rate of those evaluated who actually are verified both before and after the pilot was implemented; 3) Budget numbers with the coop program (contract students) shown separately; and 4) A narrative description of an implemented or planned non-spiced intervention strategy and flexible staffing.

Attached are documents for each pilot site which include the approved application, the list of follow-up questions from the Committee, and pilot site data provided to the Committee. If you need additional information, please let me know.

Copies: Don Anderson, Jim Werth and Steve Milliken

PART C

FINANCE REPORTS

June and September, 1996

PART CI

COST CONTAINMENT RECOMMENDATIONS

August, 1996

INTRODUCTION

The original legislation creating the Commission says that "The primary goal of the Special Education Accountability Commission shall be to identify strategies for accomplishing cost containment in special education that will result in average special education costs increasing at a rate no greater than the average annual education growth rate." Section 79-3367 RRS. That primary goal occupied much of the Commission's time during the first year of its existence. Information and recommendations which address that goal are found in Commission's initial report and concept paper, which stresses the importance of unification of special education and general education theoretically, programmatically and financially.

In addition, cost containment was an element discussed in the Commission's second report, which recommended a new funding system for special education. One of the criteria for new funding system prescribed in LB 742 was that State appropriations for special education would grow at the same rate as State appropriations for general education. The funding system recommendation of the Commission which recommends increasing special education appropriations at the same level as appropriations for general state aid and distribution of special education appropriations through the general education, equalization formula, addresses directly this state level cost containment focus of LB 742.

This report focuses on cost containment from a broader perspective. The Commission has, from the first, taken the perspective that the total costs of special education should be contained regardless of whether these costs are borne by Federal, State or School District taxpayers; in other words, controlling the growth of costs, not just shifting those costs from one level of government to another.

This section of the report will make some suggestions for cost containment in a number of different areas. Some of the recommendations are necessary as clarifications or logical extensions of the Commission's recommendations in the funding report. Items 1 and 2, which deal with NDE approval of the credentials and contract rates of third party providers, is necessary because, with the proposed new funding system through general aid rather than current cost reimbursement system, the existing review process for third party providers would be lost or dismantled. Item 6, relating to Early

Childhood Special Education and Early Intervention is necessary to clarify that those programs would continue to be funded in the same way as under current law. Other items and issues were suggested by groups such as the Nebraska Association of Special Education Supervisors and the Nebraska Assistive Technology Project.

These recommendations were generated by a combined group made up of members of the Commission's Data/Funding Subcommittee, the Nebraska School Finance Review Committee and the Nebraska Department of Education. Public comments were received on a draft on May 6 and subsequent revisions were made by the Data/Funding Subcommittee. The Commission took action to modify and adopt the following set of recommendations for inclusion in its final report on July 30, 1996.

FUNDING-RELATED AND COST CONTAINMENT STRATEGIES

Funding Subcommittee Draft

Approved July 30, 1996

1. All services provided by third party contractors, including educational service agencies (as defined in Rule 51) and individuals, will meet State program standards established by the Department of Education. (For example, credentialing requirements for staff under Rule 51 of NDE and rules of other State licensing agencies should apply to staff of third party contractors.)
2. The Department of Education will have final authority to approve or disapprove contract service rates of third party providers of specialized instruction, therapies (including physical and occupational therapies) and health related services. The rates approved should be realistic and sensitive to the market pressures of actual costs, supply and demand for such services. All such contracts for services shall define student performance objectives and include specific outcome measures. Contract fees should be paid only to third party providers approved by the State Department of Education.
3. The State Schools, the Nebraska School for the Deaf and the Nebraska School for the Visually Handicapped, and the Nebraska Diagnostic Resource Center will be subject to the same provisions for State oversight of program quality and approval of costs and rates as private providers.
4. The State must clarify, in statute and rule, what is an "educational benefit" so that schools can more easily distinguish educational services (and costs) from non-educational services, such as health and medical services. The Department of Education should implement, with due and deliberate speed, recommendations of a Special Education Advisory Council Task Force which will clarify and limit the definition of educational benefit. (For example, medical services provided following surgery are often primarily for the health and medical welfare of the student rather than an educational benefit.)
5. The Legislature and Congress should prohibit clauses in health insurance policies which exclude coverage of services to students with identified disabilities when services are primarily medical in nature (not primarily for an educational benefit). This would apply to all insurance companies subject to the jurisdiction of the State Department of Insurance, as well as employer plans which are funded or controlled by the State of Nebraska (For example, the University of Nebraska benefits plan).

6. Services for early childhood special education, ages 0 - 5, should continue to be funded, as State mandate, through an allowable cost reimbursement formula using Federal Part B special education funds and State general fund appropriations. The State should fund Part H early intervention services coordination for infants with disabilities and their families through an offset of receipts of school districts under the MIPS program against State reimbursement for early childhood special education

7. The Education Committee of the Legislature should designate a task force composed of representatives of the following : the Department of Education's Division of Vocational Rehabilitation and Office of Special Populations (Transition Initiative), the Department of Public Institutions' Developmental Disabilities Division and Mental Health Division, school districts and Educational Service Units and /or cooperatives, parents and third party service providers. The goal of the task force would be the development of legislation which will create a cooperative interagency service model for the provision of transitional and vocational services for individuals with disabilities ages 14 through 21 and beyond. The intent of this Legislation would be to create a seamless delivery system which would allow students to move from public school services to adult services without interruption or the requirement to meet new eligibility requirements. All agencies should share in the program/services management and fiscal responsibilities associated with this new delivery model which will begin at age 14. The services identified shall be incorporated into the student's educational/transitional/vocational plans and shall be based upon a developmental model designed to respond to students' individual assessment of needs , provided in the least restrictive environment. The goal of the interagency plan shall be the elimination of duplication of effort and the enhancement of fiscal and human resource efficiency . The interagency model should require the development of a transitional/vocational plan that, along with the student's individualized educational plan, would guide the provision of services and the completion of the student's public education through the high school level. This plan should allow most students to complete high school prior to age 21 (by 18 if possible) with the necessary services developed by multiple agencies in order to enable the young adult to successfully transition into his/her community.

8. The Nebraska Department of Education should develop verification criteria for determining how students qualify for special education related services.

9. The education costs of State wards should be shared equally between the school district of residence and the State of Nebraska,

10. The State Department of Education should encourage and facilitate cooperation and shared usage of assistive technology, such as a centralized registry of available equipment, regional lending centers, and centralized purchasing, distribution and training for adaptive technologies and equipment. The Department should also encourage and facilitate the cooperation and sharing of professional development library and resource materials through cooperative arrangements of Educational Service Units and school districts.

PART C2

FUNDING SYSTEM REPORT

June, 1996

TABLE OF CONTENTS

Preface of the Commssion

Ad Hoc Committee Plan

Appendices

Appendix A	-----	Members of the Commission
Appendix B	-----	Members of the Ad Hoc Committee
Appendix C	-----	Other funding alternatives presented
Appendix D	-----	LB 742 criteria checklist
Appendix E	-----	Funding Concepts:Pros and Cons
Appendix F	-----	District specific high needs factor

COMMISSION PREFACE

Several important Legislative changes have occurred since the Legislature, through LB 742, charged this Commission with making recommendations for a new funding system for special education for Nebraska. Specific changes include passage, in 1996, of LB 299, LB 1114, LB 1050 and LB 1044. These laws will dramatically change the issues faced by local boards, communities and particularly families and advocates for disabled children and youth. Under LB 299, school districts are faced with a 2% budget lid for the 1996-97 school year and a 0% budget lid for 1997-98. In 1998-99, under LB 1114, school levies will be limited to \$1.10, the same year that the new funding formula for special education is slated to go into effect under LB 742.

Also, as a result of LB 1044, human services, including those for children and youth will involve a blended approach that will blur the lines of responsibility not only within education, but among education, mental health, medicine, social services, and other service agencies. Special education programs and services need to be viewed in conjunction with natural local networks and other community resources as part of a broader strategy to achieve results. The Nebraska Partnership, as approved in LB 1044, is an example of this kind of approach. That initiative envisions one system for meeting the needs of adults, children and youth and families in Nebraska. Education must be a part of this collaborative process. This will allow for services and programs that are more cost effective for consumers.

Given this dramatically different financial and service delivery landscape, and considering the concerns expressed by many in public testimony and written comments in mind, it is recommended that the current funding system be maintained for a period not to exceed three years. This recommendation would mean a delay of one additional year (until the 1999-2000 school year) before a new funding system for special education would be implemented.

In many ways, the real issue is not how special education services are funded, but to what financial degree. The Commission has struggled with some of the apparent conflicts within the Legislative criteria for a new funding system found in LB 742: Specifically how to create a funding system that "assures that adequate resources are available to meet the needs of handicapped students and students needing support services" in the face of fundamental changes in school finance and Legislative concerns for cost containment. The Commission is to present a recommendation for a funding system which is "identification and program neutral" while also paying attention to students with "extraordinary needs". The charge of the Legislature has placed the Commission in the debate over equalization at the same asking the Commission to guarantee that the rights of individual students are protected.

Included in this document, in Appendix C , are funding proposals from groups and individuals which were considered by the Ad Hoc Committee, as per LB 742. These should be considered by the Legislature in conjunction with the proposal which follows. The Commission offers the Ad Hoc Committee proposal, consistent with the charge of the Legislature, and hopes the Legislature will seriously consider the issues outlined above.

The Commission reserves the right to modify the proposed funding recommendations made in this document after the Commission adopts proposed recommendations for an accountability system in July and August of this year. Draft accountability recommendations, such as increased pre-referral and prevention efforts, enhanced teacher training and staff development and greater reporting on student performance, may have significant fiscal impacts on schools and the State. The Commission plans to re-examine its recommendations for a new funding system in August in light of the potential fiscal impacts of proposed accountability changes.

AD HOC COMMITTEE ON SPECIAL EDUCATION FUNDING

SPECIAL EDUCATION FUNDING PLAN

INTRODUCTION

In 1995, the Legislature enacted LB 742, which provides, in part:

"It is the intent of the Legislature that, beginning with school year 1998-99, there shall be implemented a new funding system for special education.... The new funding system shall be identification and program neutral, assure adequate resources are available to meet the needs of handicapped students and students needing support services, and provide for equity in special education programs and support services..... the new funding system should be designed so that the average annual special education costs increase at a rate no greater than the average annual growth rate of general education. State funding should be made available to meet the needs of handicapped students and students needing support services without the requirement that such students be identified and verified as students with disabilities...." (Section 2, LB 742, 1995) (Appendix D is a full list of LB 742 funding system criteria.)

The Legislature defined "support services" as "preventative services for those students not identified or verified as handicapped.....but demonstrating a need for specially designed assistance in order to benefit from....general education curriculum" . (Section 3, LB 742, 1995)

Following enactment of LB 742, the Special Education Accountability Commission carefully developed recommendations for a new system to finance special education services. The Commission's Subcommittee on Data/Funding has been working since June of 1995 as an Ad Hoc Committee on Special Education Finance with representatives of the School Finance Review Committee, the Nebraska Department of Education and the Legislature's Education Committee. The Ad Hoc Committee has discussed a number of concepts and options for a new finance system within the context of the criteria for a new system established by the Legislature in LB 742. The Ad Hoc Committee has considered the special education finance proposals submitted by a number of groups in January 1996. Those proposals were useful in crystallizing some of the issues critical to a new funding system.

The Committee has come to some consensus on several key assumptions and some basic decisions for designing a new funding system for special education. The Committee has considered a number of options and weighed the advantages and disadvantages of those options in light of the Legislature's criteria for a new funding system. (See Appendix E.)

I. KEY ASSUMPTIONS AND BELIEFS

- This document assumes a paradigm shift: The old paradigm for funding special education programs may be described as a separate, categorical system. The new funding system described in LB 742 contemplates a blended, non-categorical approach which enables a unified programmatic design, merging the delivery of special education services and regular education services into one whole. In the past the premise has been that regular education is the financial responsibility of school districts, with help from the State in the form of general state aid. Special education was viewed as a primary responsibility of the State (due to Federal and State mandates) with some local contribution in the form of the local share of excess costs and the AAPC. The trend for the future is to view all of education as a local district funding responsibility with help from the State in the form of general state aid.
- The Legislative context of the Commission's work is containment of *State* special education spending. We also assume that the new funding system should be sensitive to the impacts of cost containment on the budgets and tax levies of local school districts which may be subject to dramatic system changes if any one of a number of constitutional property tax capping efforts is successful.
- Second, the Legislature should be equally concerned about the quality of effectiveness of special education services. The work of this Committee is just one aspect of the Commission's charge. Recommendations of the Accountability Committee for an accountability system for special education need to be coordinated with recommendations of this subcommittee for a funding system. We assume a new accountability system will be in place when the new funding system is implemented.
- The Committee began with the assumption that all sources of funding and all programs which provide services to students with disabilities are "on the table", unless specifically taken off: all State and Federal funds can be redirected into the new finance system. This would include State and Federal funds currently being expended in programs for school age special education, special education transportation, early childhood special education and early intervention, and residential care, as well as State operated residential schools (NSD and NSVI) and the Diagnostic Resource Center. The State Commissioner of Education has asked the U.S. Office of Special Education Programs if Federal funds can be redirected. The response was that a reassignment of the Federal funds to a non-categorical funding system (such as a block grant or the equalization formula) would have to assure a maintenance of effort. At this point, the Committee

believes that funding for Early Childhood Special Education and Early Intervention Programs should be kept separate because of the separate State mandates which exist for the 0 to 2 age population. Accordingly the Plan which follows would maintain separate funding for these programs through the current funding system. In addition, the Committee has tentatively decided to leave the funding for the State schools alone and not include it in the funding pool. Finally, a subcommittee is considering State management and funding for physical and occupation therapies. This leaves approximately \$118 million to be included in the pool of funds which would be distributed through the new funding system.

- Flexibility in funding is an important goal for school districts. This is true especially with regard to programs for students with mild disabilities and those needing support services to succeed in the general curriculum (even though not identified as "special education".)
- While overidentification of students in special education is not a problem on a statewide average basis for all disabilities (Nebraska is close to the national average in overall identification rate), there are disparities in the numbers of students identified in some disability categories across school districts. The LD (Learning Disabled), SL-I (Speech or Language Impaired) and BD (Behaviorally Disordered) categories are large and growing rapidly in many schools districts and in the State overall. It is acknowledged that the current verification criteria are somewhat subjective, leaving some discretion to school districts to identify or not to identify.
- Conversely, there was consensus that regular education has not been equipped or financed to meet the needs of students with learning problems in the regular classroom. Often students of normal intelligence, in the LD and SL-I categories for example, have different learning styles and need help in learning in a different fashion. Special education has been the most readily available option for securing that needed help. This Committee assumes that an active collaboration between regular and special education, enhanced in-service programs, inclusive practices and targeted teaching and learning strategies can be successful in serving a broader population of students outside of special education. The new funding system should be flexible in allowing this new service structure to evolve.
- Under the current reporting requirements for special education (Plans and Budgets, SESIS and Final Financials), focus has been placed on time spent in special education. The Committee believes that the reporting requirements must be minimized, to the extent possible, and that focus should be placed on the interventions and adaptations provided to students with special needs.

- There should be more collaboration and less competition for funding among regular and special education at both the local and state levels.
 - At the local level, blending funding sources together to serve student needs, will mean less encroachment and competition. Parents must realize that this will mean less money earmarked for special education and more money available to meet student needs (support and intervention activities) outside of special education.
 - In the past there has been competition between regular and special education as a result of the greater mandates and the Due Process hearing requirements of special education. In addition, special education was not under LB 1059 budget limitations, but was subject to greater financial reporting requirements. The Committee assumes that financial reporting requirements for special education will be minimized, to the extent possible given the continuing need for fiscal accountability for special education programs, and that budget lids for special education will be placed on a parity with those which apply to regular education.
 - On the State level, the Committee assumes that funding pools for special education and regular education can be kept separate, as well as linked together for purposes of establishing increases in State funding level. Under LB 742, the level of increase in special education funding has been limited to levels similar to those of regular education. The Committee assumes that this link will be maintained; that Special Education Appropriations will grow at the same rate as regular education appropriations. The Committee believes that some separate identity should be maintained for special education in order to continue some fiscal accountability for providing needed services.
- The funding system should be sensitive to the regulatory environment of special education (caseloads, verification criteria and certification requirements.) Likewise the State Department of Education must make its current and proposed new regulations sensitive to the new non-categorical funding environment. **New regulatory requirements with a fiscal impact should be fully costed out and funded by the State.**
- The Committee will compare its proposal for a new funding system to the current system from a conceptual standpoint. Statewide printouts will not be requested at this stage of discussion.
- The reality is that any new funding system proposed by the Commission, as well as the current system if it is re-enacted by the Legislature, will function within the confines of restricted (capped) State appropriations for special education.

- School districts will continue to be under Federal requirements to provide an appropriate education to students with disabilities as well as procedural Due Process requirements. ADA and Section 504 will continue as additional cost pressures.
- School districts, however, do have some discretion in controlling the growth in special education costs. Generally, schools have more discretion in dealing with the mildly disabled, borderline students than with the severely disabled.
- Some relaxation in federal restrictions on the use of special education funding would greatly enhance the flexibility of the State and school districts in designing a new non-categorical funding approach. As noted above, it is assumed that the Federal Part B dollars will continue to be utilized for the preschool program as long as that program continues to exist. (It was noted that the birth through age 2 program could be eliminated and the Federal funding attached to it moved to a different program.) Beyond that, there are serious questions which remain concerning the Federal maintenance of effort requirements: Does it apply on a State aggregate level or a district by district level? Could it apply on a regional level? Generally, the Committee assumes that the State has significant latitude to re-deploy State and local funding in a new funding system. The Commission and Department should continue dialogue with OSEP as a more specific plan is developed.
- Carrying over into the new, non-categorical funding environment, there will still be concerns about the quality and costs of services provided by third party providers. The Committee assumes that the Department, through Rule 51, and State licensing agencies will continue to maintain standards for the credentialing of staff who work with special education students (teachers, therapists, nurses, psychologists, etc.) For some medical/health services, the Department will establish maximum rates and for other such services, such as PT/OT, the Department, or some other State agency may actually negotiate rates and provide funding in order to contain costs and assure statewide access.

II. OPTIONS CONSIDERED

Based on the Legislature's charge to the Commission to recommend a new funding system for special education which meets specified criteria (See Appendix D), the Ad Hoc Committee reaffirms its earlier position that existing school age special education funds should be distributed through the equalization formula for general state aid, although some members of the Committee would prefer to maintain the current excess cost formula with some modifications.

The Committee has considered other funding options, including inclusion of a "high needs" and a block grant component in the funding system, in addition to equalization aid. Attached is Appendix B, which assesses the Pros, Cons and Issues associated with these options. In addition, the Committee considered the Pros and Cons of maintaining the current system given the reality of caps on State appropriations for special education, although, under LB 742, the Commission must report recommendations for a "new funding system". **The Committee does not recommend these high needs or block grant options.**

With regard to the high needs component, the Committee believes that school districts have the financial capacity to absorb the extraordinary costs of high needs students in their budgets. School districts have been able to handle the cost of high needs students under the current system, which is year in arrears. In addition, any special funding for high needs students would not be identification and program neutral and might encourage districts to provide extra services and incur added costs in order to receive State funding (I.e., a possible disincentive for cost containment.) If, however, a high needs component is believed by the Commission or policy makers to be essential, the Ad Hoc Committee would define high needs/high cost students using the following criteria:

- The student receives at least three distinct special education or related services under his or her IEP.
- The student spends at least 90% of his or school time in an alternative educational setting.
- The cost of educating the student is at least three times the tiered cost per student of the school district.

If the Commission feels that a high needs component is essential, the Committee would prefer that the component be integrated into the equalization formula as a district specific needs factor rather than established as a separate categorical funding pool. (See Appendix F.)

[The Commission listened to the concerns of educators and parents regarding the additional resources needed to serve high needs students. The response of the Commission was to adopt the following recommendation.

The Commission does believe that a high needs component is essential and that, within the equalization formula, school districts should receive additional State funding. On a district specific basis, school districts' needs should be determined by reference to the actual costs of providing services for high needs students, based on a definition of high needs

students similar to the one used by the Ad Hoc Committee in the preceding paragraph. The method described in Appendix F could be used to implement this recommendation.]

With regard to the block grant concept, the Committee believes that equalization aid also has the advantage of flexibility. Both are unrestricted and allow school districts to use state aid for preventative services. The major disadvantage of block grant funding is that it is nonequalizing aid, contrary to the equity goals of LB 1059 and the goal for equity in special education services stated in LB 742. Block grant funding is not sensitive to either the needs of school districts or to their resources. Moreover, many members of the Committee had serious concerns about block grant aid going to schools with no special education students or programs (absent some requirement for regional distribution or pooling of the aid in such situations)

Notwithstanding, if the Commission is convinced that non-categorical funding is an essential component of a new funding system, the Committee would recommend that funds be distributed on the basis of school age census and that there be no restrictions on the use of the money. However, schools would still be required to submit a year end showing the expenditure of all funds for special education services in order to comply with Federal maintenance of effort and reporting requirements.

III. BASIC FUNDING PLAN

1. Over the long term, the State should move to a funding system which does not differentiate between support for students in special education and those in regular education. To reiterate, the new funding paradigm is that each school district will be responsible for the education of all the students residing or optioning into the district, not just those in regular education. Identification does not transform a student into a State student rather than a district responsibility. The State's larger role must be to equalize and support the capacity of districts to educate all students and to equalize the burden on local taxpayers.
2. It follows that the State's long term goal should be to fund special education, just as regular education, through the general State aid system. Eventually, most State special education funds should flow through the equalization formula. This shift will recognize the importance of assuring equity to students as well as property taxpayers.
3. The proposal will mean that the use of State dollars flowing through the equalization formula will not be restricted at the school district level. In other words schools will be able to use this general state aid for students in special education as well as for preventative services ("support services") for the many

students currently identified as having mild disabilities, but who will not be identified under a non-categorical funding and collaborative programming environment.

4. At the State level, the State should continue to identify a separate appropriation for special education. The special education appropriations should be increased at the same level as appropriations for the general aid formula. At the local level, each district may compute the contribution to its aid package which is attributable to special education funding, if that is the desire of parents, taxpayer and the local board of education.

5. For purposes of compliance with Federal reporting and maintenance of effort requirements, districts will make a separate end of year report on State and local funds expended for special education services. However, the State funds flowing through equalization formula will not be restricted. This will allow districts to use the funds for "support services" as defined in LB 742.

6. In the equalization formula, all expenditures, (except transportation expenditures as described in LB 1050), and including special education expenditures of school districts should continue to be averaged on a tier-wide basis (as opposed to district specific basis) to assure that the new system is identification and program neutral and that it encourages cost containment. That is, special education expenditures should be used to compute tiered costs per pupil in the formula. Note however, that if the Commission believes that a high needs component is necessary, the Committee would prefer that expenditures of school districts for high needs students be counted on a district specific basis in the calculation of school district needs. (See Appendix F.)

[The Commission did not accept the recommendation of the Ad Hoc Committee on this point. The Commission does believe that a high needs component is essential. Therefore the Commission makes the following recommendation:

6. Within the equalization formula, school districts should receive additional State funding to recognize the additional costs of high needs students. On a district specific basis, school districts' "formula needs" as defined in the Tax Equity and Educational Opportunities Support Act, should be determined by reference to the actual costs of providing services for high needs students, based on a definition of "high needs students" similar to the one used by the Ad Hoc Committee on page 8 of this report. The method described in Appendix F could be used to implement this recommendation.]

7. At this point the Committee believes that all special education expenditures for school age programs should be included in the equalization program. Residential care will not be included in the equalization system.
8. Receipts and expenditures of Coops and ESUs which receive direct State funding for special education services delivered to schools would be assigned directly to the school district which receives the service. Under the equalization proposal only school districts would receive State funding.
9. As an additional cost containment strategy, special education expenditures of schools should fall under any budget limitation of school district's general fund expenditures.
10. The transition to the new system would occur over a time period not to exceed five years through a system which assures each school district that it will receive no less than a specified percentage of the prior year's aid.
11. The local contribution of school for district residents attending the Nebraska School for the Visually Handicapped and the Nebraska School for the Deaf should be the district's per pupil cost. To the extent possible, funding for the State Schools should be identification and placement neutral. The Committee supports movement of the State Board of Education towards utilization of district contract dollars for support of the Nebraska Diagnostic Resource Center.

SPECIAL EDUCATION ACCOUNTABILITY COMMISSION ROSTER

NAME	PHONE/FAX	ADDRESS	REPRESENTS
Doug Ackles	308/754-4433(W)	St. Paul Public School 1305 Howard Ave. St. Paul, NE 68873	Administrator or staff member not in special education
Keith Bartels	402/423-7256(H) 402/472-3025(W) FAX:402/472-3093	3706 Wildbriar Lane Lincoln, NE 68516	School Board
Margene Beatty	308/386-4529(H) 308/284-8481(W) FAX:308/284-8483	P.O. Box 128 Sutherland, NE 69165	Governor's Office
Ken Bird	402/399-0289(H) 402/390/2106(W) FAX:402/390-2120	Westside Com. Schools 909 So. 76th St. Omaha, NE 68114	Administrator or staff member not in special education
Robert A. Cannon	402/421-3042(H) 492/475-7011(W) FAX:402/475-8912	1000 NBC Center Lincoln, NE 68508	Parent
Lisa Fricke	402/373-4930(H) 402/373-4800(W) FAX:402/373-2712	119 South Crown Pt. Box 213 Bloomfield, NE 68718	At-large
Joseph Gaughan	402/557/2410(W) FAX:402/557/2509	Omaha Public Schools 3215 Cuming Omaha, NE 68131-2024	Administrator or staff member
Sandra Haughton	402/453-8418(H) 402/557-2753(W) FAX:402/557/2509	4922 Pratt Street Omaha, NE 68104	At-large
Velda Lambert	308/345-7507(H) 308/345-2072(W) FAX:308/345-2511	Route 3, Box 45 McCook, NE 69001	Public school special education teacher
Max McFarland	308/324-5375(H) 308/865-8508(W) FAX:308/865-8157	Dept. of Counseling & School Psychology Founders Hall, Rm. 2102 UN-K Kearney, NE 68849	Postsecondary special education
Nicolas Reyes, Jr.	308/635-2818(H) 308/630-5473(W) FAX:308/632-3820	2514 Broadway Ave. Scottsbluff, NE 69361	At-large
Richard Schoonover	402/293-5005(W)	Special Services Annex Bellevue Public Schools 2221 Main St. Bellevue, NE 68005	Special education administrator
Jean Sigler	402/551-0543(H) 402/346-0525(W) FAX:402/346-5253	Nebraska Parent Center 3610 Dodge Omaha, NE 68131	Parent

NAME	PHONE/FAX	ADDRESS	REPRESENTS
Patricia Thundercloud	402/878-2597(H) 402/878-2231(W) FAX:402/878/2881	P.O. Box 684 Winnebago, NE 68071	At-large
Sally Tremain	402/564-7966(H) 402/246-2075(W) FAX:402/564-5209	2619 21st St. Columbus, NE 68601	Public school classroom teacher
Bob Waite	402/644-2505(W)	Norfolk Public Schools P.O. Box 139 Norfolk, NE 68701	School business official
Daniel Weidner	402/444-6557(W)	Alpha School 1615 So. 6th St. Omaha, NE 68108	Private schools

APPENDIX B

**LB 742
SPECIAL EDUCATION FUNDING SYSTEM
AD HOC COMMITTEE MEMBERSHIP**

**SPECIAL EDUCATION
ACCOUNTABILITY
COMMISSION**

MARGE BEATTY
Sped. Director
ESU # 16
P.O. Box.128
Sutherlandland, NE 69165
(308 284-8481

KEN BIRD
Superintendent
Westside Community Schools
909 South 76th Street
Omaha, NE 68114
(402)390-2106

JOE GAUGHAN
Asst. Superintendent
Omaha Public Schools
3215 Cuming
Omaha, NE 68131-2024
(402) 557-2410

KEITH BARTELS
Board Member
Lincoln Public Schools
3706 Wildbriar Lane
Lincoln, NE 68517
(402) 472-3025

**SCHOOL FINANCE
REVIEW COMMITTEE**

DENNIS POOL
School Finance Administrator
Nebraska Dept. of Education
P.O. Box 94987
Lincoln, NE 68509-4987
(402) 471-2748

CLIFF DALE
Asst. Superintendent
Lincoln Public Schools
Box 82889
Lincoln, NE 68501
(402) 436-1000

GARY HAMMACK
Superintendent
Kearney Public Schools
310 W. 24th St.
Kearney, NE 68847
(308) 237-2278

DUANE STEHLIK
Superintendent
Falls City Public Schools
1415 Morton Street
Falls City, NE 68355
(402) 245-2825

BOB WAITE
School Business Off.
Norfolk Public Schools
515 Phillip St.
Box 139, NE 68701
(402) 371-9370

RICHARD SCHOONOVER
Dir. of Special Services
Special Services Annex
2221 Main Street
Bellevue, NE 68005
(402) 293-5005

DOUG ACKLES
Superintendent
St. Paul Public Schools
1305 Howard Avenue
St. Paul, NE 68873
(308) 754-4433

**NEBRASKA DEPARTMENT
OF EDUCATION**

**NE. STATE LEGISLATURE
EDUCATION COMMITTEE**

DON ANDERSON
Special Populations Unit
P.O. Box 94987
Lincoln, NE 68509-4987
(402) 471-2471

SEN. JANICE MCKENZIE
Route 3, Box 71
Harvard, NE 68944
(402) 471-2630

RUSS INBODY
LB 742 Implementation Team
P.O. Box 94987
Lincoln, NE 68509-4987
(402) 471-4320

TAMMY BARRY
Legal Counsel
Committee on Education
Nebraska State Legislature
(402) 471-2712

SUPPORT STAFF

SANDY SOSTAD

Fiscal Analyst

Nebraska State Legislature

(402) 471-0054

LARRY SCHERER

Special Ed. Acct. Comm.

C/O NDE, Special Populations Unit

P.O. Box 94987

Lincoln, NE 68509-4987

(402) 476-7701

ELAINE BAHR

NDE, Special Populations Unit

P.O. 94987

Lincoln, NE 68509-4987

(402) 471-4322

PAM ROTH

NDE, School Finance Unit

P.O. Box 94987

Lincoln, NE 68509-4987

(402) 471-3323

APPENDIX C

OTHER FUNDING ALTERNATIVES PRESENTED

Nebraska

Special



Volume 8, Number 3

Winter 1995-96



FROM THE EDITOR . . .

Dennis F. Flood

On October 13, 1992, the NCSA Executive Board created the Task Force on Special Education on the recommendation of former NCSA Lobbyist, June Remington. In addition to representatives from each NCSA affiliate, NDE, NASB, and NRCSA members participated on the Task Force. The purpose of the Task Force was to examine the cost of providing special education services in Nebraska. Dr. Ken Bird, Superintendent, Westside Community Schools served as Chairperson of the Task Force. After planning meetings in November and December, the Task Force, at the suggestion of State Senators Dennis Baack and Scott Moore, established a subcommittee to draft legislation to establish a Special Education Commission to study special education and identify cost control measures. On January 14, 1993, Senator Jessie Rasmussen introduced LB 392 to create the Special Education Accountability

Commission. At the end of the 1993 Legislative session, LB 392 was amended into LB 520--the Early Intervention Act, and the Special Education Accountability Commission was born. During the 1995 Legislative session Senator Janis McKenzie introduced LB 742, a bill designed to limit special education funding and initiate reform.

This concept paper describes a preliminary investigation of the issues related to special education funding, resource allocation, and services delivery. Three NASES LB 742 focus groups have been working since last June to address alternative approaches to funding special education in Nebraska and attempting to draw conclusions regarding the mandate of LB 742. We hope, as a result of the information in this document, that dialogue and debate will occur as we traverse the many mazes of educational renewal and LB 742. 🍏

SPECIAL EDITION:

LB 742 FUNDING CONCEPT PAPER

STATEMENT OF BELIEF

Members of the Nebraska Association of Special Education Supervisors (NASES), an affiliate of the Nebraska Council of School Administrators (NCSA), believe that an improved special education services delivery system will enable children and youth of Nebraska to achieve to their fullest potential. While we work to improve delivery systems for students with disabilities, we are at a crossroads as to how services are funded. We want to ensure that funds for students with disabilities remain sufficient to meet the needs of students with disabilities while at the same time ensuring that such funds can have a positive impact on all students in the public schools of Nebraska. NASES believes that the cost of providing special education services should not be shifted to local property taxes as a method of reducing state responsibility for the mandated provision of special education and related services.



FUNDING PROPOSAL STATEMENT

NASES proposes a conceptual framework for a special education funding system as a combination block (flat) grant for prevention and support services and an entitlement reimbursement formula based upon actual district expenditures not to exceed the total entitlement. An individual district's special education entitlement may be established by dividing the total amount of state special education funds available for reimbursement by the total number of students in the state through a census or average daily membership (ADM) calculation. The state average student funds entitlement is multiplied by the district's census or average daily membership (ADM) to establish a district's special education and support services entitlement.

The special education and support services entitlement formula is recommended as follows:

1. State funds available for special education reimbursement divided by the number of students in the state based on a district's census or average daily membership (ADM) calculation would equal the district's per pupil allocation.

2. Per pupil allocation multiplied by the local education agency (LEA) census or average daily membership equals a district's entitlement.

* The average daily membership (ADM) calculation should take into consideration the special education services to non public school students.

A district may access the entitlement through the following approach:

1. Ninety percent (90%) of a LEA's entitlement may be accessed through a special education cost reimbursement formula based on actual special education program expenditures.

Ten percent (10%) of the LEA entitlement may be accessed through a block (flat) grant proposal and application to the Nebraska Department of Education (NDE). A district may not receive more funds to provide special education programs and services than their entitlement unless extraordinary needs are determined.

2. The ten percent (10%) block (flat) grant may be utilized to support activities designed by the LEA to benefit special education and may include activities such as: school improvement activities, pre-referral intervention strategies, child-find, interagency collaboration, supplies and instructional materials, and equipment to fund special education and support services (at-risk).

3. The special education actual cost reimbursement formula may be based on the following special education costs: staff salaries, benefits, mileage, staff development, attorney fees, and contracted services.

Coordination and delivery of services through multi-district cooperatives and ESUs are highly encouraged in this proposed newly designed system. Districts may assign a portion of their entitlement and authorize direct funding to a cooperative or ESU for the provision of special education and support services (at-risk).

4. A funding system to address the financial support of students with extremely disabling conditions and extraordinary needs which result in high costs to school districts beyond the districts' ability to reasonably provide for special education programs and support services should be considered.

a. One possible method which could be utilized to provide for extraordinary needs students could be through the establishment of a formula based on

the average per pupil cost of a district. School districts would provide three times their per pupil costs to determine the base contribution for the education of extraordinary needs students.

b. The high cost of a student beyond the base contribution would be a shared cost utilizing a 75% state and 25 % district proration.

c. EXAMPLE:

Program/Services Cost	\$65,000
Average district per pupil cost (\$5000) x 3	\$15,000
Remaining Cost	\$50,000
\$50,000 x .75 (state share)	\$37,500
\$50,000 x .25 (additional local share)	\$12,500
Total state share	\$37,500
Total district share	\$27,500

d. A district could have a total cost liability limited to \$35,000 per extraordinary needs student. All remaining placement costs based on the above formula could be provided by the state.

* In lieu of a set dollar amount, the total district liability could be based on a multiple of the state average per pupil cost.

5. A hold harmless provision could be developed similar to the previous hold harmless provision permitted by the Title I program. (Eighty-five per cent of the previous year's entitlement.) This provision would allow for a transition from the existing excess cost formula to the new funding system.

6. If equalization aid is adopted as part of a special education funding formula, the funding system should assure that all school districts providing special education receive some level of funding to support special education through a block (flat) grant entitlement.

7. Special education transportation and the early childhood program should be studied to determine an appropriate method to reimburse for these services which would produce cost containment practices.

To: Interested Parties

**From: Duane Tappe ESU #1
Bob Uhing Wayne Public Schools**

We have reviewed the proposals on special education funding from the December 20 & January 10 NASES, a division of the Nebraska Council of School Administrators (NCSA), meetings. It is our understanding that the Accountability Commission is requesting a number of proposals to consider. At the January 10 meeting we proposed an alternative funding formula. Special education is a state and federally mandated service. Therefore, it is imperative that there be a continuation of federal and state money. In a shared cost formula the local school district portion maintains a degree of local control. We believe this funding formula allows for local control, while also meeting the needs of all special education students.

Alternative Funding Proposal

The NASES organization has proposed an entitlement funding formula that is too unpredictable and fails to address ECSE, Transportation, and high cost students. This funding formula will have a negative impact on a number of school districts in the state. Because special education has very unique requirements it seems reasonable that special education should have its own unique funding formula. The case has been made to have a unified educational system. Thirty years ago education in the state of Nebraska was a unified system. This system failed to meet the unique needs of special education students, which is why our present funding mechanism was developed. We believe a new funding formula should be put in place that is fair, predictable, and serves the educational needs of all children with disabilities.

It is our belief that an entitlement formula or an equalization formula to fund special education in Nebraska is too complex and too unpredictable. The excess cost formula that has been used for over 20 years created some confusion, (ie., some observers might have seen this as "excessive" costs), but at least it was fair, in that special education dollars followed special education students. The funding method did not create the problem of high costs to support special education. Rather, it is the growing number of eligible students and increased demand for services that caused the overall costs for special education to increase at a rate higher than regular education. A lid on state special education costs can only shift costs to local property taxes if the need is still there. Until rules are implemented to reduce the demand for services, the dilemma will continue.

If the intent is to provide the necessary service and to hold the line on state reimbursement costs, we would propose that the new formula meet the following criteria:

- 1. Keep it fair.**
- 2. Keep it simple.**

1. Keep it fair. In other words. we need to assure that dollars spent for special education will follow the need. That was the intent of Senator David Stahmer in the early 70's when he introduced LB 403.

2. Keep it simple. We need a system that everyone from our governor to local taxpayers can understand. We also need an element of predictability so that local school administrators can budget and plan accordingly.

Therefore we are proposing the following "shared cost formula".

ALL "SPECIAL EDUCATION PROGRAMS" (INCLUDING SCHOOL AGE, ECSE, AND TRANSPORTATION) PROVIDED BY LOCAL SCHOOL DISTRICTS SHALL BE REIMBURSED BY THE STATE DEPARTMENT AT A RATE OF 70% OF ALLOWABLE COSTS.

Rationale:

With this formula, there is no need to figure AAPC's (Adjusted Average Per Pupil Costs), work with different rates for different levels of service, or with different time tables. In looking at overall budgets in selected school districts in the ESU #1 area, we noted that overall, school districts are receiving approximately 65% to 75% reimbursement after working through the current formulas. Why not just start with a simple formula of 70% state reimbursement and increase the state share towards 80% if cost containment rules are implemented. This system also meets the criteria of LB742 which states that the funding system be:

- 1. identification and program neutral;**
- 2. assure that adequate resources are available to meet the needs of students with disabilities and students needing support services; and,**
- 3. provide for equity in special education programs and support services to students regardless of the district in which they reside.**

The potential cost saving proposals identified in the NASES paper should all be carefully scrutinized by the accountability commission to discern which options are legal and achievable in order to maintain a 65% to 75% state share. The 25 to 35% district contribution would also have an impact on district program growth if all parties understand that the percentages mentioned above are the districts share on all program decisions. An automatic cost containment formula is built into this formula simply through the increased percentage individual school districts must pay. The percentages identified in this proposal may be adjusted by the state department of education based on available funds for special education reimbursement ie., if other cost containment measures are implemented one would expect the state share to increase; If the demand for services and number of students continue to increase the percentage would drop.

This funding formula meets the needs of all students with disabilities regardless of cost, age, or severity of disability. In addition, no school districts will be singled out for unfair reimbursement because of its size or location.

LB 1145

SUMMARY OF PRO-EQUALIZATION DISTRICTS' LEGISLATIVE DRAFT

This bill is made up of a number of statutory amendments and proposals relating to the equalization of funding for Nebraska's public school districts. Simply stated, equalized funding differs from non-equalized funding in one or both of two ways. Equalized funding takes into account both the fiscal needs of individual school districts and the relative fiscal resources of individual school districts. Non-equalized funding is insensitive to needs, resources, or both, and is commonly referred to as being "non-equalizing." Some sources of funds actually tend to go disproportionately to districts with lower needs and/or higher resources, and are referred to as "counter-equalizing."

LB1059 of 1990 made a dramatic improvement in the equalization of funding to Nebraska school districts. Prior to its enactment, only \$36 million dollars per year were distributed through a formula that even attempted to balance the fiscal needs and the available fiscal resources of school districts. Today, over \$400 million dollars are distributed through the Tax Equity and Educational Opportunities Support Act, with most of this money distributed as equalization aid.

The primary goal of this legislative package is to enhance the equalization of funding for Nebraska school districts. It does so through three general approaches:

- 1) Maximizing the equalization effect of all funds distributed through the 1059 formula (currently, "rebate," equalization, option hold harmless, etc.).
- 2) Increasing the equalizing effect and/or reducing the nonequalizing effect of funding sources for school districts other than LB1059's general state aid (including special education, state apportionment, and the like).
- 3) Reducing the degree to which small school districts with high operating expenditures can generate disproportionate state aid and/or protect their tax base from helping to meet the needs of students in other school districts.

The tables on the following pages detail the specific issues addressed by this bill and provides a "map" for locating the sections addressing each issue.

BEST COPY AVAILABLE

Pro-Equalization Districts' Proposal on Special Education Funding As It Relates to the Special Education Accountability Commission

A Discussion Paper Prepared by Lincoln Public Schools
January 16, 1996

The following paper is presented as a series of questions and answers. Its intended purpose is to respond to questions that have been, or might be, raised about the interaction of the Pro-Equalization Districts' proposal for special education funding contained in LB1145 and the work of the Special Education Accountability Commission.

Q1: What are the problems with the current method of funding special education that the proposal contained in LB1145 is attempting to address?

A1: There are two major areas of concern, and each is addressed in the proposal.

1) First, actual special education costs are lumped in with all other costs in the calculation of "tiered cost." Therefore, school districts with above-average special education requirements are "hurt" (by not having their full special education fiscal need reflected in their tiered costs) while below-average requirement districts receive a windfall in the tiers. This is precisely the same problem (needs being averaged within tiers for services that are not randomly divided among the districts within tiers) as the one with transportation needs that the Education Committee is currently advocating remedying in LB1050. In the attached spreadsheet example, the 14% special education district is "shorted" \$1,575,000 in needs, while the 11% special education district gets a \$1,575,000 "windfall."

Second, even though the need side of the formula is averaged (within tiers) for special education costs, the other side of the formula (resources) works quite differently. There, each individual district's actual special education receipts (based on 90% of their allowable excess cost) are fully accountable as "other receipts." In effect, this produces a "double whammy" for districts with higher-than-typical special education costs: their needs are under-stated to "average" by the tiers, but their accountable receipts are above "average" because of the categorical receipt. In the attached example, which illustrates two Lincoln-size districts that are identical except for their Special Education population, this results in a net difference of \$2,835,000. In other words, the taxpayers of District A have to pay \$2,835,000 more in property taxes for their district to have the "same" educational program as District B, due to the current interaction of categorical special education funding, tier needs averaging, and equalization.

2) Next, the categorical special education funding is "blind" to the relationship of needs and resources that equalization concepts are founded upon. When an equalization district receives one more dollar of special education funding, their equalization aid goes down by one dollar (since special education reimbursements are "accountable receipts"), and their property taxes stay the same. On the other hand, when a non-equalization district receives one more dollar of special education reimbursement, their state aid is unchanged (since their aid is non-equalized rebate and/or option hold harmless), and their property tax need goes down a dollar. As you can see from this simple example, categorical special education funding actually has the opposite effect that one would tend to wish for: instead of helping lower-resource districts control their tax rates to provide special education programs, that benefit actually accrues only to non-equalization districts.

Q2: Will the Pro-Equalization proposal encourage equalized districts to increase their special education spending?

A2: Certainly no more than the current arrangement does. First, a district simply increasing their special education spending does not equate with an increase in their allowable special education costs. Just as with the current funding system, unnecessary increases in Special Education costs which are not reimbursed by the state would not be reflected in individual districts' need and therefore would continue to end up as local property tax. The only district where an increase in special education spending would de facto result in an increase in state aid would be in Omaha who, with their single tier, sees their state aid need go up, dollar for dollar, with their increased spending regardless of whether it's an allowable excess cost or not. This proposal doesn't remedy that situation, but neither does it worsen it.

In fact, this proposal actually increases a current disincentive to increase special education spending. In the current excess-cost arrangement, increased special education spending, even if it represents an allowable excess (and therefore reimbursable) cost, is not reimbursed until the following fiscal year. Simply put, the district's property-tax payers have to "front" the money to support that increased spending for one year. Under this proposal, that time-lag actually increases to two years (since those needs are measured in "the most recently available complete data year").

Q3: Does this proposal interfere with the ongoing work of the Special Education Accountability Commission?

A3: We think that it clearly does not. This proposal is in no way intended to "solve" the special education funding issues that the Commission was created to address. This proposal simply represents a fairer, more equitable way to fund the current special education program as dictated by current state law and the current Rule 51. As you can see from the above examples, the current system does not fairly fund the current special education program.

As the Commission proceeds with its work, this proposal can hopefully narrow the Commission's focus away from funding issues in their own right, and toward the programmatic characteristics that any funding system will (and must) be responsive to.

There is an historical parallel in the history of LB1059. In the late 1980's, numerous "experts" such as the Greater Omaha Area Chamber of Commerce and the authors of the Syracuse Tax Study urged the Legislature to not make changes in how schools were financed until the entire state's school districts had been reorganized. Instead, the Legislature recognized that there were inequities in the old school funding system that transcended organizational issues, and proceeded with dramatically altering the funding system. That didn't (and doesn't) eliminate or detract from the debate on how school districts should be organized. It simply makes the process of funding the current system fairer for kids and for taxpayers.

Our proposal does the same. It doesn't overhaul the special education program. It just makes the funding of the current special education program fairer for kids and taxpayers.

Q4: How can it be fair to take all special education funding away from non-equalization districts?

A4: On its face, this may seem harsh. But we need to remember several things.

First, this proposal does not take away all special education funding from any district. Granted, it may eliminate significant state funding for some districts, but it in no way diminishes their opportunity to use the "local" property tax base for which the legislature has granted them taxing authority. Bear in mind, no district in Nebraska currently has its special education program funded entirely by state funds; all districts must currently pay for their non-allowable and AAPC costs from a mix of state and local non-categorical funds.

Second, a better question may be "how can it be fair not to?" As detailed above, categorical special education funding for non-equalized districts treats them differently than it does equalization districts, and in a way that actually works to their advantage. The practical effect of our proposal is that taxpayers would be able to get comparable services for their special education students for a comparable tax effort. This fundamental goal of any equalized funding system may seem harsh to the "losers" but we must always remind ourselves that these "losers" already do (and always have) occupied a position of advantage, not of disadvantage. They are the districts that have always been able to offer a more costly program at a lower tax rate than their equalized neighbors. As a practical matter, equalization precludes there being any "losers" in the truest sense, since any district that loses so much categorical special education funding that their tax rate would have to exceed that of other districts for comparable spending will become an equalization district and be placed on the same leveled playing field as the districts where the vast majority of Nebraska students are educated.

BEST COPY AVAILABLE

Q5: Is there any way the proposal could be modified to eliminate any chance that a district can get more state aid just by increasing its special education spending?

A5: As discussed earlier, using Allowable Excess Costs to differentiate needs, as opposed to simply using whatever amount districts spend for "special education," coupled with the two-year lag in equalization funding, provide what we think are adequate safeguards against special education spending escalation attributable to this change in the financing formula. If the Education Committee or Legislature is not as confident, there are certainly ways that the formula could be adapted to be less responsive to individual districts' special education spending and more responsive to "typical" costs for special education. This could be done through use of a weighting system for individual handicapping conditions, or through some form of "governor" on the growth in formula need attributable to individual districts' special education expenses. However, we must be careful to avoid blurring the differences among districts to the point that we end up back where we started, with low-incidence special education districts receiving a "windfall" from the necessary expenditures of higher-incidence districts.

Q6: How does the proposal "square" with the concepts of block grants?

A6: If the primary goal of a "block grant" for special education is to provide for randomly-distributed special education needs, not based on identification of individual handicapped students, it seems to us that the "average cost" concept inherent in LB1059's tiers does precisely that, without the danger of distributing state block grant funds to non-equalized districts and thereby providing those districts' taxpayers with an inequitable windfall. Put bluntly, we think that funds that would otherwise be distributed on a per-student basis as "block grants" would be vastly more equitably distributed as equalization state aid.

Q7: Could the two-year lag in funding inherent in this proposal represent a serious problem for districts with dramatic and unavoidable increases in special education spending?

A7: Certainly, it is not difficult to conjure up a scenario where a district has one or more severely handicapped children become residents, perhaps court-ordered into an out-of-state facility, for which they would be liable for expenditures. Under the current funding system, that district would have to "front" the expenses for a year (until the categorical reimbursement was received). Under our proposal, the wait would be extended to two years. While the proposal doesn't change the nature of the burden on individual districts, it does lengthen its time.

If the Legislature were to find this unacceptable, there are several very viable "safety net" remedies. One would be a pool of funds available to the Department of Education that could, under authority of the State Board, be provided to districts as no-interest loans for inordinate special education expenditures. Such funds would be repaid

as a deduction from the following year's state aid (for equalized districts) or as an actual repayment from locally budgeted funds (for non-equalized districts). Therefore, the pool of funds could be perpetually self-replenishing. Bear in mind, if the increased costs are great enough to drive a non-equalization district into equalization status, then some or all of the loan would not have to be collected locally for repayment. If the additional cost does not make the district an equalization one, then their property taxpayers will be given the opportunity to pay a rate of tax that more closely approximates the rate everyone else in the state must pay for a comparable level of educational service. This reminds us that equalization is, in itself, a "safety net": it ensures that districts will not have to tax their patrons inordinately for unavoidable expenditures.

Q8: This proposal is a pretty bold step, and would make dramatic changes in some districts' funding. Is there any way to reduce the impact it would have?

A8: While the impact on some districts would indeed be dramatic, we maintain that the impact is totally appropriate and, indeed, desirable. If a non-equalized district has had a dramatically lower tax rate than other districts for years, and suddenly is forced by this proposal to skyrocket their levy all the way up to average, we don't see that as an unacceptable change.

However, if the Legislature doesn't find such dramatic shifts acceptable, there would be a number of ways to "lessen" the impact. Just as the original LB1059 contained certain deliberately non-equalizing features (hold-harmless, rebate, etc.), the Legislature could pursue a number of strategies to "lessen the blow." For example, the current 90% excess cost formula could be changed to some other (lesser) percentage, with the difference going into equalization. Some special treatment of the accountable receipts would be necessary, but this could probably be accomplished.

Or, the Legislature could establish some (hopefully small) categorical grant to all districts, which would be an accountable receipt in the aid formula. Obviously, a variety of things could be done. By their very nature, however, these would tend to be non-equalizing.

Effects of Current Interaction of Special Education Excess Cost Reimbursement and Equalization Aid

The following model illustrates two Lincoln-sized districts that are identical in nearly every way. Their total enrollments, non-special education costs per student, property tax bases, rebates, and miscellaneous receipts are identical.

However, District A has 14% of their students in Special Education (Lincoln's actual percentage) and District B has 11% of their students in Special Education (approximately the state average).

Please note that both districts' cost per special education student are also identical.

	ADM	30,000	5,000	Non-Sped Cost Per ADM	Number of Sp Ed Children	Excess Allowable Sped Cost Per Handicapped Child	% Sp Ed Children Are of ADM	Total Actual Cost	Total Actual Cost Per ADM	Tiered Cost Per ADM	Total Formula Needs (TC * ADM)	90% of Excess Cost	Other State Aid Resources (Property Tax, Rebate, Etc.)	Total Accountable Receipts	Equalization Aid
District A	30,000	\$5,000	4200	\$3,500	14%	\$164,700,000	\$5,480	\$5,438	\$163,125,000	\$13,230,000	\$120,000,000	\$461,108,628	\$29,895,000		
District B	30,000	\$5,000	3300	\$3,500	11%	\$161,550,000	\$5,385	\$5,438	\$163,125,000	\$10,395,000	\$120,000,000	\$455,122,623	\$32,730,000		
									Difference					Aid	
									Difference					Difference:	
									Between Actual Cost & Formula Needs:					Difference:	
															\$2,835,000

142

143

BEST COPY AVAILABLE

APPENDIX D

LB 742 FUNDING SYSTEM CHECKLIST

- _____ Overall, system is identification and program neutral (verification not required).
- _____ Funding for support services is available.
- _____ Promotes sound practice and quality services.
- _____ Encourages preventative services.
- _____ Encourages services are which integrated with regular education when appropriate.
- _____ Services driven by educational needs, not state funding.
- _____ Adequate resources are available to meet student needs.
- _____ Equity in services for students is assured.
- _____ Costs grow at a rate no greater than regular education.
- _____ Funding is available for extremely disabled, high cost students.
- _____ Integrate with general state aid system.
- _____ Phase in, minimize impacts on schools.
- _____ Assure accountability for meeting educational needs.

APPENDIX E

FUNDING OPTION CONCEPTS PROS, CONS AND ISSUES

EQUALIZATION

Pros

- Distribution method is easily established within the current State Aid system.
- Is identification and program neutral.
- Growth in special education funding at the same level as general education.
- Removes categorical funding of special education as a disequalizing factor in the State's overall school finance structure.
- Is sensitive to both the needs of school districts (costs) and their resources (ability to pay).
- Provides schools the capacity to assure student equity in special education services.
- A large majority (approx. 90%) of students are served by school districts receiving equalization aid (See attached).
- Improves the equalizing capacity of the system and may reduce risks of successful school finance equity litigation.
- More schools will qualify for equalization aid with the infusion of special education funding.

Cons

- At the school level, revenues may not be specifically identified as intended for special education services.
- Not all districts will qualify for equalization aid, but all have responsibility to provide special education. Districts not receiving equalization aid will have to absorb special education expenditures into the property tax portion of their budgets.
- Some districts may receive less total state support for education.
- ESUS and cooperatives do not receive equalization aid.
- Special education costs are not randomly distributed across all school districts. Currently, the equalization formula does not address legitimate differences in school district needs and the uniqueness of special education programs in individual districts.

Issues

- Lack of categorical funding may impact programming for special education.

- How long will assistance to school districts from the pool be available, one year or longer?
- What will be included as catastrophic expenditures: attorney's fees?, residential placement?, program costs?
- How to integrate with other components of the funding system—equalization or block grants?
- How to encourage cooperative regional programming for high needs students?

BLOCK GRANTS

Pros

- Each district's state funding may more easily be determined to permit school districts to complete their budgets.
- Allows flexibility in local decision-making.
- Block grant funds could be used for preventative or "support" services.
- May encourage regional, cooperative programming for small school districts.
- Funds are easily distributed; a simple formula.
- There is a track record in other states, such as Vermont and Pennsylvania allowing for some evaluation.

Cons

- No assurance that funds will be used to benefit children with special needs.
- Contrary to equalization goals—not sensitive to school district needs or resources.
- May be easier for the State to reduce appropriations for a block grant program not tied to specific services or school district needs.
- The accuracy of the census count is questionable.
- Using a census count may reward districts with a high percent of students in private, parochial and home schools.
- Using a census count will penalize districts serving a high percentage of option students.

Issues

- Block grants distributed on the basis of school age census of children (as opposed to special education child count) may result in funds being paid to districts with no special education students.
- How to encourage regional, cooperative programming by requiring a minimum level of school district funding to qualify for block grants?

- Maintenance of effort must be assured in any new funding system.
- If it is determined that special education students are not being served, how will the State enforce compliance? The State is ultimately responsible for assuring that services are provided to students with disabilities.
- The current equalization formula must be adjusted in the areas of needs and resources to avoid introducing a special education bias or penalty.
- How will special education be counted for "lid" purposes?

HIGH NEEDS FUNDING COMPONENT

Pros

- Provides funds to a school district for unexpected and catastrophic special education expenditures on behalf of an individual student.
- Provides a "safety net" (insurance) to protect schools financially as a result of a high cost program.
- As a categorical funding program, it may increase the probability that high needs students will be served appropriately.
- It is politically practical as it is appealing to school districts and parents.

Cons

- Is not identification or program neutral. May create an incentive to identify more high needs students and provide more services.
- May be counter-equalizing. Some districts may receive greater assistance than other, despite lack of Needs or presence of Resources as defined in the equalization formula.
- Defining what is a catastrophic cost is problematic: A \$20,000 cost in a district with a \$200,000 budget may be catastrophic while in a district with a \$2 million dollar budget a \$20,000 cost would not be a serious impact.
- Timing of grant awards may be a problem.
- Will complicate the cost tracking and accounting system. Districts are not now required to keep records of costs for individual students. This could become a paperwork burden.
- Defining who are high needs students is difficult.

Issues

- How to establish method to set aside a pool of dollars for high needs?
- How to establish a method for accessing funds in the high needs pool? (IE, what will the distribution system be.
- How to estimate and appropriate funds for the high needs pool? (What to do if inadequate dollars are appropriated or if excess dollars are appropriated?)

CURRENT SYSTEM/EXCESS COST REIMBURSEMENT

Pros

- Reimbursement process is well established with a 20 year track record.
- The system is understood and manageable.
- School districts are reimbursed on the basis of actual expenditures for special education services; funding is sensitive to district needs.
- Schools are held accountable for spending State dollars on special education services. Provides an audit trail of dollars to identified students with disabilities.
- Clearly delineates the ramifications of the cap (LB 742) on special education funding.
- Schools are aware of the types of services on which state dollars may be expended.

Cons

- Is not identification, program or cost neutral; only identified students may be included in Plans and Budgets and Final Financials.
- The current list of 8 allowables do not cover all special education expenditures.
- Current allowable are open to interpretation leading to arguable audit exceptions.
- Amount of funding is not know until after each district has set its budget.
- Does not include an equalization component. (Ie. Does not consider district resources at all and considers district needs partially— only allowable costs).
- Existing system is inconsistent in using both year in arrears data and current year data.
- Requires a bureaucracy to administer the program.

Issues

- Need to determine services which would be considered allowable costs (Eg. physical therapy, below age five services.)
- Consideration of what is included in allowable costs (salaries, fringe benefits, supplies, etc.)

APPENDIX F

DISTRICT SPECIFIC HIGH NEEDS FACTOR

The Committee reviewed a number of options for a high needs component, including a separate categorical high needs pool and a high needs catastrophic appeal process which would apply only in very narrowly limited situations. All of these proposals ran afoul of two basic problems: 1) The difficulty in accurately defining the high needs population given current data limitations; and 2) The likelihood that creation of a separate funding source for high needs students would create an incentive for school to identify more students in this category or to provide a higher level of services in order to qualify for this source of aid. In effect, the Committee was concerned that a separate funding component for high needs would give rise to a new definition of "special education" and result in a categorical funding program which would not be identification and program neutral.

In order to recognize that some school districts may face higher costs because of the presence of a number of high needs students in the district, a circumstance beyond the control of school districts, the Committee did consider a plan which would recognize distinctions in special education expenditures within the equalization formula. The Department of Education could collect data in 1997-98 which would more clearly identify the costs incurred by schools for the education of high needs students. The criteria specified in section II of this document might be used as the basis for collection of this data. Beginning in 1999-2000, the State could distribute equalization aid to school districts based on the data describing high needs. District high needs expenditures could be included in the calculation of district formula needs on a district specific basis. Expenditures for the remainder of special education programs, primarily for students with mild disabilities and for students needing support services, could be included in the calculation of tiered costs per student. This proposal would recognize the additional costs of high needs students through the district specific needs factor while maintaining cost containment goals through the averaging inherent in the tiered cost calculation.

PART C3

**FUNDING AND COST CONTAINMENT
LEGISLATION**

Section summary

Draft

RECOMMENDED LEGISLATION

Pursuant to RRS section 79-3368(3), the final report is to include "recommended legislation to implement a funding system", which the Commission is to develop. The funding report does include recommended concepts which should be embodied in legislation. Following is a summary of the draft legislation which is attached:

Funding and cost containment legislation summary (Req. #0053)

Section 1: Amending section 9-812, in the State Lottery Act, to add as a possible purpose for grant funding, innovative programs for special education students and students needing support services which demonstrate improved outcomes for such students through an emphasis on prevention and collaborative planning.

Section 2: Amending the Early Intervention Act, section 43-2515, to provide for offset of school receipts of Medicaid in Public Schools against Early Childhood Special Education Reimbursement in order to fund services coordination and case management. The offset is used to transfer funds from NDE to DSS to fund staff employed by DSS for these Early Intervention activities.

Section 3. Amends section 79-215 to provide for equal sharing of the costs of education for state ward between the State and the school district of residence.

Section 4. Amends section 79-528 to require a supplement to the Annual Finance Report of expenditures for special education programs as needed to comply with the IDEA.

Section 5: Adds reference to a new section from the bill in the Tax Equity and Educational Opportunitis Support Act (TEEOSA).

Sections 6 and 7: Amending section 79-1003 and 791014. These sections will create a new definition of "special education high needs student allowance" and will modify each district's "adjusted need" TEEOSA so that the equalization aid of districts will reflect school expenditures for "high needs students" as defined in the Commission's funding report (page 8): 1) receives at least three distinct special education or related services: 2) spends at least 90% of his or her school time in an alternative educational setting: and 3) the cost of educating the student is at least three times the tiered cost per student of the school district.

Section 8: Phase in of appropriations for special education to the new system. Beginning in FY 1999-2,000, 20% of school age and transportation special

education appropriations, paid under sections 79-1142 and 79-1144, and will be moved into the Tax Equity and Educational Opportunities Support fund for distribution as equalization aid. An additional 20% will be added to this fund each year through full implementation in FY 2,003 to 2,004. The Legislature will continue to identify the appropriations paid into this equalization fund as dedicated to special education programs and support services, on an aggregate statewide basis and the total amount of special education appropriations will be increased (or decreased) annually at the same percentage rate as the other appropriations for general state aid.

Section 9: Amends section 79-1018 to delete lottery grant funds for innovative special education programs as "other actual receipts" in TEEOSA.

Section 10: Amending sections 79-1025 of TEEOSA (as amended by LB 299 in 1996) to include special education under the budget growth restrictions applicable to school districts.

Section 11: Adds references in the Special Education Act to new sections created by the bill.

Section 12: Deletes reference in intent language regarding accountability for special education to a repealed section (Commission accountability charge, which will be completed with the Final Report of the Commission).

Section 13: Adds reference to a new definition section in the Act (support services definition).

Section 14: A section which defines the term support services along the lines of the definition in LB 742.

Section 15: Legislative intent for the new funding system for special education.

Section 16: During the five year phase in period, each school district will receive the lower of a) the amount of aid it would otherwise generate under the excess cost reimbursement formula or b) 80% of the amount of aid that it received the prior year as excess cost reimbursement aid. [Note that during the phase in period, receipts under the special education excess cost reimbursement formula will continue to be "accountable receipts under the equalization aid formula. This does not require legislative change.]

Section 17: Adding a new section to the Special Education Act which require the NDE to establish criteria for determining what is an educational benefit rather than a medical or health benefit. NDE would also be required to establish criteria for determination of appropriate related services.

Sections 18 and 20: Amending section 79-1140 and 79-1158 to provide for approval of contract rates of third party providers of special education and related services and to provide that NDE set performance standards for such contracts.

Section 19: Amending section 79-1141 of the Special Education Act to change the payment of resident school districts for students attending the Nebraska School for the Deaf or the Nebraska School for the Visually Handicapped. The amount paid would be the district's per pupil cost rather than the district's adjusted average per pupil cost plus 10% of allowable excess cost. This section would become effective for school year 2,003-2,004.

Section 21: The LB 742 sunset repealer of funding statutes for Early Childhood Special Education and Residential Care is repealed. No changes in the funding formulas for these components of special education are recommended by the Commission. Delayed repealer (8-1-2003), after the phase in period, for the excess cost reimbursement formula for school age programs and transportation and definitional sections associated with the excess cost reimbursement formula. After that date, all funding for these programs will flow through equalization aid.

Section 22: Adding a new section which prohibits exclusions in health insurance contracts of coverage of students with disabilities for services which are primarily medical in nature.

Section 23: Repealer of sections which are amended in the bill.

Section 24: Outright repealer of sections creating the Commission and LB 742 intent language for funding.

LEGISLATURE OF NEBRASKA
NINETY-FIFTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL

Introduced by

Read first time

Committee:

A BILL

1 FOR AN ACT relating to special education; to amend sections 79-215,
2 79-528, 79-1001, 79-1003, 79-1014, 79-1018, 79-1025,
3 79-1110, 79-1112, 79-1113, 79-1140, 79-1141, 79-1158, and
4 79-1184, Reissue Revised Statutes of Nebraska, and
5 sections 9-812 and 43-2515, Revised Statutes Supplement,
6 1996; to provide for, change, and eliminate provisions
7 relating to reimbursement and expenditures for special
8 education; to harmonize provisions; to repeal the
9 original sections; and to outright repeal sections
10 79-1179 to 79-1183 and 79-1185 to 79-1187, Reissue
11 Revised Statutes of Nebraska.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 9-812, Revised Statutes Supplement,
2 1996, is amended to read:

3 9-812. (1) All money received from the operation of
4 lottery games conducted pursuant to the State Lottery Act in
5 Nebraska shall be deposited in the State Lottery Operation Trust
6 Fund, which fund is hereby created. All payments of expenses of
7 the operation of the lottery games shall be made from the State
8 Lottery Operation Cash Fund. In accordance with legislative
9 appropriations, money for payments for expenses of the division
10 shall be transferred from the State Lottery Operation Trust Fund to
11 the State Lottery Operation Cash Fund, which fund is hereby
12 created. All money necessary for the payment of lottery prizes
13 shall be transferred from the State Lottery Operation Trust Fund to
14 the State Lottery Prize Trust Fund, which fund is hereby created.
15 The amount used for the payment of lottery prizes shall not be less
16 than forty percent of the dollar amount of the lottery tickets
17 which have been sold. At least twenty-five percent of the dollar
18 amount of the lottery tickets which have been sold on an annualized
19 basis shall be transferred from the State Lottery Operation Trust
20 Fund to the Education Innovation Fund, the Solid Waste Landfill
21 Closure Assistance Fund, the Nebraska Environmental Trust Fund, and
22 the Compulsive Gamblers Assistance Fund. Forty-nine and one-half
23 percent of the money remaining after the payment of prizes and
24 operating expenses shall be transferred to the Education Innovation
25 Fund. Beginning on July 15, 1993, and continuing through July 1,
26 1997, twenty-four and one-half percent of the money remaining after
27 the payment of prizes and operating expenses shall be transferred

1 to the Solid Waste Landfill Closure Assistance Fund and twenty-five
2 percent of the money remaining after the payment of prizes and
3 operating expenses shall be transferred to the Nebraska
4 Environmental Trust Fund to be used as provided in the Nebraska
5 Environmental Trust Act. After July 1, 1997, forty-nine and
6 one-half percent of the money remaining after the payment of prizes
7 and operating expenses shall be transferred to the Nebraska
8 Environmental Trust Fund to be used as provided in the Nebraska
9 Environmental Trust Act. One percent of the money remaining after
10 the payment of prizes and operating expenses shall be transferred
11 to the Compulsive Gamblers Assistance Fund to be used as provided
12 in sections 83-162.01 to 83-162.04.

13 (2) The Education Innovation Fund is hereby created.
14 Each fiscal year beginning with fiscal year 1994-95, at least
15 seventy-five percent of the lottery proceeds allocated to the
16 Education Innovation Fund shall be available for disbursement. The
17 Education Innovation Fund shall be allocated by the Governor
18 through incentive grants to encourage the development of strategic
19 school improvement plans by school districts for accomplishing high
20 performance learning and to encourage schools to establish
21 innovations in programs or practices that result in restructuring
22 of school organization, school management, and instructional
23 programs which bring about improvement in the quality of education.
24 Such grants are intended to provide selected school districts,
25 teachers or groups of teachers, nonprofit educational
26 organizations, educational service units, or cooperatives funding
27 for the allowable costs of implementing pilot projects and model

1 programs.

2 Minigrants shall be available to school districts to
3 support the development of strategic school improvement plans which
4 shall include statements of purposes and goals for the districts.
5 The plans shall also include the specific statements of improvement
6 or strategic initiatives designed to improve quality learning for
7 every student.

8 Major competitive grants shall be available to support
9 innovative programs which are directly related to the strategic
10 school improvement plans. The development of a strategic school
11 improvement plan by a school district shall be required before a
12 grant is awarded. Annual reports shall be made by program
13 recipients documenting the effectiveness of the program in
14 improving the quality of education as designed in the strategic
15 school improvement plans. Special consideration shall be given to
16 plans which contain public or private matching funds and
17 cooperative agreements, including agreements for in-kind services.
18 Purposes for which incentives would be offered shall include:

19 (a) Professional staff development programs to provide
20 funds for teacher and administrator training and continuing
21 education to upgrade teaching and administrative skills;

22 (b) The development of strategic school improvement plans
23 by school districts;

24 (c) Educational technology assistance to public schools
25 for the purchase and operation of computers, telecommunications
26 equipment and services, and other forms of technological innovation
27 which may enhance classroom teaching, instructional management, and

1 districtwide administration pursuant to the state's goal of
2 ensuring that all kindergarten through grade twelve public school
3 districts or affiliated school systems have a direct connection to
4 a statewide public computer information network by June 30, 2000.
5 The telecomputing equipment and services needed to meet this goal
6 may be funded under this subsection, section 79-1233 and 79-1310,
7 or any combination of such subsection and sections. Such
8 telecommunications equipment, services, and forms of technical
9 innovation shall be approved by the State Department of Education
10 in consultation with the Department of Administrative Services to
11 insure compatibility of technologies and compliance with statewide
12 priorities;

13 (d) An educational accountability program to develop an
14 educational indicators system to measure the performance and
15 outcomes of public schools and to ensure efficiency in operations;

16 (e) Alternative programs for students, including
17 underrepresented groups, at-risk students, and dropouts;

18 (f) Programs that demonstrate improvement of student
19 performance against valid national and international achievement
20 standards;

21 (g) Early childhood and parent education which emphasizes
22 child development;

23 (h) Programs using decisionmaking models that increase
24 involvement of parents, teachers, and students in school
25 management;

26 (i) Increased involvement of the community in order to
27 achieve increased confidence in and satisfaction with its schools;

1 (j) Development of magnet or model programs designed to
2 facilitate desegregation;

3 (k) Programs that address family and social issues
4 impairing the learning productivity of students;

5 (l) Programs enhancing critical and higher-order thinking
6 capabilities;

7 (m) Programs which produce the quality of education
8 necessary to guarantee a competitive work force;

9 (n) Programs designed to increase productivity of staff
10 and students through innovative use of time;

11 (o) Training programs designed to benefit teachers at all
12 levels of education by increasing their ability to work with
13 educational technology in the classroom; and

14 (p) Approved programs or services under sections 79-1106
15 to 79-1109; and

16 (g) Innovative programs for students with disabilities
17 receiving special education under the Special Education Act and
18 students needing support services as defined in section 14 of this
19 act, which programs demonstrate improved outcomes for students
20 through emphasis on prevention and collaborative planning.

21 The Governor shall establish the Excellence in Education
22 Council. The Governor shall appoint eleven members to the council
23 including representatives of educational organizations,
24 postsecondary educational institutions, the business community, and
25 the general public, members of school boards and parent education
26 associations, school administrators, and at least four teachers who
27 are engaged in classroom teaching. The State Department of

1 Education shall provide staff support for the council. The council
2 shall have the following powers and duties:

3 (i) In consultation with the State Department of
4 Education, develop and publish criteria for the awarding of grants
5 for programs pursuant to this subsection;

6 (ii) Provide recommendations to the Governor regarding
7 the selection of projects to be funded and the distribution and
8 duration of project funding;

9 (iii) Establish standards, formats, procedures, and
10 timelines for the successful implementation of approved programs
11 funded by the Education Innovation Fund;

12 (iv) Assist school districts in determining the
13 effectiveness of the innovations in programs and practices and
14 measure the subsequent degree of improvement in the quality of
15 education;

16 (v) Consider the reasonable distribution of funds across
17 the state and all classes of school districts; and

18 (vi) Provide annual reports to the Governor concerning
19 programs funded by the fund. Each report shall include the number
20 of applicants and approved applicants, an overview of the various
21 programs, objectives, and anticipated outcomes, and detailed
22 reports of the cost of each program.

23 To assist the council in carrying out its duties, the
24 State Board of Education shall, in consultation with the council,
25 adopt and promulgate rules and regulations establishing criteria,
26 standards, and procedures regarding the selection and
27 administration of programs funded from the Education Innovation

1 Fund.

2 (3) Recipients of grants from the Education Innovation
3 Fund shall be required to provide, upon request, such data relating
4 to the funded programs and initiatives as the Governor deems
5 necessary.

6 (4) Any money in the State Lottery Operation Trust Fund,
7 the State Lottery Operation Cash Fund, the State Lottery Prize
8 Trust Fund, or the Education Innovation Fund available for
9 investment shall be invested by the state investment officer
10 pursuant to the Nebraska Capital Expansion Act and the Nebraska
11 State Funds Investment Act.

12 (5) Unclaimed prize money on a winning lottery ticket
13 shall be retained for a period of time prescribed by rules and
14 regulations. If no claim is made within such period, the prize
15 money shall be used at the discretion of the Tax Commissioner for
16 any of the purposes prescribed in this section.

17 Sec. 2. Section 43-2515, Revised Statutes Supplement,
18 1996, is amended to read:

19 43-2515. On or before October 1, 1993, and for each year
20 thereafter, the Department of Health and Human Services Finance and
21 Support and the State Department of Education shall jointly certify
22 to the budget administrator of the budget division of the
23 Department of Administrative Services the amount of federal
24 medicaid funds paid to school districts pursuant to the Early
25 Intervention Act for special education services for children age
26 five and older. The General Fund appropriation to the State
27 Department of Education, Program 440, for state special education

1 aid shall be decreased by an amount equal to the amount that would
2 have been reimbursed with state general funds to the school
3 districts through the special education reimbursement process for
4 early childhood special education services for children from birth
5 to age five and elder years that was paid to school districts or
6 approved cooperatives with federal medicaid funds.

7 It is the intent of the Legislature that an amount equal
8 to the amount that would have been reimbursed with state general
9 funds to the school districts, certified to the budget
10 administrator, be appropriated from the General Fund to aid in
11 carrying out the provisions of the Early Intervention Act and other
12 related early intervention services.

13 Sec. 3. Section 79-215, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 79-215. (1) A school board or board of education may
16 admit nonresident pupils to the school district, may determine the
17 rate of tuition of the pupils, and shall collect such tuition in
18 advance except as otherwise provided in this section.

19 (2) When the pupil as a ward of the state or as a ward of
20 any court (a) has been placed in a school district other than the
21 district in which he or she resided at the time he or she became a
22 ward and such ward does not reside in a foster family home licensed
23 or approved by the Department of Health and Human Services
24 Regulation and Licensure or a foster home maintained or used by the
25 Department of Correctional Services pursuant to section 83-108.04
26 or (b) has been placed in any institution which maintains a special
27 education program which has been approved by the State Department

1 of Education and such institution is not owned or operated by the
2 pupil's resident school district, the cost of his or her education
3 and the required transportation costs associated with the child's
4 education shall be paid by the state, but not in advance, to the
5 receiving school district or approved institution under rules and
6 regulations prescribed by the Department of Health and Human
7 Services. Any pupil who is a ward of the state or a ward of any
8 court who resides in a foster family home licensed or approved by
9 the Department of Health and Human Services Regulation and
10 Licensure or a foster home maintained or used by the Department of
11 Correctional Services pursuant to section 83-108.04 shall be deemed
12 a resident of the district in which the foster family home or
13 foster home is located, and the cost of educating such wards shall
14 be shared equally by the school district of residence and the
15 state.

16 (3) In the case of any individual eighteen years of age
17 or younger who is a ward of the state or any court and who is
18 placed in a county detention home established under section
19 43-2,110, the cost of his or her education shall be paid by the
20 state, regardless of such individual's district of residency, to
21 the agency or institution which: (a) Is selected by the county
22 board with jurisdiction over such detention home; (b) has agreed or
23 contracted with such county board to provide educational services;
24 and (c) has been approved by the State Department of Education
25 pursuant to rules and regulations prescribed by the State Board of
26 Education.

27 (4) No tuition shall be charged for children who may be

1 by law allowed to attend the school without charge. The school
2 district in which the parent or guardian of any nonresident pupil
3 maintains his or her legal residence shall not be liable for the
4 payment of tuition and the children of school age of such parent or
5 guardian shall be entitled to free common school privileges the
6 same as any child who is a bona fide resident of such school
7 district whenever the parent or guardian of such nonresident pupil,
8 having entered the public service of the State of Nebraska, has
9 moved from the school district in which he or she maintains legal
10 residence into another school district for temporary purposes
11 incidental to serving the state, without the intention of making
12 the school district to which the parent or guardian has moved his
13 or her legal residence. No tuition shall be charged for a child
14 whose parents are divorced if such child attends school in a
15 district in which either parent resides. The burden of proof as to
16 legal residence shall rest with the person claiming legal residence
17 in any district. The school district may allow a pupil whose
18 residency in the district ceases during a school year to continue
19 attending school for the remainder of that school year without
20 payment of tuition.

21 (5) The school board or board of education may admit
22 nonresident pupils to the school district without requiring the
23 payment of tuition if such pupils are in the actual physical
24 custody of a resident of the school district and are not residents
25 of an adjoining school district and the board determines that the
26 pupils would otherwise be denied guaranteed free common school
27 privileges.

1 (6) The changes made to this section by Laws 1992, LB 3,
2 Ninety-second Legislature, Third Special Session, shall apply to
3 all reimbursements under this section for school year 1992-93 and
4 all school years thereafter.

5 Sec. 4. Section 79-528, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 79-528. (1) On or before July 20 in all school
8 districts, the secretary of the school board or board of education
9 shall deliver to the county superintendent, to be filed in the
10 county superintendent's office, a report under oath showing the
11 number of children from birth through twenty years of age belonging
12 to the school district according to the census taken as provided in
13 sections 79-524 and 79-578. The report shall identify the number
14 of boys and the number of girls in each of the respective age
15 categories. Each Class I school district which is part of a Class
16 VI school district offering instruction (a) in grades kindergarten
17 through six shall report children from birth through eleven years
18 of age and (b) in grades kindergarten through eight shall report
19 children from birth through thirteen years of age. Each Class VI
20 school district offering instruction (i) in grades seven through
21 twelve shall report children who are twelve through twenty years of
22 age and (ii) in grades nine through twelve children who are
23 fourteen through twenty years of age. Each Class I district which
24 has affiliated in whole or in part shall report children from birth
25 through thirteen years of age. Each Class I district which is not
26 in whole or in part a part of a Class VI district and which has not
27 affiliated in whole or in part shall report children from birth

1 through twenty years of age. Each Class II, III, IV, or V district
2 shall report children who are fourteen through twenty years of age
3 residing in Class I districts or portions thereof which have
4 affiliated with such district. The board of any district
5 neglecting to take and report the enumeration shall be liable to
6 the school district for all school money which such district may
7 lose by such neglect.

8 (2) On or before July 15 in all school districts, the
9 secretary of the school board or board of education shall deliver
10 to the county superintendent, to be filed in the county
11 superintendent's office, a report under oath described as an
12 end-of-the-school-year annual statistical summary showing (a) the
13 number of children attending school during the year under five
14 years of age and also the number twenty-one years of age and older,
15 (b) the length of time the school has been taught during the year
16 by a qualified teacher, (c) the length of time taught by each
17 substitute teacher, and (d) such other information as the
18 Commissioner of Education directs.

19 (3) On or before October 15 in Class I school districts,
20 the secretary of the school board shall submit to the county
21 superintendent, to be filed in the county superintendent's office,
22 and on or before November 1 in Class II, III, IV, V, and VI school
23 districts, the secretary of the school board or board of education
24 shall submit to the county superintendent and to the Commissioner
25 of Education, to be filed in their offices, a report under oath
26 described as the annual financial report showing (a) the amount of
27 money received from all sources during the year and the amount of

1 money expended by the school district during the year, (b) the rate
2 of tax levied for all school purposes, (c) the amount of bonded
3 indebtedness, (d) such other information as shall be necessary to
4 fulfill the requirements of sections 79-1003, 79-1004, 79-1006,
5 79-1008, 79-1011 to 79-1013, 79-1015 to 79-1030, and 79-1114,
6 including the amount of funds expended for programs for students
7 with disabilities and for students needing support services as
8 defined in section 14 of this act, and (e) such other information
9 as the Commissioner of Education directs.

10 (4) On or before October 15 of each year, the secretary
11 of each school board or board of education shall deliver to the
12 county superintendent and to the State Department of Education the
13 fall school district membership report, which report shall include
14 the number of children from birth through twenty years of age
15 enrolled in the district on the last Friday in September of a given
16 school year. The report shall enumerate (a) resident students by
17 grade level and nonresident students by grade level and
18 classification, including, but not limited to, option students as
19 defined in section 79-233, wards of the court, or contract
20 students, (b) school district levies for the current fiscal year,
21 and (c) total assessed valuation for the current fiscal year. When
22 any school district fails to submit its fall school district
23 membership report by November 1, the commissioner shall, after
24 notice to the district and an opportunity to be heard, direct that
25 any state aid granted pursuant to the Tax Equity and Educational
26 Opportunities Support Act be withheld until such time as the report
27 is received by the department. In addition, the commissioner shall

1 notify the county superintendent to direct the county treasurer to
2 withhold all school money belonging to the school district until
3 such time as the commissioner notifies the county superintendent of
4 receipt of such report. The county treasurer shall withhold such
5 money.

6 Sec. 5. Section 79-1001, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 79-1001. Sections 79-1001 to 79-1033 and section 8 of
9 this act shall be known and may be cited as the Tax Equity and
10 Educational Opportunities Support Act.

11 Sec. 6. Section 79-1003, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 79-1003. For purposes of the Tax Equity and Educational
14 Opportunities Support Act:

15 (1) Adjusted general fund operating expenditures means
16 general fund operating expenditures as calculated pursuant to
17 subdivision (21) of this section minus the transportation allowance
18 and the special education high-needs student allowance;

19 (2) Adjusted valuation means the assessed valuation of
20 taxable property of each district in the state adjusted pursuant to
21 the adjustment factors described in section 79-1016. For the
22 calculation of state aid to be paid in school years 1994-95 and
23 1995-96, adjusted valuation means the adjusted valuation for the
24 property tax year ending during the school year in which the aid
25 based upon that value is to be paid. For calculation of state aid
26 to be paid in school year 1996-97 and each school year thereafter,
27 adjusted valuation means the adjusted valuation for the property

1 tax year ending during the school year immediately preceding the
2 school year in which the aid based upon that value is to be paid.
3 For purposes of determining the local effort rate yield pursuant to
4 section 79-1015, adjusted valuation does not include the value of
5 any property which a court, by a final judgment from which no
6 appeal is taken, has declared to be nontaxable or exempt from
7 taxation;

8 (3) Allocated income tax funds means the amount of
9 assistance paid to a district pursuant to section 79-1004 or
10 79-1005;

11 (4) Average daily membership means the average daily
12 membership for grades kindergarten through twelve as provided in
13 each district's annual financial report and annual statistical
14 summary and, for the calculation of state aid to be paid in school
15 year 1993-94 and each school year thereafter, includes the
16 proportionate share of students enrolled in a public school
17 instructional program on less than a full-time basis;

18 (5) Average daily membership tiers means groupings of
19 districts by the number of students comprising a district's average
20 daily membership in a specified grade range;

21 (6) Base fiscal year means the first fiscal year in which
22 all data sources reflect the reorganized district as a single
23 district for the calculation of state aid;

24 (7) Board means the school board or board of education of
25 each school district;

26 (8) Categorical federal funds means federal funds limited
27 to a specific purpose by federal law, including, but not limited

1 to, Chapter 1 funds, Chapter 2 funds, Title VI funds, federal
2 vocational education funds, federal school lunch funds, Indian
3 education funds, and Head Start funds;

4 (9) Consolidate means to voluntarily reduce the number of
5 school districts providing education to a grade group and does not
6 include dissolution pursuant to section 79-498;

7 (10) Current school year means the current school fiscal
8 year;

9 (11) Department means the State Department of Education;

10 (12) District means any Class I, II, III, IV, V, or VI
11 district and, for purposes of sections 79-1001 to 79-1022, the
12 nonresident high school tuition fund of each county;

13 (13) Ensuing school year means the school year following
14 the current school year;

15 (14) Equalization aid means the amount of assistance paid
16 to a district pursuant to sections 79-1008 to 79-1022;

17 (15) Fall membership means the total membership in
18 kindergarten through grade twelve as reported on the fall school
19 district membership report pursuant to section 79-528;

20 (16) Fiscal year means the state fiscal year which is the
21 period from July 1 to the following June 30;

22 (17) Formula students means (a) for state aid certified
23 pursuant to section 79-1022, the sum of fall membership from the
24 school year immediately preceding the school year in which the aid
25 is to be paid, multiplied by the average ratio of average daily
26 membership to fall membership for the most recently available
27 complete data year and the two school years prior to the most

1 recently available complete data year, and tuitioned students from
2 the school year immediately preceding the school year in which the
3 aid is to be paid and (b) for final calculation of state aid
4 pursuant to section 79-1065, the sum of average daily membership
5 and tuitioned students from the school year immediately preceding
6 the school year in which the aid was paid;

7 (18) Full-day kindergarten means kindergarten offered by
8 a district for at least one thousand thirty-two instructional
9 hours;

10 (19) General fund budget of expenditures means the total
11 budgeted expenditures for general fund purposes as certified in the
12 budget statement adopted pursuant to the Nebraska Budget Act,
13 except that for purposes of the limitation imposed in section
14 79-1023, the general fund budget of expenditures does not include
15 any special grant funds, exclusive of local matching funds,
16 received by a district subject to the approval of the department;

17 (20) General fund expenditures means all expenditures
18 from the general fund;

19 (21) General fund operating expenditures means the total
20 general fund expenditures minus categorical federal funds, tuition
21 paid, transportation fees paid to other districts, adult education,
22 summer school, school lunch pass-through, community services,
23 redemption of the principal portion of general fund debt service,
24 and transfers from other funds into the general fund;

25 (22) Income tax liability means the amount of the
26 reported income tax liability for resident individuals pursuant to
27 the Nebraska Revenue Act of 1967 less all nonrefundable credits

1 earned and refunds made;

2 (23) Income tax receipts means the amount of income tax
3 collected pursuant to the Nebraska Revenue Act of 1967 less all
4 nonrefundable credits earned and refunds made;

5 (24) Most recently available complete data year means the
6 most recent single school fiscal year for which the annual
7 financial report, fall school district membership report, annual
8 statistical summary, Nebraska income tax liability by school
9 district, and adjusted valuation data are available;

10 (25) Regular route transportation means the
11 transportation of students on regularly scheduled daily routes to
12 and from the attendance center;

13 (26) Reorganized district means any district involved in
14 a consolidation and currently educating students following
15 consolidation;

16 (27) Special education means specially designed
17 kindergarten through grade twelve instruction pursuant to section
18 79-1125, and includes special education transportation;

19 (28) Special education high-needs student allowance means
20 the actual costs of education for students with identified and
21 verified disabilities under the Special Education Act who (a)
22 receive at least three distinct special education or related
23 services, (b) spend at least ninety percent of their school time in
24 an alternative educational setting, and (c) cause school districts
25 to incur costs of education which are at least three times greater
26 than the tiered cost per student of the school district;

27 (29) State aid means the amount of assistance paid to a

1 district pursuant to sections 79-1004, 79-1005, and 79-1007 to
2 79-1022;

3 ~~(29)~~ (30) State board means the State Board of Education;

4 ~~(30)~~ (31) State support means all funds provided to
5 districts by the State of Nebraska for the general fund support of
6 elementary and secondary education;

7 ~~(31)~~ (32) Transportation allowance means the lesser of:

8 (a) The general fund expenditures for regular route transportation
9 and in lieu of transportation expenditures pursuant to section
10 79-611, in the most recently available complete data year, but not
11 including special education transportation expenditures or other
12 expenditures previously excluded from general fund operating
13 expenditures; or (b) the number of miles traveled in the most
14 recently available complete data year by vehicles owned, leased, or
15 contracted by the district for the purpose of regular route
16 transportation multiplied by four hundred percent of the mileage
17 rate established by the Department of Administrative Services
18 pursuant to section 81-1176 as of January 1 of the most recently
19 available complete data year added to in lieu of transportation
20 expenditures pursuant to section 79-611, from the same data year.

21 For school fiscal year 1996-97, the determination of the
22 transportation allowance shall be based on the best available
23 information previously collected by the State Department of
24 Education and shall not include in lieu of transportation
25 expenditures under section 79-611; and

26 ~~(32)~~ (33) Tuitioned students means students in
27 kindergarten through grade twelve of the district whose tuition is

1 paid by the district to some other district or education agency.

2 Sec. 7. Section 79-1014, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 79-1014. For the calculation of state aid to be paid for
5 school fiscal year 1996-97 and each school fiscal year thereafter,
6 using each district's adjusted tiered cost per student as
7 calculated pursuant to section 79-1007, adjusted need for each
8 district shall be computed by first multiplying the number of
9 formula students in each grade grouping of kindergarten, one
10 through six, including full-day kindergarten, seven and eight, and
11 nine through twelve by each such district's corresponding adjusted
12 tiered cost per student in each grade grouping. The sum of such
13 products and the district's transportation allowance and special
14 education high-needs student allowance shall be the district's
15 total formula need.

16 Sec. 8. For school year 1999-2000, twenty percent of the
17 appropriations for school-age special education and transportation
18 under sections 79-1142 and 79-1144 shall be appropriated to the Tax
19 Equity and Educational Opportunities Support Fund for distribution
20 as equalization aid pursuant to sections 79-1008 to 79-1022. For
21 school year 2000-2001, forty percent of the appropriations for
22 school-age special education and transportation under sections
23 79-1142 and 79-1144 shall be appropriated to the Tax Equity and
24 Educational Opportunities Support Fund for distribution as
25 equalization aid pursuant to sections 79-1008 to 79-1022. For
26 school year 2001-2002, sixty percent of the appropriations for
27 school-age special education and transportation under sections

1 79-1142 and 79-1144 shall be appropriated to the Tax Equity and
2 Educational Opportunities Support Fund for distribution as
3 equalization aid pursuant to sections 79-1008 to 79-1022. For
4 school year 2002-2003, eighty percent of the appropriations for
5 school-age special education and transportation under sections
6 79-1142 and 79-1144 shall be appropriated to the Tax Equity and
7 Educational Opportunities Support Fund for distribution as
8 equalization aid pursuant to sections 79-1008 to 79-1022. For
9 school year 2003-2004 and each school year thereafter, one hundred
10 percent of the appropriations for school-age special education and
11 transportation under sections 79-1142 and 79-1144 shall be
12 appropriated to the Tax Equity and Educational Opportunities
13 Support Fund for distribution as equalization aid pursuant to
14 sections 79-1008 to 79-1022. The Legislature shall appropriate a
15 total amount for special education each year which equals the
16 amount appropriated the preceding year plus a growth factor equal
17 to the same percentage rate increase as appropriated to the Tax
18 Equity and Educational Opportunities Support Fund and the School
19 District Income Tax Fund.

20 Sec. 9. Section 79-1018, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 79-1018. District formula resources include other actual
23 receipts as determined by the department for the most recently
24 available complete data year, except that receipts from the
25 Community Improvements Cash Fund and receipts acquired pursuant to
26 the Low-Level Radioactive Waste Disposal Act shall not be included.

27 Other actual receipts include:

- 1 (1) Public power district sales tax revenue;
- 2 (2) Fines and license fees;
- 3 (3) Nonresident high school tuition receipts, except that
- 4 for the calculation of state aid to be paid in school years
- 5 1992-93, 1993-94, and 1994-95, other actual receipts shall include
- 6 the district's total nonresident high school tuition charge for
- 7 each such school year as certified by the department pursuant to
- 8 section 79-4,102 as such section existed immediately prior to July
- 9 1, 1993;
- 10 (4) Tuition receipts from individuals, other districts,
- 11 or any other source except those derived from adult education;
- 12 (5) Transportation receipts;
- 13 (6) Interest on investments;
- 14 (7) Other miscellaneous local receipts, not including
- 15 receipts from private foundations, individuals, associations, or
- 16 charitable organizations;
- 17 (8) Special education receipts, excluding grant funds
- 18 received pursuant to section 9-812;
- 19 (9) Receipts from the state for wards of the court and
- 20 wards of the state;
- 21 (10) All receipts from the temporary school fund;
- 22 (11) Receipts from the Insurance Tax Fund, except that
- 23 for the calculation of state aid to be paid in school year 1996-97
- 24 and each school year thereafter, other actual receipts do not
- 25 include Insurance Tax Fund receipts;
- 26 (12) Pro rata motor vehicle license fee receipts;
- 27 (13) Amounts provided by the state on behalf of the

1 district as reimbursement for repayment of personal property taxes
2 by centrally assessed pipeline companies pursuant to section
3 77-3617;

4 (14) Other miscellaneous state receipts excluding revenue
5 from the textbook loan program authorized by section 79-734;

6 (15) Impact aid entitlements for the school fiscal year
7 which have actually been received by the district to the extent
8 allowed by federal law;

9 (16) All other noncategorical federal receipts;

10 (17) All receipts pursuant to the enrollment option
11 program under sections 79-232 to 79-247; and

12 (18) Receipts under the federal Medicare Catastrophic
13 Coverage Act of 1988 as authorized pursuant to sections 43-2510 and
14 43-2511 but only to the extent of the amount the district would
15 have otherwise received pursuant to the Special Education Act.

16 Sec. 10. Section 79-1025, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 79-1025. (1) For fiscal year 1996-97, the basic
19 allowable growth rate for general fund expenditures ~~other than~~
20 ~~expenditures for special education~~ shall be two percent plus the
21 growth in students. For fiscal year 1997-98, the basic allowable
22 growth rate for general fund expenditures other than expenditures
23 for special education shall be the growth in students. For
24 purposes of this subsection, the growth in students shall be the
25 percentage increase in the number of students calculated by
26 dividing the fall membership count from the school year immediately
27 preceding the school year for which the budget is being determined

1 multiplied by the average ratio of average daily membership to fall
2 membership for the most recent available data year and the two
3 school years prior to that year by the average daily membership in
4 the school district from the second school year preceding the year
5 for which the budget is being determined and then subtracting one
6 from the ratio. If the calculated growth in students is negative,
7 the growth in students shall be zero for the purposes of this
8 section.

9 (2) For all other fiscal years, the basic allowable
10 growth rate for general fund expenditures ~~other than expenditures~~
11 ~~for special education~~ shall be three percent and the allowable
12 growth range shall be from three percent to five and one-half
13 percent. ~~The budget authority for special education shall be the~~
14 ~~actual anticipated expenditures for special education subject to~~
15 ~~the approval of the state board. Such budget authority shall be~~
16 ~~used only for special education expenditures.~~

17 Sec. 11. Section 79-1110, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 79-1110. Sections 79-1110 to 79-1184 and sections 14 to
20 17 of this act shall be known and may be cited as the Special
21 Education Act.

22 Sec. 12. Section 79-1112, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 79-1112. (1) The Legislature finds and declares that:

25 (a) Special education is and will continue to be of
26 significant interest to education policymakers, educators, parents,
27 taxpayers, and, most importantly, to students;

1 (b) The fiscal resources requested to provide educational
2 services to children with disabilities and the need for
3 accountability for those resources requires a comprehensive and
4 reliable system of review;

5 (c) Fiscal resources are limited while program expansion
6 and pressures for additional programs and services are being
7 experienced;

8 (d) Nebraska needs to establish educational standards for
9 children with disabilities, including special education and related
10 services which must be provided to children with disabilities;

11 (e) Current accountability systems do not adequately
12 measure the efficiency and effectiveness of special education
13 programs;

14 (f) Current accountability systems do not adequately
15 measure the efficiency and effectiveness of special education
16 programs in a cost-effective manner; and

17 (g) Local school boards should retain responsibility for
18 the content of instructional programs within ~~the~~ a broad program
19 framework. ~~developed under section 79-1181.~~

20 (2) It is the intent of the Legislature to establish a
21 process for (a) developing a clear understanding of the range of
22 services required by law to meet the educational needs of children
23 with disabilities, (b) assuring that the intent of rules and
24 regulations are carried out in the most cost-efficient manner, and
25 (c) establishing an effective and meaningful system of program
26 standards and evaluation of student outcomes.

27 Sec. 13. Section 79-1113, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 79-1113. For purposes of the Special Education Act,
3 unless the context otherwise requires, the definitions found in
4 sections 79-1114 to 79-1125 and section 14 of this act shall be
5 used.

6 Sec. 14. Support services means preventive services for
7 students who demonstrate a need for specially designed assistance
8 in order to meet local performance standards under the school
9 district's general education curriculum but who are not identified
10 or verified as handicapped pursuant to sections 79-1120 and
11 sections 79-1137 to 79-1139.

12 Sec. 15. (1) The Legislature hereby finds and declares
13 that:

14 (a) It is the intent of the Legislature to phase in a
15 funding system which does not differentiate between support for
16 students in special education and those in regular education. Each
17 school district will be responsible for the education of all the
18 students residing or optioning into the district, not just those in
19 regular education. Identification does not transform a student
20 into a state student rather than a district responsibility. The
21 state's larger role must be to equalize and support the capacity of
22 districts to educate all students and to equalize the burden on
23 local taxpayers;

24 (b) It follows that the state's long-term goal should be
25 to fund special education, just as regular education, through the
26 general state aid system in the Tax Equity and Educational
27 Opportunities Support Act. Eventually, most state special

1 education funds should flow through the equalization formula in the
2 act. This shift will recognize the importance of assuring equity
3 to students as well as property taxpayers;

4 (c) At the local level, the use of state dollars flowing
5 through the equalization formula will not be restricted. Schools
6 will be able to use this general state aid for students in special
7 education as well as for preventive support services. This change
8 will allow many students currently identified as having mild
9 disabilities, but who will not be identified under a noncategorical
10 funding and collaborative programming environment, to continue to
11 receive support services needed to achieve local school district
12 performance standards;

13 (d) At the state level, the Legislature will continue to
14 identify a separate appropriation for special education. The
15 special education appropriations should be increased at the same
16 level as appropriations for the general aid formula; and

17 (e) For purposes of compliance with federal reporting and
18 maintenance of effort requirements, districts will make a separate
19 end-of-year report on state and local funds expended for special
20 education services as required under section 79-528.

21 (2) It is the intent of the Legislature that the new
22 funding system for special education should: (a) Be identification
23 and program neutral; (b) assure that funding is available for
24 support services; (c) encourage services are which integrated with
25 regular education when appropriate; (d) allow services to be driven
26 by educational needs, not state funding; (e) assure that adequate
27 resources are available to meet student needs; (f) assure equity in

1 services available to students regardless of the size, wealth, or
2 geographic location of the school district where students live; (g)
3 contain costs of special education at a rate no greater than
4 regular education; (h) assure that funding is available for
5 extremely disabled high-cost students; (i) integrate special
6 education funding distribution with the funding distribution under
7 the general state aid system; and (j) provide a gradual transition
8 and phase-in to the new funding system in order to minimize impacts
9 on schools.

10 Sec. 16. During the phase-in period described in section
11 8 of this act, for school years 1999-2000 to 2003-2004, each school
12 district will receive, as reimbursement for excess allowable costs
13 under section 79-1142 and 79-1144, the lesser of (1) the amount of
14 aid it would otherwise receive pursuant to such sections or (2)
15 eighty percent of the amount that it received as reimbursement
16 under such sections for the prior year. If the amounts
17 appropriated pursuant to section 8 of this act are not sufficient
18 to provide full funding for all school districts under this
19 section, the amounts payable to each school district shall be
20 prorated accordingly.

21 Sec. 17. The State Department of Education shall adopt
22 and promulgate rules and regulations which define "educational
23 benefit" in order to give direction to school districts in making
24 the distinction between health or medical services which are not
25 the responsibility of the school system and educational services
26 which are the responsibility of the school system.

27 Sec. 18. Section 79-1140, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 79-1140. (1) Except as provided in sections 79-232 to
3 79-247 and 79-1141, each school district shall pay an amount equal
4 to the average per pupil cost of the servicing agency of the
5 preceding year or the cost as agreed upon pursuant to the contract
6 to the agency providing the educational program for every child
7 with a disability who is a resident of the district and attending
8 an educational program not operated by the school district,
9 including programs operated by the State Department of Education,
10 the Department of Health and Human Services, and any other
11 servicing agency whose programs are approved by the State
12 Department of Education.

13 (2) The State Department of Education shall have final
14 authority to approve or disapprove contract service rates of
15 third-party providers of specialized instruction, therapies,
16 including physical and occupational therapies, and health-related
17 services. The rates approved shall be realistic and sensitive to
18 the market pressures of actual costs, supply, and demand for such
19 services. The Nebraska School for the Deaf, the Nebraska School
20 for the Visually Handicapped, and the Diagnostic Resource Center at
21 Cozad shall be subject to the same provisions for state oversight
22 of approval of costs and rates as private providers.

23 Sec. 19. Section 79-1141, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 79-1141. The school district of residence of each
26 student who attends the Nebraska School for the Visually
27 Handicapped or the Nebraska School for the Deaf shall pay an amount

1 equal to the school district's adjusted average per pupil cost of
2 the preceding year plus ten percent of the allowable excess cost.
3 The remainder of the cost for each student shall be accounted for
4 in the budget for the Nebraska School for the Visually Handicapped
5 or the Nebraska School for the Deaf.

6 For school year 2003-2004 and each school year
7 thereafter, the school district of residence of each student who
8 attends the Nebraska School for the Deaf or the Nebraska School for
9 the Visually Handicapped shall pay an amount equal to the school
10 district's average per pupil cost as reported of the annual
11 financial report described in section 79-528.

12 Sec. 20. Section 79-1158, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 79-1158. (1) No reimbursement for special education
15 programs shall be allowed unless the program meets the standards
16 established by the State Department of Education.

17 (2) Services provided by third-party contractors,
18 including educational service agencies as defined in rules and
19 regulations of the department and individuals, shall meet state
20 program standards established by the department. Certification or
21 licensing requirements for staff under rules and regulations of the
22 State Department of Education and rules of other state licensing
23 entities shall apply to staff of third-party contractors. All
24 contracts for services shall define student performance objectives
25 and shall include specific outcome measures. Contract fees shall
26 be paid only to third-party contractors approved by the State
27 Department of Education. The Nebraska School for the Deaf, the

1 Nebraska School for the Visually Handicapped, and the Diagnostic
2 Resource Center at Cozad shall be subject to the same provisions
3 for state oversight of program quality as private providers.

4 Sec. 21. Section 79-1184, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 79-1184. Sections 79-1114 to 79-1116, 79-1119, 79-1132,
7 79-1142, and 79-1144, and 79-1147 terminate on August 31, ~~1998~~
8 2003.

9 Sec. 22. No insurance carrier authorized to do business
10 in the State of Nebraska shall include in any contract of insurance
11 for health care any language which excludes from coverage services
12 which are primarily medical in nature solely because such service
13 is included in an individualized education plan under the Special
14 Education Act and federal Individuals with Disabilities Education
15 Act.

16 Sec. 23. Original sections 79-215, 79-528, 79-1001,
17 79-1003, 79-1014, 79-1018, 79-1025, 79-1110, 79-1112, 79-1113,
18 79-1140, 79-1141, 79-1158, and 79-1184, Reissue Revised Statutes of
19 Nebraska, and sections 9-812 and 43-2515, Revised Statutes
20 Supplement, 1996, are repealed.

21 Sec. 24. The following sections are outright repealed:
22 Sections 79-1179 to 79-1183 and 79-1185 to 79-1187, Reissue Revised
23 Statutes of Nebraska.

PART D

ACCOUNTABILITY REPORT

July, 1996

PART D1

ACCOUNTABILITY RECOMMENDATIONS

August, 1996

INTRODUCTION

The Commission was given the charge to make recommendations for accountability measures for special education, including recommendations for broad frameworks for special education program standards, a system for assessing student outcomes and a system for monitoring costs of special education. The Commission was also to make recommendations for an accountability report which describes special education programs and the impacts of those programs on students while in school and upon exiting school. Reporting requirements are to be integrated into the existing data system of the Department. See Section 79-3368 (1)(e).

Note that the provisions for cost monitoring are included in the second report of the Commission which includes recommendations for a new funding system and inclusion of special education expenditures in the Annual Finance Report. Other required recommendations are in the report which follows.

The Commission's Accountability Subcommittee has been working since enactment of LB 742 last year to develop policy level recommendations for the report which follows. The subcommittee included parents, teachers, administrators, a representative of private schools and school psychologists. A draft report was presented at a public hearing in June. The Commission considered and addressed public input from the hearing as well as that provided in written comments and verbal comments which were received. The Committee's report was modified and adopted by the full Commission on July 30, 1996.

This report must be considered in the context of the funding report which preceded it. The Commission has recommended funding of special education through the general aid, equalization formula to replace the current excess cost reimbursement formula. There are a number of accounting trails which are used in the current system: the annual Plans and Budget reports, the annual Final Financial Report, annual reports of Educational Service Agencies (ESUs and private providers) as well as periodic Audits for compliance with State and Federal regulations. Under the Commission funding proposal, a year end supplement to the Annual Finance Report plus whatever is required in the way of Federal Audits, will be all that remains. The result may be the loss of accountability from the fiscal perspective (tracking of State and Federal dollars to expenditures at the local level. The Commission's report on accountability includes recommendations which focus on accountability primarily from the standpoint of tracking student performance and outcomes against locally set

standards. The other theme which runs through the report is accountability for providing services using the most effective combination of resources in a process which emphasizes prevention and intervention, before it is necessary to consider evaluation of a student for possible placement in special education.

While the Commission's report supports a performance and outcome based accountability system for special education and for education generally, the Commission recognizes that it will take several years to change over the school system to this type of accountability approach. Therefore, the Commission also supports maintenance and strengthening of some process requirements, such as an enhanced student assistance team (SAT), a more closely monitored IEP process, improvements in teacher training and in-service and a more functional assessment process. In many cases, the Commission builds on to the existing process structure, rather than seeking to re-invent the wheel.

The Commission is aware that many educators may chafe at the prospects of additional reporting requirements which are included in its recommendations. The Commission strongly recommends that the reporting burden be kept to the minimum by integration of special education reporting requirements with those which already exist for general education. New reporting requirements should be balanced by elimination of current reports which have less value.

Following is the accountability report of the Commission.

BEST COPY AVAILABLE

ACCOUNTABILITY SUBCOMMITTEE

ACCOUNTABILITY PLAN FOR SPECIAL EDUCATION

ADOPTED JULY 30, 1996

PURPOSE

The Special Education Accountability Commission has been given the mission by the Legislature to address issues and make recommendations for an accountability system for special education programs. This system is to include, but is not exclusive to, recommendations for broad program standards, a system to assess student outcomes and a system for managing and monitoring special education costs. Under LB 742, the accountability system must also include recommendations for a state accountability report and changes in NDE's data collection system.

PREAMBLE

Effectiveness of special education services should be measured by improved outcomes for students, not simply by the number and kind of services offered. Two of the fundamental questions an effective accountability system must ask of education include the following:

1. Are students learning?
2. How do you know?

KEY ASSUMPTIONS AND BELIEFS

We believe that:

- Any accountability system should measure both the opportunity to learn (program standards) and learning outcomes (performance standards).
- Students that need help should get help regardless of verification.
- Additional pre-service and in-service training and support must be provided to teachers, administrators and support staff as schools move towards

serving more students in more "unified educational systems" ¹ and more inclusive settings.

- Collaboration between all service providers and trainers of service providers is essential (special education and regular education).
- An accountability system must include an enforcement mechanism.
- The State will hold local school districts responsible for the success of all students.

We assume that:

- As a result of funding and verification process changes being made and contemplated by the Commission, the Department of Education and Legislature, the following changes will occur in the delivery of special education services:
 - A. Significantly fewer students will be identified and verified for special education;
 - B. Some students now served in special education will no longer be served through special education ²; and
 - C. More services (special education and support services) will be provided in more unified educational systems and in more inclusive settings.
- The educational system will be held accountable for meeting the learning needs of all students.
- A more unified educational system will free up some staff who can be re-deployed in the service of all students.

¹ * The Special Education Advisory Council has defined a unified school system as "A true High Performance Learning System that does not differentiate between special and regular education, but focuses on providing education to all students." McLaughlin and others have noted that a unified system blurs the lines between special and regular education blending service delivery, funding, outcomes, service location, administration and teacher training.

² More students will be served under prevention/intervention strategies such as the SAT or other comparable problem solving processes. Also, under Section 504 of the Rehabilitation Act of 1973, some students who are now included in special education may fall under a Section 504 accommodation plan.

POLICY RECOMMENDATIONS

Local standards for student performance and programs

I. Measurable program and performance standards must be established by school districts for "all students"³.

A. Program standards must be measurable and must be consistent with applicable Federal and State law.

B. Performance standards for students must be measurable, consistent with curriculum, content and outcome expectations of the community and State and compatible with national standards.⁴ Performance standards must be designed to assure that all students exiting the school system are adequately prepared to live and work well in their world.

C. To enable all students to meet the performance standards established by school districts, program standards must include provision for adaptations and accommodations to the curriculum, instruction and assessment.

Accountability for improved services

II. The education system must be accountable for services provided to students in special education programs and to students in need of "support services".⁵

³ This document assumes that all children, including those with identified disabilities and those who need special support services, can learn and should be included in an accountability system for an educational system which provides services to students through a variety of different programs and supports. The term "all students" will be used throughout this document with that meaning.

⁴ An example might be district generated skill or curriculum content objectives.

⁵ The Committee accepts the definition of support services provided in section 3 of LB 742: "Support services shall mean preventative services for those students not identified or verified as handicapped pursuant to sections 79-3309 and sections 79-3317 to 79-3318, but demonstrating a need for specially designed assistance in order to benefit from the school district's general education curriculum and in [order to] avoid the need for potentially expensive special education placement and services."

Prevention and intervention support services

A. The school district shall direct that each building administrator shall be accountable for the implementation of prevention and intervention strategies which will include identification of students who need support services, notification and involvement of family members, determination of the specific needs of students and the necessary services to meet those needs, providing the needed services and monitoring the effectiveness of the services provided. Appropriate licensed or certificated specialists must become more involved in the development, implementation and evaluation of such prevention and intervention processes.⁶ The attached appendix is a model illustrating the different levels of prevention and intervention which might apply in different learning and teaching situations.

Expansion of school district prevention and intervention processes presumes a funding system where State and local funding sources can be used to meet student needs without the requirement of identification and verification of disability. **Schools will see a redeployment of resources from verification efforts and special education services to prevention and intervention planning, implementation and evaluation.**

Identification of student needs

B. As school districts identify specific learning outcomes for all students, a process should be developed by the Department of Education which focuses on identification of the specific needs of students who do not meet such outcomes.

⁶ Licensed or certificated professionals who typically will be involved in such prevention processes include the classroom teacher, special education teachers, the building administrator, the school psychologist, speech pathologists, and others with a specialized knowledge or understanding of curriculum adaptation and instructional strategies for diverse learners. As an example, the Commission heard from many about the changing role of the school psychologist, moving from the traditional "tester" role in the psychological assessment for entry into special education to a collaborator with teachers in the planning of instructional strategies based on the assessed needs of individual or groups of students in prevention/intervention efforts.

Verification criteria

C. For students who are referred for special education evaluation, current verification criteria should remain in Rule pending possible revision by the Nebraska Department of Education.

Functional assessments

D. The evaluations conducted upon referral to the Multidisciplinary Team normally focus on the question "To identify or not to identify as disabled?" The individual student assessment must become more comprehensive and facilitate improved outcomes, not just answer the identification question. The reports of school psychologists and other professionals on the MDT can provide additional useful information which can be used to develop learning and teaching strategies, regardless of whether the student is identified or not identified as disabled under State or Federal law.

The IEP

E. For students who are identified and verified as disabled, the Department of Education must adopt a strengthened IEP process (in a Revised Rule). The building administrator shall be responsible for the overall work and monitoring of the IEP and the implementation of curriculum adaptations and instructional strategies established in the IEP.

Incentive program for recognition of effective programs

F. The Legislature should consider expanding criteria for utilization of lottery funds to support financial incentives which encourage creative, innovative and effective approaches and which result in improved outcomes for special education students and students needing support services. These incentive funds should not be counted as receipts of the school district which reduce state aid under the Tax Equity and Educational Opportunities Support Act.

Integration with school accreditation

III. The Department of Education should assure that accountability measures for special education are implemented through integration into the school accreditation system of the State.

A. The Department of Education must adopt a "strengthened prevention and intervention process" in Rule 10 for Accreditation of Schools.⁷ Monitoring and enforcement of the accreditation requirements for prevention and intervention processes shall be through normal Rule 10 monitoring and enforcement processes (such as annual reports and assurances, school improvement planning, seven year self-evaluations).

B. State accreditation of school districts must include a measurement of school district success in meeting program and performance standards for all students, including those with disabilities and those needing support services.. The accreditation process, based on a school improvement model, must include targeted technical assistance and improvement planning for districts not demonstrating progress.

C. School improvement plans must include staff development and training plans to assure that staff (including administrators) have the skills for instructional adaptations, behavior interventions and accommodations to

⁷ The Department of Education could adopt a strengthened Student Assistance Team process, in Rule 10 for Accreditation of Schools. Based on criteria established by the Department relating to students who qualify for support services, any parent, teacher, counselor or other school personnel could request the convening of a Student Assistance Team. The building administrator would become accountable for the overall work of the Student Assistance Team and the implementation of intervention strategies created by the Student Assistance Team. Using baseline data (describing present level of performance), the Student Assistance Team would develop individualized intervention strategies for students, with objectives and steps leading towards objectives. The Student Assistance Team would also define outcome goals for specific skills development. Strategies will be implemented at the school and classroom level under the direction and supervision of the Student Assistance Team. At a minimum the Student Assistance Team could include the following types of intervention strategies: (a) environmental or organizational adaptations; (b) teaching strategy adjustments; and (c) curriculum adjustments. The SAT would collect and analyze data to evaluate the effectiveness of the intervention which is implemented. (For example: student work products or behavior data which document progression towards objectives for skill acquisition or behavior modification). The SAT would meet on a regular basis to review student progress, determine intervention effectiveness and, if necessary, develop alternative intervention strategies. The SAT would determine the frequency of review meetings depending on the nature of the interventions being implemented.

assessments that are necessary to work successfully with diverse learners.

D. As a component of ongoing school improvement required under Rule 10, school districts must submit a written report to the Department of Education which outlines an action plan to include goals, objectives and a time line for more flexible assignment of staff, necessary teacher training and the changing role of administrators with respect to prevention and intervention efforts. Plans must show that the school district provides for mediation or other alternative dispute resolution process to resolve conflicts with verified and non-verified students who need support services.

Training

IV. Appropriate pre-service and in-service training must be provided so that every student has the opportunity to meet performance standards through his or her own learning style. Training should provide the tools and strategies to teachers so that most students can meet performance standards. Standards should not be lowered.

A. At the university and college level, professional development and training of teachers and other certificated staff must support the concepts of more unified educational systems (special and regular education) and facilitate collaborative educational practices for all students, including those with disabilities and those needing support services. Pre-service training should promote team collaboration toward the solution of academic and behavioral problems.

B. By the year 2,000, certification rules should require that all newly certificated staff have adequate training in collaboration and prevention/intervention strategies in order to meet the needs of "students who need support services". LB 742, 1995.

C. All employees of school districts and contract providers of education services must receive training which supports the concepts of a more unified educational system (special and regular education) and facilitate collaborative educational practices for all students, including those with disabilities and those needing support services.

D. School districts must require and provide appropriate and ongoing training in instructional adaptations, behavior interventions and classroom management and the assessment of student needs to all teachers, administrators and other school personnel.

E. All teachers and administrators should receive training in the recognition of indicators and symptoms of at-risk students and training in team problem solving with a focus on student strengths.

F. Information must be made available to parents regarding ongoing training opportunities.

The student assessment system

V. An accountability system must measure the success of the local school districts, and the State as a whole, in meeting performance standards for all students. The student assessment system should provide measurements of students performance and opportunities to learn.

A. "With few exceptions", ⁸ students with disabilities and students needing support services must be included in each school district's general education assessment process which is aligned with the general education curriculum and content standards.

B. For each student with a disability given an alternative assessment, an explanation must be provided in the Individualized Educational Plan regarding why an alternative assessment is appropriate and how the child will be assessed.

Data reporting requirements

VI. At a minimum, an accountability system must provide student outcome data regarding the success of students, school buildings, districts and the State in meeting the needs of all students.

A. The providers of services must report regular and ongoing indicators of all students' progress at the classroom, building, district and state levels.

B. For students with disabilities and those requiring *support* services, each school district shall develop an instrument, with technical assistance from the Department of Education and parent advisory groups, to assess

⁸ It is assumed that students with disabilities with cognitive development which is normal or above can be included in the assessment of the school district which is used to track progress through the general education curriculum. This assumes that appropriate accommodations are made in the assessment process.

consumer satisfaction. Each school district shall implement a survey(s), of students, parents, teachers and administrators to assess satisfaction with prevention and intervention processes, the IEP process, and special education services provided and student progress towards meeting IEP objectives. Each district will compile data from the surveys and report aggregate data in the school district's annual report to school patrons and to the Department of Education biennially. This survey should be integrated into the graduate follow-up survey required for school accreditation in Rule 10.

C. State level data on student progress shall include:

- (1) the annual number and percentage of students entering special education;
- (2) the annual number and percentage of special education students progressing to a less restrictive environment or returned to the regular education program (i.e. no longer verified as having a disability);
- (3) the number of students receiving support services and special education services who leave school before graduation (disaggregated and compared to general education); and
- (4) aggregate data from the annual satisfaction survey.

D. The Department of Education should integrate and consolidate special education report requirements with other reports required by the Department to avoid unnecessary duplication and minimize paperwork requirements to the extent possible.

Best Practices Guidance and Technical Assistance

VII. The Department of Education will develop "Best Practices" reference guides, with technical assistance from practicing professionals, that focus on promising prevention and intervention practices. Specifically, the studies should investigate what can be done to insure that all youngsters are successful so the need for more expensive remedial education is reduced.

Best practices refer to strategies, used to meet the specific learning needs of students, that are operational, observable and measurable. The Department of Education should provide the resources and technical assistance and training in prevention and intervention practices (such as an expanded student assistance team process) necessary to implement such practices.

PRIMARY PREVENTION

- Proactive in Nature
- Unified Education Focus
- Preservice/Inservice Training in Interventions Collaboration
- Goal-Prevent Learning Difficulties Before They Become "Problems"

SECONDARY PREVENTION

- The Application of Preservice/Inservice Skill Training
- Interventions/Adaption Strategies Applied at Early Stage
- Work by Problem Solving Team Identify Need-Plan Implement-Evaluate

TERTIARY PREVENTION

- Reactive
- Intervention to Keep Problem From Getting Worse
- Referral-Assessment Verification of "Disability" (Sp. Ed)
- IEP Team Develops Goals/Objectives

LEVELS OF PREVENTION MODEL

PART D2

ACCOUNTABILITY LEGISLATION

Section summary

Draft

Accountability legislation summary (Req. # 0052).

Section 1 Establishes legislative intent for an accountability system for special education.

Section 2: A new section which defines the term support services along the same lines as LB 742.

Section 3: New section which requires school districts to establish program and performance standards for all students, including students with disabilities and those requiring support services. Also requires school districts to develop adaptations and accommodations to curriculum, instruction and assessment for students with disabilities and those requiring support services.

Section 4. New section which requires school districts make school building administrators accountable for providing needed prevention and intervention services. The prevention efforts will include a system for identifying students who need support services, determination of needs for services, planning, delivery of services and continuing monitoring and assessment of student progress under the prevention/intervention plan.

Section 5: New section requiring NDE to develop a process for identification of students who need support services. The process should be tied to student performance against local performance standards.

Section 6: Amending section 79-318 to require the inclusion of students with disabilities from the regular school assessment unless the IEP specifies an alternative assessment and the reason therefor.

Section 7: Amending section 79-528 to require an annual report of indicators of student progress for all students, use and reporting of the results from a regular survey of consumer satisfaction regarding special education programs, reporting of the number and percentage of students entering and exiting special education programs and the number and percentage of special education students and students needing support services who leave school before graduation (compared to regular education). Data reporting requirements are to be minimized and integrated with other reporting requirements to the extent possible.

Section 8: Amendment to 79-703, school accreditation requirements, to require NDE to integrate special education program and performance requirements into school accreditation standards. Specific accreditation components for schools will include: an enhanced prevention/intervention process, a measurement for assessing local district success in meeting program and performance

requirements, a written action plan in the school improvement planning report which assures adequate staff development in prevention/intervention skills, provisions for flexible use of staff, new roles for administrators in designing and providing services for students needing support services and a mediation or alternative dispute resolution process for resolving conflicts with parents of students with disabilities or those needing support services .

Section 9: Amend section 79-1154, stating that newly certificated staff must have competencies in collaboration and prevention/intervention strategies to meet State certification requirements by the year 2,000. Existing staff must receive in-service training in unified education strategies, collaborative decision making and planning in order to meet the needs of all students, including those with identified disabilities and those needing preventative support services.

Section 10: Repealer of sections amended in the bill.

Section 11: Outright repealer of sections creating the Special Education Accountability Commission (which terminates September 1, 1996), section with Legislative intent language from LB 742 for a new funding system for special education and a section which defines "support services", which is replaced in the bill.

LEGISLATURE OF NEBRASKA
NINETY-FIFTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL

Introduced by
Read first time
Committee:

A BILL

1 FOR AN ACT relating to special education; to amend sections 79-318,
2 79-528, 79-703, and 79-1154, Reissue Revised Statutes of
3 Nebraska; to provide for establishment of progress and
4 outcome standards as provided; to provide for
5 accountability; to provide duties; to harmonize
6 provisions; to repeal the original sections; and to
7 outright repeal sections 79-1179 to 79-1183 and sections
8 79-1185 to 79-1187, Reissue Revised Statutes of Nebraska.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature hereby finds and declares
2 that an accountability system for special education must be part of
3 an accountability system for all of education which:

4 (1) Includes program standards that measure the
5 opportunity to learn and performance standards which measure
6 learning outcomes;

7 (2) Assures that students who need help should get help
8 regardless of identification or verification as handicapped;

9 (3) Provides needed preservice and inservice training and
10 support to teachers, administrators, and support staff as schools
11 move towards serving more students in more unified educational
12 systems and more inclusive settings;

13 (4) Fosters collaboration between all service providers
14 and trainers of service providers, those in special education and
15 those in regular education;

16 (5) Includes an effective and non-burdensome enforcement
17 mechanism;

18 (6) Holds local school districts responsible for the
19 success of all students; and

20 (7) Assures that all teachers have the competency to
21 address the needs of a diverse group of students.

22 Sec. 2. For purposes of sections 1 to 5 of this act,
23 support services means preventive services for students who
24 demonstrate a need for specially designed assistance in order to
25 meet local performance standards under the school district's
26 general education curriculum but who are not identified or verified
27 as handicapped pursuant to sections 79-1120 and sections 79-1137 to

1 79-1139.

2 Sec. 3. On or before July 1, 1999, each school district
3 shall establish program standards and performance standards for all
4 students, including students with disabilities and students needing
5 support services as defined in section 2 of this act. To enable
6 all students to meet performance standards, school districts shall
7 make available appropriate adaptations and accommodations to the
8 curriculum, instruction, and assessment for students with
9 disabilities and students needing support services.

10 Sec. 4. Each school district shall be accountable, at
11 the building level, for the implementation of prevention and
12 intervention strategies which will include identification of
13 students who need support services, notification and involvement of
14 family members, determination of the specific needs of students and
15 the necessary services to meet those needs, providing the needed
16 services, and monitoring the effectiveness of the services
17 provided. Appropriately licensed or certified specialists shall
18 participate actively in the development, implementation, and
19 evaluation of such prevention and intervention strategies.

20 Sec. 5. The State Department of Education shall develop
21 a process which focuses on identification of the specific needs of
22 students who do not meet learning outcomes established for all
23 students by school districts. The process shall aid school
24 districts in identification of students who need support services.

25 Sec. 6. Section 79-318, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 79-318. The State Board of Education shall:

1 (1) Appoint and fix the compensation of the Commissioner
2 of Education;

3 (2) Remove the commissioner from office at any time for
4 conviction of any crime involving moral turpitude or felonious act,
5 for inefficiency, or for willful and continuous disregard of his or
6 her duties as commissioner or of the directives of the board;

7 (3) Upon recommendation of the commissioner, appoint and
8 fix the compensation of a deputy commissioner and all professional
9 employees of the board;

10 (4) Organize the State Department of Education into such
11 divisions, branches, or sections as may be necessary or desirable
12 to perform all its proper functions and to render maximum service
13 to the board and to the state school system;

14 (5) Provide, through the commissioner and his or her
15 professional staff, enlightened professional leadership, guidance,
16 and supervision of the state school system, including educational
17 service units. In order that the commissioner and his or her staff
18 may carry out their duties, the board shall, through the
19 commissioner: (a) Provide supervisory and consultation services to
20 the schools of the state; (b) issue materials helpful in the
21 development, maintenance, and improvement of educational facilities
22 and programs; (c) establish rules and regulations which govern
23 standards and procedures for the approval and legal operation of
24 all schools in the state and for the accreditation of all schools
25 requesting state accreditation. All public, private,
26 denominational, or parochial schools shall either comply with the
27 accreditation or approval requirements prescribed in this section

1 and section 79-703 or, for those schools which elect not to meet
2 accreditation or approval requirements, the requirements prescribed
3 in subsections (2) through (5) of section 79-1601. Standards and
4 procedures for approval and accreditation shall be based upon the
5 program of studies, guidance services, the number and preparation
6 of teachers in relation to the curriculum and enrollment,
7 instructional materials and equipment, science facilities and
8 equipment, library facilities and materials, and health and safety
9 factors in buildings and grounds. Rules and regulations which
10 govern standards and procedures for private, denominational, and
11 parochial schools which elect, pursuant to the procedures
12 prescribed in subsections (2) through (5) of section 79-1601, not
13 to meet state accreditation or approval requirements shall be as
14 described in such section; (d) institute a statewide system of
15 testing to determine the degree of achievement and accomplishment
16 of all the students within the state's school systems if it
17 determines such testing would be advisable; (e) prescribe a uniform
18 system of records and accounting for keeping adequate educational
19 and financial records, for gathering and reporting necessary
20 educational data, and for evaluating educational progress; (f)
21 cause to be published laws, rules, and regulations governing the
22 schools and the school lands and funds with explanatory notes for
23 the guidance of those charged with the administration of the
24 schools of the state; (g) approve teacher education programs
25 conducted in Nebraska postsecondary educational institutions
26 designed for the purpose of certificating teachers and
27 administrators; (h) approve teacher evaluation policies and

1 procedures developed by school districts and educational service
2 units; ~~and~~ (i) approve general plans and adopt educational
3 policies, standards, rules, and regulations for carrying out the
4 board's responsibilities and those assigned to the State Department
5 of Education by the Legislature; and (j) assure that school
6 districts include, with appropriate accommodations, students with
7 disabilities and students needing support services, as defined in
8 section 2 of this act, in general education assessments, except for
9 students with disabilities for whom an alternative assessment is
10 justified and established in an individual education plan;

11 (6) Adopt and promulgate rules and regulations for the
12 guidance, supervision, accreditation, and coordination of
13 educational service units. Such rules and regulations for
14 accreditation shall include, but not be limited to, (a) a
15 requirement that programs and services offered to school districts
16 by each educational service unit shall be evaluated on a regular
17 basis, but not less than every seven years, to assure that
18 educational service units remain responsive to school district
19 needs and (b) guidelines for the use and management of funds
20 generated from the property tax levy and from other sources of
21 revenue as may be available to the educational service units, to
22 assure that public funds are used to accomplish the purposes and
23 goals assigned to the educational service units by section 79-1204.
24 The State Board of Education shall establish procedures to
25 encourage the coordination of activities among educational service
26 units and to encourage effective and efficient educational service
27 delivery on a statewide basis;

1 (7) Submit a biennial report to the Governor and the
2 Clerk of the Legislature covering the actions of the board, the
3 operations of the State Department of Education, and the progress
4 and needs of the schools and recommend such legislation as may be
5 necessary to satisfy these needs;

6 (8) Prepare and distribute reports designed to acquaint
7 school district officers, teachers, and patrons of the schools with
8 the conditions and needs of the schools;

9 (9) Provide for consultation with professional educators
10 and lay leaders for the purpose of securing advice deemed necessary
11 in the formulation of policies and in the effectual discharge of
12 its duties;

13 (10) Make studies, investigations, and reports and
14 assemble information as necessary for the formulation of policies,
15 for making plans, for evaluating the state school program, and for
16 making essential and adequate reports;

17 (11) Submit to the Governor and the Legislature a budget
18 necessary to finance the state school program under its
19 jurisdiction, including the internal operation and maintenance of
20 the State Department of Education;

21 (12) Interpret its own policies, standards, rules, and
22 regulations and, upon reasonable request, hear complaints and
23 disputes arising therefrom;

24 (13) With the advice of the Department of Motor Vehicles,
25 adopt and promulgate rules and regulations containing reasonable
26 standards, not inconsistent with existing statutes, governing: (a)
27 The general design, equipment, color, operation, and maintenance of

1 any vehicle with a manufacturer's rated seating capacity of eleven
2 or more passengers used for the transportation of school children;
3 and (b) the equipment, operation, and maintenance of any vehicle
4 with a capacity of ten or less passengers used for the
5 transportation of school students, when such vehicles are owned,
6 operated, or owned and operated by any school district or privately
7 owned or operated under contract with any school district in this
8 state. Similar rules and regulations shall be adopted and
9 promulgated for operators of such vehicles as provided in section
10 79-607;

11 (14) Accept, on behalf of the Nebraska School for the
12 Visually Handicapped, on behalf of the Nebraska School for the
13 Deaf, or on behalf of any school for students with mental
14 retardation which is exclusively owned by the State of Nebraska and
15 under the control and supervision of the State Department of
16 Education, devises of real property or donations or bequests of
17 other property, or both, if in its judgment any such devise,
18 donation, or bequest is for the best interest of any such school or
19 the students attending such school, or both, and irrigate or
20 otherwise improve any such real estate when in the board's judgment
21 it would be advisable to do so; and

22 (15) Upon acceptance of any devise, donation, or bequest
23 as provided in this section, administer and carry out such devise,
24 donation, or bequest in accordance with the terms and conditions
25 thereof. If not prohibited by the terms and conditions of any such
26 devise, donation, or bequest, the board may sell, convey, exchange,
27 or lease property so devised, donated, or bequeathed upon such

1 terms and conditions as it deems best and remit all money derived
2 from any such sale or lease to the State Treasurer for credit to
3 the State Department of Education Trust Fund.

4 Each member of the Legislature shall receive a copy of
5 the report required by subdivision (7) of this section by making a
6 request for it to the commissioner.

7 None of the duties prescribed in this section shall
8 prevent the board from exercising such other duties as in its
9 judgment may be necessary for the proper and legal exercise of its
10 obligations.

11 Sec. 7. Section 79-528, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 79-528. (1) On or before July 20 in all school
14 districts, the secretary of the school board or board of education
15 shall deliver to the county superintendent, to be filed in the
16 county superintendent's office, a report under oath showing the
17 number of children from birth through twenty years of age belonging
18 to the school district according to the census taken as provided in
19 sections 79-524 and 79-578. The report shall identify the number
20 of boys and the number of girls in each of the respective age
21 categories. Each Class I school district which is part of a Class
22 VI school district offering instruction (a) in grades kindergarten
23 through six shall report children from birth through eleven years
24 of age and (b) in grades kindergarten through eight shall report
25 children from birth through thirteen years of age. Each Class VI
26 school district offering instruction (i) in grades seven through
27 twelve shall report children who are twelve through twenty years of

1 age and (ii) in grades nine through twelve children who are
2 fourteen through twenty years of age. Each Class I district which
3 has affiliated in whole or in part shall report children from birth
4 through thirteen years of age. Each Class I district which is not
5 in whole or in part a part of a Class VI district and which has not
6 affiliated in whole or in part shall report children from birth
7 through twenty years of age. Each Class II, III, IV, or V district
8 shall report children who are fourteen through twenty years of age
9 residing in Class I districts or portions thereof which have
10 affiliated with such district. The board of any district
11 neglecting to take and report the enumeration shall be liable to
12 the school district for all school money which such district may
13 lose by such neglect.

14 (2) On or before July 15 in all school districts, the
15 secretary of the school board or board of education shall deliver
16 to the county superintendent, to be filed in the county
17 superintendent's office, a report under oath described as an
18 end-of-the-school-year annual statistical summary showing (a) the
19 number of children attending school during the year under five
20 years of age and also the number twenty-one years of age and older,
21 (b) the length of time the school has been taught during the year
22 by a qualified teacher, (c) the length of time taught by each
23 substitute teacher, and (d) such other information as the
24 Commissioner of Education directs.

25 (3) On or before October 15 in Class I school districts,
26 the secretary of the school board shall submit to the county
27 superintendent, to be filed in the county superintendent's office,

1 and on or before November 1 in Class II, III, IV, V, and VI school
2 districts, the secretary of the school board or board of education
3 shall submit to the county superintendent and to the Commissioner
4 of Education, to be filed in their offices, a report under oath
5 described as the annual financial report showing (a) the amount of
6 money received from all sources during the year and the amount of
7 money expended by the school district during the year, (b) the rate
8 of tax levied for all school purposes, (c) the amount of bonded
9 indebtedness, (d) such other information as shall be necessary to
10 fulfill the requirements of sections 79-1003, 79-1004, 79-1006,
11 79-1008, 79-1011 to 79-1013, 79-1015 to 79-1030, and 79-1114, and
12 (e) such other information as the Commissioner of Education
13 directs.

14 (4) On or before October 15 of each year, the secretary
15 of each school board or board of education shall deliver to the
16 county superintendent and to the State Department of Education the
17 fall school district membership report, which report shall include
18 the number of children from birth through twenty years of age
19 enrolled in the district on the last Friday in September of a given
20 school year. The report shall enumerate (a) resident students by
21 grade level and nonresident students by grade level and
22 classification, including, but not limited to, option students as
23 defined in section 79-233, wards of the court, or contract
24 students, (b) school district levies for the current fiscal year,
25 and (c) total assessed valuation for the current fiscal year. When
26 any school district fails to submit its fall school district
27 membership report by November 1, the commissioner shall, after

1 notice to the district and an opportunity to be heard, direct that
2 any state aid granted pursuant to the Tax Equity and Educational
3 Opportunities Support Act be withheld until such time as the report
4 is received by the department. In addition, the commissioner shall
5 notify the county superintendent to direct the county treasurer to
6 withhold all school money belonging to the school district until
7 such time as the commissioner notifies the county superintendent of
8 receipt of such report. The county treasurer shall withhold such
9 money.

10 (5) On dates established by the State Department of
11 Education, each school district shall submit a report which
12 includes outcome data regarding the success of students, school
13 buildings, school districts, and the state in meeting the needs of
14 all students. The report shall include regular and ongoing
15 indicators of all students' progress at the classroom, school
16 building, school district, and state levels.

17 (6) For students with disabilities and students requiring
18 support services as defined in section 2 of this act, each school
19 district shall, with technical assistance from the department and
20 parent advisory groups, develop an instrument to assess consumer
21 satisfaction. Each district shall implement a survey of students,
22 parents, teachers, and administrators to assess satisfaction with
23 prevention and intervention strategies, the individual education
24 plan process, special education services provided, and student
25 progress towards meeting individual education plan objectives.
26 Each district shall compile data from the surveys and report
27 aggregate data in the school district's annual report to school

1 patrons and to the department biennially. The survey shall be
2 integrated into the graduate follow-up survey required for school
3 accreditation.

4 (7) State-level data on student progress shall include:

5 (a) The annual number and percentage of students entering
6 special education;

7 (b) The annual number and percentage of special education
8 students progressing to a less restrictive environment or returned
9 to the general education program because they are no longer
10 verified as having a disability;

11 (c) The number of students receiving support services and
12 special education services who leave school before graduation,
13 disaggregated and compared to general education; and

14 (d) Aggregate data from the annual satisfaction survey.

15 Sec. 8. Section 79-703, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 79-703. (1) To ensure both equality of opportunity and
18 quality of programs offered, all public schools in the state shall
19 be required to meet quality and performance-based approval or
20 accreditation standards as prescribed by the State Board of
21 Education. The board shall establish a core curriculum standard,
22 which shall include multicultural education and vocational
23 education courses, for all public schools in the state.
24 Accreditation and approval standards shall be designed to assure
25 effective schooling and quality of instructional programs
26 regardless of school size, wealth, or geographic location. The
27 board shall recognize and encourage the maximum use of cooperative

1 programs and may provide for approval or accreditation of programs
2 on a cooperative basis, including the sharing of administrative and
3 instructional staff, between school districts for the purpose of
4 meeting the approval and accreditation requirements established
5 pursuant to this section and section 79-318.

6 (2) The Commissioner of Education shall appoint an
7 accreditation committee which shall be representative of the
8 educational institutions and agencies of the state and shall
9 include as a member the director of admissions of the University of
10 Nebraska.

11 (3) The accreditation committee shall be responsible for:
12 (a) Recommending appropriate standards and policies with respect to
13 the accreditation and classification of schools; and (b) making
14 recommendations annually to the commissioner relative to the
15 accreditation and classification of individual schools. No school
16 shall be considered for accreditation status which has not first
17 fulfilled all requirements for an approved school.

18 (4) By school year 1993-94 all public schools in the
19 state shall be accredited.

20 (5) It is the intent of the Legislature that all public
21 school students shall have access to all educational services
22 required of accredited schools. Such services may be provided
23 through cooperative programs or alternative methods of delivery.

24 (6) The State Department of Education shall integrate
25 program standards and performance standards for special education
26 and support services, as defined in section 2 of this act, into
27 accreditation standards for all schools. Such standards shall

1 include provisions for:

2 (a) A strengthened prevention and intervention process.
3 Monitoring and enforcement of the accreditation requirements for
4 prevention and intervention processes shall be through normal
5 school accreditation monitoring and enforcement processes,
6 including annual reports and assurances, school improvement
7 planning, and seven-year self-evaluations;

8 (b) Measurement of school district success in meeting
9 program standards and performance standards for all students,
10 including students with disabilities and students needing support
11 services. The accreditation process, based on a school-improvement
12 model, shall include targeted technical assistance and improvement
13 planning for districts not demonstrating progress;

14 (c) School improvement plans which include staff
15 development and training plans to assure that staff, including
16 administrators, have the skills for instructional adaptations,
17 behavior interventions, and accommodations to assessments that are
18 necessary to work successfully with diverse learners; and

19 (d) As a component of ongoing school improvement required
20 under school accreditation, a written report submitted to the State
21 Department of Education which outlines an action plan including
22 goals, objectives, and a time line for more flexible assignment of
23 staff, necessary teacher training, and the changing role of
24 administrators with respect to prevention and intervention efforts.
25 The plan shall show that the school district provides for mediation
26 or other alternative dispute resolution to resolve conflicts with
27 verified and nonverified students who need support services.

1 Sec. 9. Section 79-1154, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 79-1154. (1) The State Board of Education shall review
4 special training and educational programs offered by or in
5 conjunction with any public school district, combination of public
6 school districts, educational service unit, or combination of
7 educational service units subject to the following:

8 ~~(1)~~ (a) Each teacher in any such special program shall be
9 qualified;

10 ~~(2)~~ (b) Teacher aides working with any such program shall
11 have such qualifications as the governing body of the school shall
12 prescribe and shall participate in appropriate inservice
13 activities; and

14 ~~(3)~~ (c) Each qualified teacher shall be responsible for
15 the direct supervision of teacher aides, whose duties shall be
16 limited to those prescribed in section 79-802.

17 (2) Beginning January 1, 2000, all newly certificated
18 staff shall have completed adequate training in collaboration and
19 prevention and intervention strategies in order to meet the needs
20 of students needing support services as defined in section 2 of
21 this act.

22 (3) Beginning with school year 2000-2001, all employees
23 of school districts and contract providers of education services
24 shall receive training which supports the concepts of a more
25 unified educational system and collaborative educational practices
26 for all students, including students with disabilities and students
27 needing support services.

1 (4) Every school district shall require and provide
2 appropriate and ongoing training in instructional adaptations,
3 behavior interventions, classroom management, and assessment of
4 student needs to all teachers, administrators, and other school
5 personnel.

6 (5) For purposes of this section, qualified teacher means
7 an individual holding a valid State of Nebraska teaching or special
8 services certificate with an endorsement appropriate to the
9 ~~handicaps~~ disabilities served. If such teacher is serving children
10 with more than one ~~handicap~~ disability, qualified teacher means an
11 individual holding a valid State of Nebraska teaching or special
12 services certificate with an endorsement in at least one of the
13 ~~handicaps~~ disabilities served.

14 Sec. 10. Original sections 79-318, 79-528, 79-703, and
15 79-1154, Reissue Revised Statutes of Nebraska, are repealed.

16 Sec. 11. The following sections are outright repealed:
17 Sections 79-1179 to 79-1183 and 79-1185 to 79-1187, Reissue Revised
18 Statutes of Nebraska.

BEST COPY AVAILABLE

CONCLUSION; NEXT STEPS

With the presentation and distribution of this report, the Commission will have completed the mission and responsibilities assigned to it by the Legislature. The Commission is scheduled to terminate on September 1, 1996.

A few themes have ran through the entire work of the Commission and are found in this and the other two reports of the Commission. These may be summarized as follows:

1. Special education must be viewed as an integral part of the whole school system, not a separate, stand alone, component. Programmatically and financially, special education must become more integrated with general education.
2. Equitable access to high quality education services is important for all students. The funding system must insure that adequate resources are available so that all school districts can provide these services.
3. Enhanced prevention and intervention efforts, through the collaborative efforts of well prepared and well trained staff, are essential. Much more must be done to break down the barriers so that students with special needs can be served at the point of need without the prerequisite for identification and verification as students with disabilities.
4. As the entire K-12 school system moves towards accountability through performance based standards and student outcomes, special education must be a part of that movement. In the transition, however, crucial input and process requirements must be maintained to assure that services to students with disabilities continue to remain available as guaranteed under the Individuals With Disabilities Education Act.

The Commission has taken its responsibilities seriously. As advocates for students with disabilities, members of the Commission often found it difficult to consider changes in a special education system that, by most standards, has been a national leader. The Commission has absolutely no intent to diminish services or overall funding for students with disabilities. Rather, services need to become more widely available to students who need support services in school systems which provide a full range of services to meet the needs of "all students."

The Commission is aware that many a report of special study groups have not led to needed changes in policy and practice. In an effort to assure that its recommendations for policy changes are considered, a follow-up chart is included as Appendix F. That document lists the Commission recommendations, the entity responsible for picking up that recommendation (Legislature, NDE, etc.) and the action necessary to implement the recommendation (legislation, funding, rule change, technical assistance, training, etc.) It is hoped that this chart will help those who receive this report to know what to do to implement it.

Finally, several members of the Commission and staff have expressed an interest in serving in a follow-up capacity to present the recommendations and reasoning of the Commission to interested groups and to develop the legislation, rules, trainings and information which will be needed to bring life to this document. The Commission does recognize that the development of policy recommendations is only the first step towards reform of a system which includes a vast network of teachers, administrators, professionals, parents and student. Members of the Legislature, the State Department of Education, the Governor and others in state government, as well as school officials, parent groups and professional groups are encouraged to call upon former members of the Commission and staff for input and assistance. We will do our best to continue service in this important endeavor.

COMMISSION RECOMMENDATIONS FOLLOW-UP CHART

I. FUNDING

<u>RECOMMENDATION</u>	<u>ACTION</u>	<u>RESPONSIBLE PARTY</u>
A. Blend special education funding into general aid formula. Phased in. School age funding only.	Legislation introduced	Education Committee of the Legislature
B. Maintain separate Legislative appropriations for special education	Budget requests and appropriations	NDE, Governor's Budget Office Legislative Fiscal Office and Legislature's Appropriations Committee
C. Report expenditures for special education through Annual Finance Report	Legislation introduced Rule revisions Forms elimination and modification	Education Committee of the Legislature. State Board of Education, NDE Data Center.
D. Modify equalization formula to count costs of high needs students as district specific "needs".	Legislation introduced	Education Committee of the Legislature

RECOMMENDATION	ACTION	RESPONSIBLE PARTY
E. Include special education expenditures under budget limitations provisions.	Legislation introduced Budget and lid documents modified.	Education Committee of the Legislature and NDE's School Finance Division.
II. COST CONTAINMENT		
A. Program quality standards apply to third party contractors.	NDE review and possible revision of rules	NDE's Special Populations Office and State Board of Education.
B. Review and approve third party contract rates.	Modify process for rate approval and rule.	NDE's Special Population Office and State Board of Education.
C. More specifically define the term "educational benefit" to distinguish from medical services.	Legislation introduced and rule revised.	Education Committee of the Legislature, NDE's Special Populations Office and the State Board of Education.
D. Prohibit automatic coverage exclusions in health insurance policies of services which are primarily medical in nature.	Legislation introduced in the Legislature and Congress.	Education Committee of the Legislature and Members of the Nebraska Congressional Delegation.

- E. Interagency service cooperation for students ages 14 - 21. Establish task force, plan and legislation to define roles. Education Committee to convene task force. NDE's Special Populations Office and Division of Vocational Rehabilitation and Department of Public Institution's Developmental Disabilities Division and Mental Health Division.
- F. Establish criteria for offering related services (eligibility and amount of services.) Introduced legislation and revised rule. Education Committee of the Legislature, NDE's Special Populations Office and the State Board of Education.
- G. Share costs of wards. Legislation introduced. Education Committee of the Legislature.
- H. Regional centers for sharing assistive technologies and equipment. Legislation introduced, seed funds appropriated and centers set up. Education and Appropriations Committees of the Legislature and NDE's Assistive Technology project.

III. ACCOUNTABILITY

RECOMMENDATION	ACTION	RESPONSIBLE PARTY
	Performance standards	
A. Establish measurable performance standards for all students; including provisions for adaptation and accommodations to the curriculum, instruction and assessment.	School board policies Community involvement Teacher planning	School boards
	Improved services	
B. Enhanced prevention and intervention services (support services).	Implement prevention and intervention strategies (e.g. enhanced SATs)	School building administrator
C. Identify students needing support services.	Establish a process for identification of students needing support services which is based on local performance standards.	NDE Office of Special Populations will establish the process and school and teachers will apply the process.

D. More functional assessments.

Establish a more outcome oriented process which provides more information for developing instructional strategies.

School psychologists and other specialists on MDTs.

E. Improved IEPs.

Strengthened rule provisions.

Monitoring and enforcement of IEP goals and plans.

NDE, Office of Special Populations, State Board of Education.

School building administrators.

F. Financial incentives for effective programs.

Legislation to expand allowable purposes for schools use of lottery grant funds.

Education Committee of the Legislature.

G. Require a strengthened prevention/intervention process in all schools.

Rule revision to include in Rule 10 a requirement for all schools to implement enhanced prevention/intervention

NDE, Special Populations Office, Accreditation and Approval Division and the State Board of Education.
School boards, administrators and teachers.

Integration with accreditation

<p>H. Require all schools to measure student progress in achieving local performance standards.</p>	<p>Rule 10 revision</p>	<p>NDE, Special Populations Office, Accreditation and Approval Division and the State Board of Education. School boards, administrators and teachers.</p>
<p>I. Require all school improvement plans to include provisions for staff development in instructional adaptations, curriculum accommodations and behavioral interventions.</p>	<p>Rule 10 revision</p>	<p>NDE, Special Populations Office, Accreditation and Approval Division and the State Board of Education. School boards, administrators and teachers.</p>
<p>J. Written assurances, goals, objectives and time lines for implementing prevention/intervention strategies.</p>	<p>Rule 10 revision and School Improvement plan revisions</p>	<p>NDE, Special Populations Office, Accreditation and Approval Division and the State Board of Education. School district planning teams, administrators and school boards.</p>
<p>Training</p>		
<p>K. Pre-service training which focuses on collaboration and prevention.</p>	<p>Teacher training curriculum and instruction focus changes</p>	<p>Nebraska Council on Teacher Education, Colleges of Teacher Education, Deans, Directors and College Faculty.</p>

L. All new teachers have - Rule 21 certification
competencies in prevention and revisions.
by the year 2,000. NDE, Teacher Certification,
Special Populations Office collaboration
and the State Board of Education.

M. In-service training which School boards, administrators,
enhances collaboration and ESUs, NDE's Staff Develop-
prevention skills. ment Div., teachers, specialists
and parents.

Student assessment systems

N. Include students with disabilities in local student assessments (i.e. achievement tests) or use an alternative assessment specified in IEP.

Modify local school district testing policies and practices. Implemented through legislation and revisions to Rule 10

Education Committee of the Legislature, State Board of Education, school boards and school administrators.

Data reporting requirements

O. Report on student progress

Building, district and state level reports required in Rule 10

NDE, Special Populations Office, Accreditation Division, State Board of Education, school boards, district administration and building administrators.



U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement (OERI)
Educational Resources Information Center (ERIC)



NOTICE

REPRODUCTION BASIS

This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").