



Arizona's Education Financing and Special Education: A Perfect Storm

Public education is starkly different than it was 40 years ago when U.S. schools educated only one in five children with disabilities.¹ Many states had laws excluding certain students from attending public schools, including children who were deaf, blind, or had emotional or intellectual disabilities. In 1974, Arizona students with certain disabilities were either not allowed in schools because they were viewed as unable to be educated, were schooled in separate facilities, or taught at home.² As of October 1st 2015, 127,356 students with disabilities make up 11.3% of the student population in Arizona public schools, pre-K through 12th grade. Among this group, 65% are placed inside a regular class for 80% or more of the day.³

This positive change was sparked by the Individuals with Disabilities Education Act (IDEA), originally titled the Education for All Handicapped Children Act, passed in 1975. The IDEA spells out the requirements to ensure that all children with disabilities have a Free Appropriate Public Education (FAPE) available to them. The IDEA requires public schools to use special education and other disability-related services designed to, "Meet a student's unique needs and prepare them for further education, employment, and independent living..." The IDEA was the final civil rights law that, once and for all, allowed all children to have access to an education, opening the door for a brighter future.

What is an IEP?

The individualized Education Program (IEP) is an annual education plan, required by IDEA, developed in concert with the student, parent, and school staff. The IEP ensures that students with disabilities have the supports needed to help them learn to the best of their abilities.

The Confusion over Free Appropriate Public Education (FAPE)

Often, when there is a disagreement between parents and educators, it is over how appropriate education is defined and which services the school is mandated to provide free of charge.

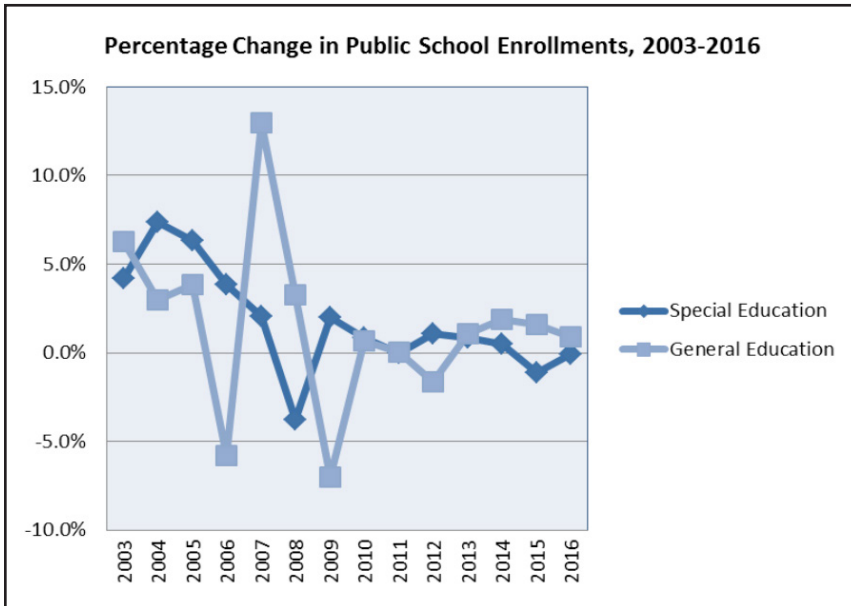
1 U.S. Department of Education, *Thirty Five Years in Educating Children with Disabilities through IDEA*, November, 2010. <http://www2.ed.gov/about/offices/list/osers/idea35/history/idea-35-history.pdf>

2 A.R.S. 15-1011-1020, 1961, 1975.

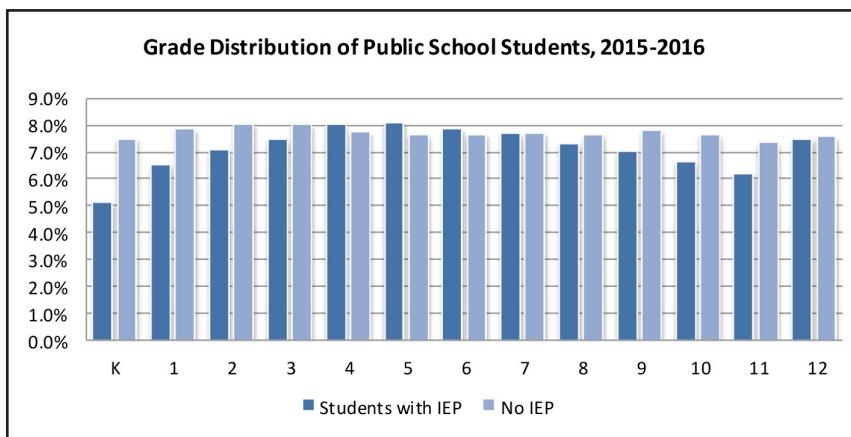
3 Arizona Department of Education (ADE), Exceptional Student Services Data Management, <http://www.azed.gov/special-education/funding/data-management/arizona-sped-population-data/>

The law defines FAPE as:

- Special education and related services that have been provided at public expense, under public supervision and direction, and without charge
- Meets the standards of the state educational agency
- Includes an appropriate preschool, elementary school, or secondary school education in the state involved
- Provides conformity with the IEP



Source: Enrollment Figures, Arizona Department of Education.



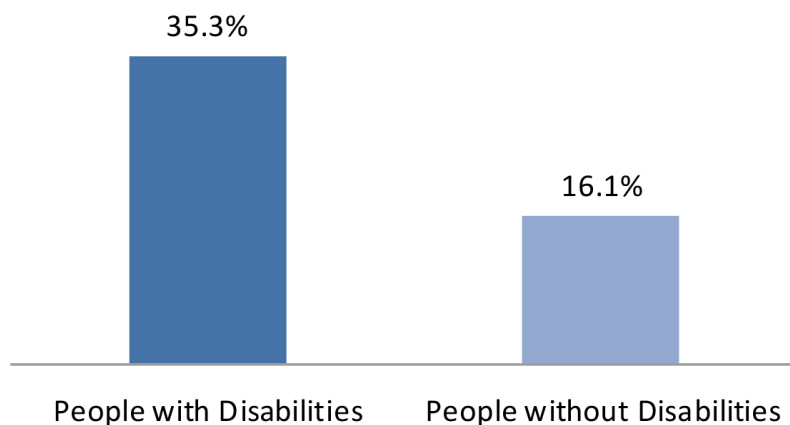
Source: Enrollment Figures, Arizona Department of Education.

The program must provide the student access to the general education curriculum and meet state grade level standards. It requires that children with disabilities receive the same support, as is provided to students without disabilities and that this support be provided to children in general education settings as much as possible.

Because “appropriate” is based on each child’s IEP and his or her progress, FAPE is determined on an individual basis. What is judged to be suitable for one child may not be for another. Districts are considered to be in compliance with FAPE if the child’s IEP enables the child to achieve educational progress. Present federal law states that a school district is not required to provide the best possible educational program, only one that meets the unique needs of the child and demonstrates educational benefit. For example, individuals can receive occupational, speech or physical therapy services, assistive technology, class schedule modifications, and/or supplemental instruction under FAPE.

⁴ ADE, Ibid.

Arizona Disconnection Rate Ages 16-24, (2010 - 2014)



were enrolled in grades 3 – 6, with another enrollment spike in 12th grade, as some special education students remain enrolled until age 22. As children age in the school system, they are more likely to be identified for services, but the numbers are somewhat understated. There is a significant number of kindergarten – 3rd grade students not enrolled in special education classes who would qualify, but have not yet been identified.

It is critical that high schools prepare to educate and train the growing number of youth with disabilities for life beyond high school – one of the stated goals of FAPE. But there’s more work to do in transition. More than one in three adolescents and young adults with disabilities between the ages of 16 - 24 are neither in school nor employed - more than twice the rate among young adults without disabilities.⁵ Similarly, Arizona’s post-school outcomes survey of high school students with disabilities who exited school in 2014 show that 27% are not engaged in work or school activities.⁶

The Roadblocks to Receiving FAPE

There are significant barriers to accessing FAPE in Arizona for students with disabilities. The Arizona Center for Disability Law reports that the most frequent education-related complaints filed in Arizona center on the failure of some schools to implement the student’s individualized education plan (IEP) or disagreements over the services that should be included in the IEP. There are

Special Education Growth⁴

Since 2003, the number of Arizona students with IEPs, also defined as special education students, has risen by 24.1% – slightly higher than the 21.2% total growth among the rest of the student population. The 128,971 special education students enrolled in public education in the 2013-2014 school year constitutes the largest number in Arizona’s history; however, special education enrollments have been on the decline since then.

As of October 1, 2015, the largest percentage of special education students

Arizona Substitute Teacher Certification Requirements

A substitute teacher fills in when the regular teacher is unavailable. The sub can teach up to 120 days in one school per school year. The only requirements are a valid fingerprint clearance card and a Bachelor’s degree. The certificate is good for 6 years.

⁵ ADE, Annual Report of the Arizona Superintendent of Public Instruction, Fiscal Years 2012-2013. <http://www.azed.gov/superintendent/superintendents-annual-report/>

⁶ U.S. Census Bureau, Arizona Public Use Microdata Sample Person file, 2010-2014.

numerous reasons for this cited throughout the literature: teacher and therapist shortages, inadequate training of parents, students and educational staff, attitudinal barriers, and funding shortfalls, to name a few.

One of the primary barriers for the implementation of FAPE in Arizona is inadequate funding, leading to shortages of qualified teachers, a lack of quality training for current teachers, and barriers to acquiring equipment or supports for students to progress in their education goals.

In 2014, Arizona ranked 49th for total per-pupil education spending at \$8,786 per child.⁷ This has an adverse impact on students with disabilities. Since 1975, it has been estimated that children with disabilities cost approximately twice as much to educate as those without disabilities. To help support state and local governments, Congress set the maximum federal contribution at 40% of the excess costs of educating students

with disabilities through IDEA. However, the federal contribution maximum has not increased over time and continues to fund only 19% of Arizona special education – placing responsibility for more than 80% of these costs onto local and state governments.⁸

This exacerbates Arizona’s already critical education financing problem and contributes to a teacher shortage, forcing those with minimal special education training, such as substitutes and teacher interns (i.e. teachers in training) to fill gaps. Nationally, Arizona ranks 48th for its student/teacher ratio with 22.3 students per teacher⁹ and in the bottom five for both general education and special education teacher salaries across all grade levels.¹⁰ The good news is that even if local education funding

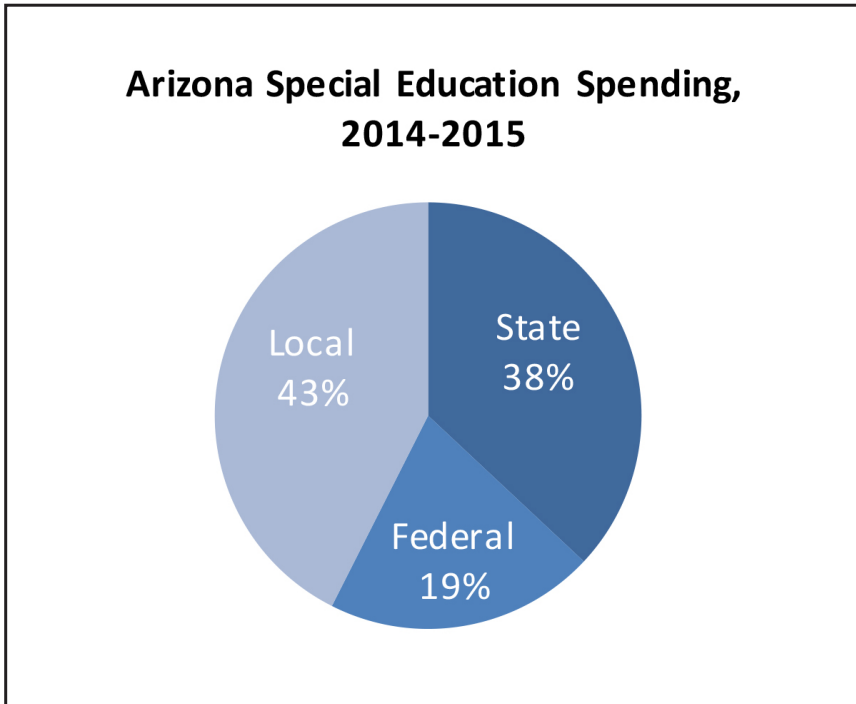
takes budget hits, special education funding is protected. Schools receiving federal IDEA funds must meet the maintenance of effort requirement and spend the same amount of local/state funding for special education and related services as it spent in the previous fiscal year (34 CFR §300.203). Regardless, funding levels have been inadequate to pay for the resources and expertise needed to provide FAPE to the growing population of special education students.

⁷ U.S. Census Bureau, Public Elementary-Secondary Education Finance Data, 2014.

⁸ To calculate the percentages for fiscal year 2014-2015, the various special education unweighted ADM counts were multiplied by their respective weights in accordance to ARS 15-943(2b). The resulting weighted ADM was then multiplied by the per pupil “base level” that was in effect for the year pursuant to ARS 15-901B2 to derive the state’s responsibility of special education. The total “federal grants in aid for special education” was used for the federal portion. Both the state and federal allocations were subtracted from the total actual special education expenses for both district and charter schools to derive a local percentage.

⁹ NCES, 2016. Digest of Education Statistics. <http://nces.ed.gov/pubs2016/2016006.pdf>

¹⁰ Bureau of Labor Statistics, Occupational Employment and Wages, May 2015, 2016, available at <http://www.bls.gov/oes/current/oes252054.htm>



Accessing Other Options

Parents of students with and without disabilities are increasingly enrolling their children in charter schools. Charter schools, often smaller than district schools with a more individualized curriculum, make parents feel they have more influence in setting their child's educational goals. In the 2013–2014 school year, Arizona had the second highest percentage (18%) of charter school enrollment in the nation – up from 11.6% in 2010–2011.¹¹

Unfortunately, small charter schools often have less access to resources to administer FAPE. In a 2012 national review of charter performance among students with disabilities, Government Accountability Office investigators¹² found that while charter schools were publicizing and offering special education services, officials at half the 13 schools visited said “insufficient resources” were a challenge. Often, parents were directed to look elsewhere for their child's educational needs. As a result, students with disabilities were underrepresented in charter schools (8%) compared to public non-charter schools (11%).

This same troublesome trend is occurring in Arizona. In 2015, Arizona charter schools had a slightly better representation of students with disabilities (8.3%) than the national average, but it was still below the state average of students with disabilities in non-charter public schools (12.3%).¹³ To remedy the situation, the U.S. Department of Education issued guidance reminding charters they have the same obligations as non-charter public schools to ensure that students with disabilities receive FAPE. The guidance also noted that charter schools should ensure students with disabilities are not discriminated against in the admissions process or when accessing extracurricular activities or in regard to discipline.¹⁴

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The Empowerment Scholarship Account Explosion

In trying to overcome obstacles in obtaining FAPE in both public and charter schools, many parents of students with disabilities are electing to educate their child outside the public school system by way of Empowerment Scholarship Accounts (ESA). The ESA is a parent-controlled bank account established to provide education funding for qualified students with or without a disability. The ESA program allows parents of eligible students to utilize public monies to purchase educational services rendered solely through and by private individuals, vendors and schools.

In 2011, parents of students with disabilities were the first to be allowed to use public education funding through these ESAs to pay for private schools, homeschooling, tutoring and other educational expenses outside the public school system. Over the years the program was expanded to children of active duty military parents, foster children, and children who attend poorly performing public schools, including kindergartners.

¹¹ U.S. Department of Education, National Center for Education Statistics. (2016). *The Condition of Education*, Charter School Enrollment.

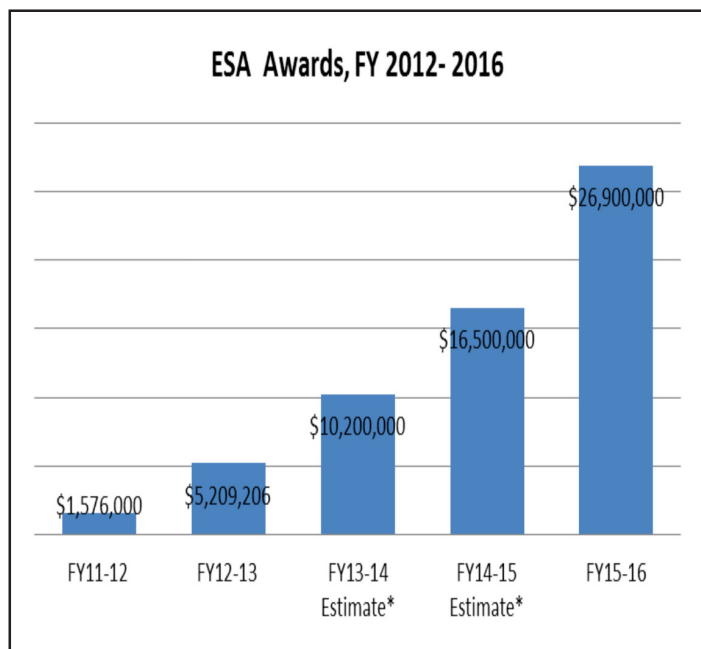
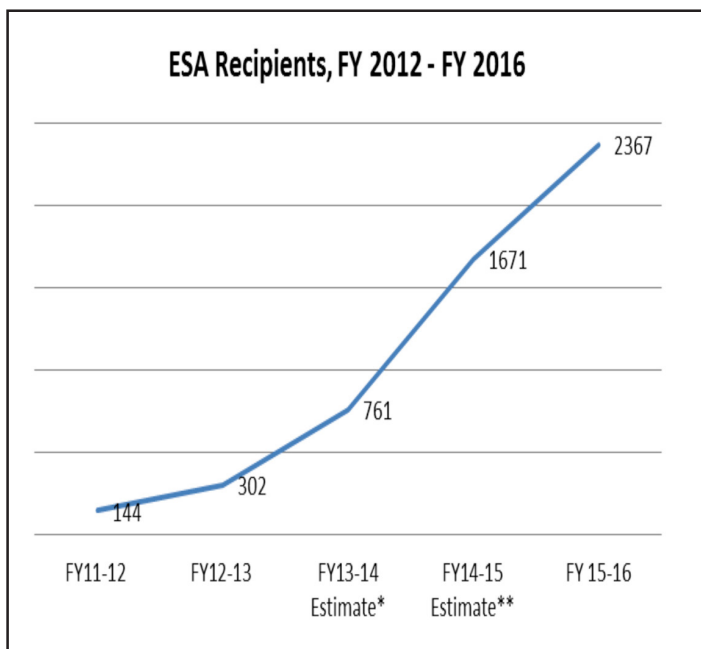
¹² U.S. Government Accountability Office, *Charter schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities*, 2012, <http://www.gao.gov/assets/600/591435.pdf>

¹³ ADE, *Annual Report of the Arizona Superintendent of Public Instruction, Fiscal Years 2012-2013*.

¹⁴ <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>

In April 2017 Governor Doug Ducey signed SB 1431, which will incrementally expand the availability of ESAs to all K-12 students in public and charter schools over the next four years.

In the 2015-2016 school year, more than half (57.3%) of ESA recipients were guardians of students with disabilities.¹⁵ Many parents perceive that the public education system has failed them, and apply to ESAs in search of better ways to educate their child. Between 2012 and 2016, the number of ESA enrollments of students with disabilities had exploded by 840% with expenditures increasing by well over 1600%. In the 2015–2016 school year, \$26.9 million had been diverted to private options, with the majority of this funding coming out of special education.¹⁶ To control this growth, an annual cap of 5,500 new students had been imposed on the program between 2015 and 2019.¹⁷ This same cap is in place until 2022; however, it is important to note that there is no priority for students with disabilities. ESAs are authorized on a first-come, first-served basis. This poses a real cause for concern for the students who are left behind, as well as for the students who leave.



While the ESA program offers guardians the flexibility and control to administer his or her child’s education the way they see fit, there are trade-offs. There is no state oversight or fiscal monitoring of private schools. There is also no requirement to serve children with disabilities under IDEA or to provide the student with an IEP. Furthermore, private schools have complete control over admission, enrollment policies, and curriculum. They are not subject to IDEA laws, which, like charter schools, can pose a barrier to admission for students with disabilities.

¹⁵ Memo from Aiden Fleming, Deputy Director, Policy Development & Government Relations, September 15, 2015.

¹⁶ AZ Central. State money helping wealthier kids go to private school. <http://www.azcentral.com/story/news/arizona/politics/education/2016/02/23/state-money-helping-wealthier-arizona-kids-go-private-schools/80303730/>

¹⁷ AZ Central. Gov. Doug Ducey signs expansion of Arizona’s school voucher program. <http://www.azcentral.com/story/news/politics/arizona-education/2017/04/07/arizona-gov-doug-ducey-signs-school-voucher-expansion/100159192/>

The majority of participants use the funding to seek specialized private schools, private tutors, and therapists. In response, segregated day schools that serve students with disabilities and accept ESAs have also opened in response to demand. Some argue these schools, as well as home schools, run contrary to the ideals of IDEA, which promise a least restrictive environment and access to the general education curriculum. For some parents, the lack of options currently available through public education is reminiscent of pre-1975, pre-IDEA days. The exercise of these private options can be viewed as an outgrowth of Arizona's special education system. Parents who utilize these options want to ensure that their children are safe, they receive an appropriate education from trained educators and staff, and that their children receive the necessary supports to thrive to the best of their abilities. These are all rights promised under IDEA and FAPE. Unfortunately, some parents and students with disabilities are struggling to achieve them.

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Conclusion

Arizona special education students and their families find themselves in a system where access to FAPE can be difficult. Some schools have difficulty providing access to FAPE while others set the bar high and are model schools. Overall, public schools are struggling with what little they have available to provide quality education and transition services to the growing number of students in need. By and large, most special education students are staying in traditional public schools. But if the trend of school choice continues, many may choose to exit traditional public schools. The question that begs an answer: Will this path wind us back to where we started?

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