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Arizona Developmental Disabilities Planning Council℠

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

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INTRODUCTION

Public education is starkly different than it was forty 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 or were schooled in separate facilities or at home.[2] Today, 13.4 percent of the student population in Arizona public schools, pre-K through 12th grade, has a disability. Among this group nearly two-thirds, (62 percent) are placed inside a regular class for 80 percent 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. IDEA ensures that all children with disabilities have a free appropriate public education (FAPE) available to them. It requires public schools to use special education and other disability-related services designed to "**meet a students' unique needs and prepare them for further education, employment, and independent living...**" 20 U.S.C. 1400(d). 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.

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[1] Office of Special Education and Rehabilitative Services. "Thirty Five Years in Educating Children with Disabilities through IDEA." U.S. Department of Education, Nov. 2010. Web. <http://www2.ed.gov/about/offices/list/osers/idea35/history/idea-35-history.pdf>.

[2] A.R.S. Sec. 15-1011-1020. Print.

[3] "Exceptional Student Services Data Management." *Special Education.* Arizona Department of Education, 2012-2013. Web. <http://www.azed.gov/special-education/funding/data-management/2012-2013/>.

The Confusion Over Free, Appropriate Public Education

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.

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;
- and provides conformity with the individualized education plan or Individualized Education Program.

What is an IEP?

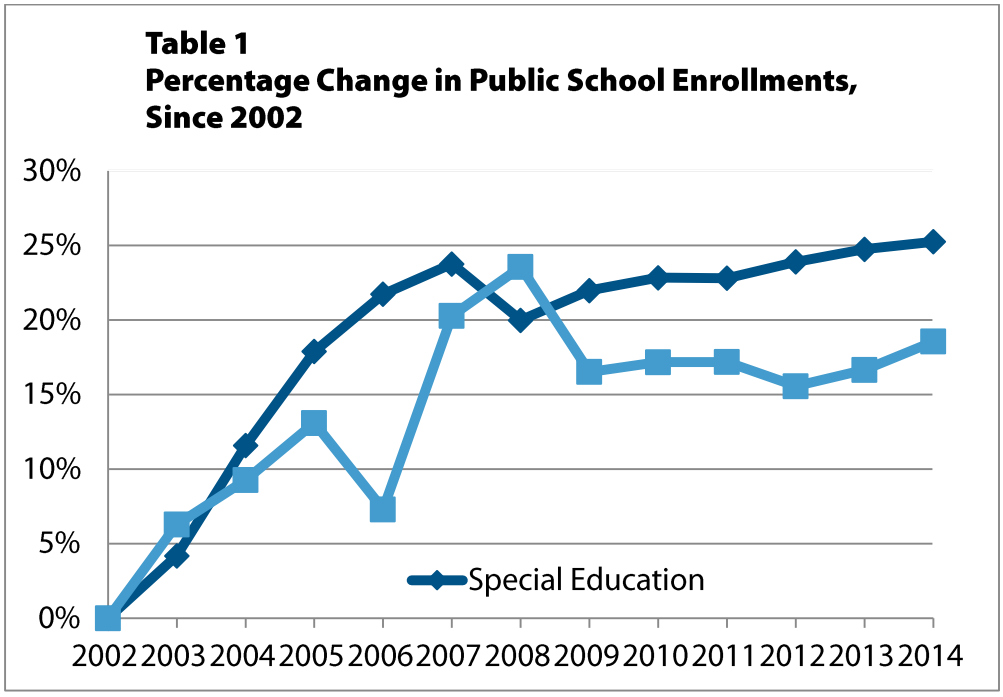
The Individualized Education Program (IEP) is an annual education plan, required by IDEA, developed in concert with the student, parent, and school staff. The IEP ensures that students with disabilities have the supports needed to help them learn to the best of their abilities.

In plain language, 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, free of charge, 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. The 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.

Special Education Growth[4]

Since 2003, the number of Arizona students with IEPs, or special education students, has risen by 25.3 percent – significantly higher than the 18.6 percent total growth among the rest of the student population (see table 1). In fact, the 128,971 special education students enrolled in public education in the 2013-2014 school year constitutes the largest number in Arizona's history. And, this number will only continue to grow as more students are identified for services.



Note: The ADE school enrollment counts from 2002-2003 through 2007-2008 are not unduplicated counts. Concurrently enrolled students are counted as having an active membership in each school, which may overstate aggregate enrollment numbers. For example, concurrent enrollments in technology schools are included.

As of October 1, 2012, the largest percentage of special education students was enrolled in grades 3 – 8 (see table 2). And, the numbers are somewhat understated. There is a significant number of Kindergarten – 3rd grade students not enrolled in special education who will/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, more work in transition needs to be done. In

[4] Ibid.

2012-2013 only 12.5 percent of the special education budget was spent on providing vocational technical education for at least 30 percent of special education students who could benefit from these programs.[5] Consequently, 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 (see table 3).[6]

Table 2
Percent of Total IEP and Total Non-IEP Students by Grade Level, 2012-2013

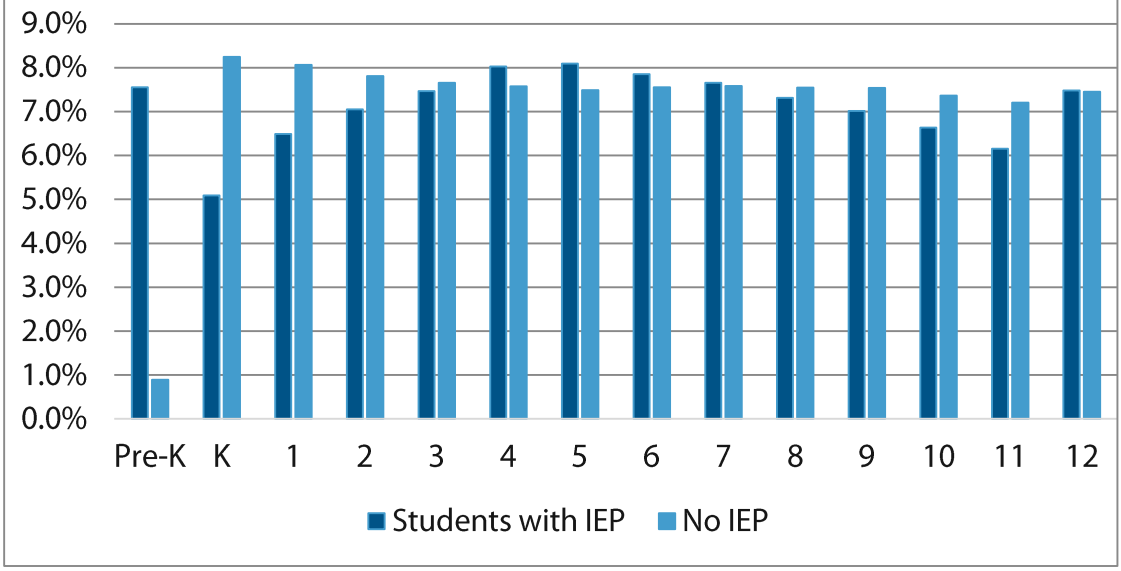
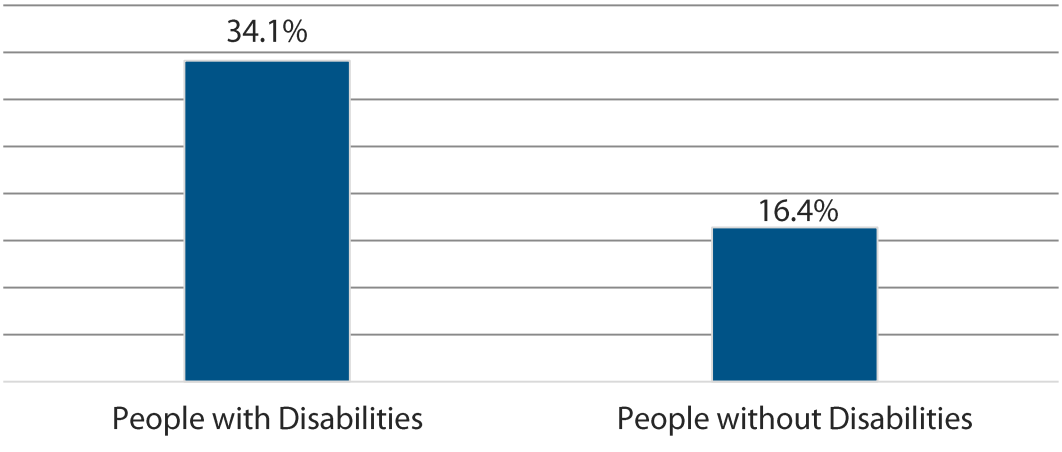


Table 3
Arizona Disconnection Rate of Youth Ages 16-24, 2008-2012



[5] Office of John Huppenthal. *Annual Report of the Arizona Superintendent of Public Instruction*. Rep. Vol. 1-2. N.p.: Arizona Department of Education, 2014. Web. <http://www.azed.gov/superintendent/superintendents-annual-report/>.

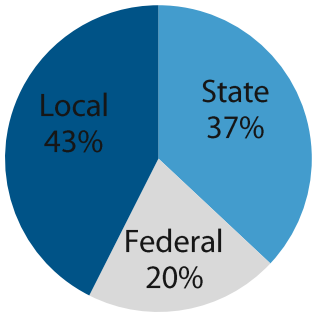
[6] U.S. Census Bureau. *Arizona Public Use Microdata Sample Person File*. N.p.: n.p., 2008-2012. Print.

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 IEP or disagreements over the services that should be included in the IEP. There are 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.

Table 4
Arizona Special Education Spending, 2012-2013



In 2011, Arizona ranked **47th** for total per-pupil education spending.[7] This has an adverse impact on students with disabilities. It has been estimated that, since 1975, 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 percent 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 20 percent of Arizona special education – placing responsibility for 80% of these costs onto local and state governments (see table 4).[8]

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[7] Hunting, Dan. "Elementary and Secondary Education: 2002 - 2011." *Arizona's Education Financing*. Rep. Arizona State University - Morrison Institute for Public Policy, 19 Nov. 2013. Web. <http://morrisoninstitute.asu.edu/sites/default/files/content/products/AZ%20Ed%20Financing.pdf>.

[8] To calculate the percentages for fiscal year 2012-2013, 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.

This has exacerbated the Arizona's already critical education financing problem and contributed to a teacher shortage, forcing a heavy reliance on 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 21.4 students per teacher, **50th** for general education teacher salaries and **44th** for special education teacher salaries.[9]

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 six years.

Further, Arizona special education funding took a $10 million cut in federal IDEA funds in the 2013-2014 school year, as a result of the federal sequestration. Local education funding also took budget "hits," but special education funding is protected. Schools receiving federal IDEA funds must meet the maintenance of effort (MOE) requirement and expend the same amount of local/state funding for special education and related services as it expended in the previous fiscal year (34 CFR §300.203). Although the ramifications of the sequestration have not yet been fully realized, many schools have shifted priorities so that they are able to meet the requirements of MOE and the FAPE provisions. While federal IDEA funds will be restored in fiscal year 2014 – 2015, total allocated funding allocated will fall short. Prior funding levels have been inadequate to pay for the resources and expertise needed to provide FAPE to the growing population of special education students.

[9] U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "Local Education Agency (School District) Universe Survey", 2010-11 v.2a; "National Public Education Financial Survey (State Fiscal)", 2010-11 (FY 2011) v.1a; "Public Elementary/Secondary School Universe Survey", 2010-11 v.2a; "State Nonfiscal Public Elementary/Secondary Education Survey", 2010-11 v.1a, 2011-12 v.1a.

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 2010-2011 Arizona had the second highest percentage (11.6 percent) of charter school enrollment in the nation.[10] 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 investigators 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.[11] 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 percent) compared to public non-charter schools (11 percent).

This same troublesome trend is occurring in Arizona. In 2013, Arizona charter schools had a slightly better representation of students with disabilities (9.8 percent) than the national average, but it was still below the state average of students with disabilities in non-charter public schools (11.7 percent).[12] Additionally, Arizona charter schools allocate only 4.6 percent of their budgets to special education, whereas public school districts spend almost four times that amount, 16.7 percent.[13] To remedy the situation the U.S. Department of Education recently issued guidance, reminding charters they have the same obligations as non-charter public schools to ensure that students with disabilities receive FAPE, and are not discriminated against in the admissions process, access to extracurricular activities or in regard to discipline.[14]

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[10] Institute of Education Sciences. "The Condition of Education 2013." 037 (2013): 1-241. National Center for Education Statistics. U.S. Department of Education, May 2013. Web. <http://nces.ed.gov/pubs2013/2013037.pdf>.

[11] U.S. Government Accountability Office. *Report to Congressional Requesters*. 543rd ed. Vol. 12. *Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities*. June 2012. Web. <http://www.gao.gov/assets/600/591435.pdf>.

[12] Office of John Huppenthal. *Annual Report of the Arizona Superintendent of Public Instruction*. Rep. Vol. 1-2. Arizona Department of Education, 2014. Web. <http://www.azed.gov/superintendent/superintendents-annual-report/>.

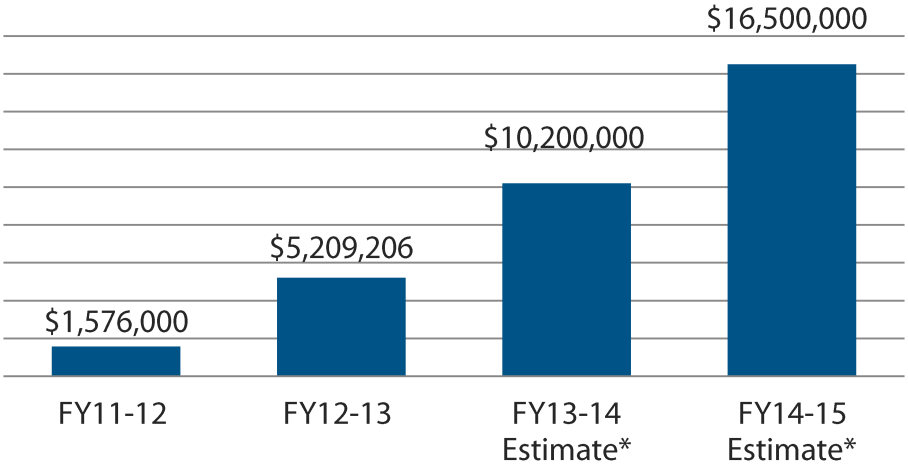
[13] Ibid.

[14] U.S. Department Of Education. Dear Colleague Letter from Assistant Secretary for Civil Rights Catherine E. Lhamon (2014): 1-7. U.S. Department of Education. Office of Civil Rights, 14 May 2014. Web. <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>.

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 disabled and non-disabled students. 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.

Table 5
ESA Awards, FY 2012- 2015



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, home schooling, tutoring and other educational expenses outside the public school system. But, the program has been expanded to children of active duty military parents, foster children, and children who attend poorly performing public schools, including kindergartners.

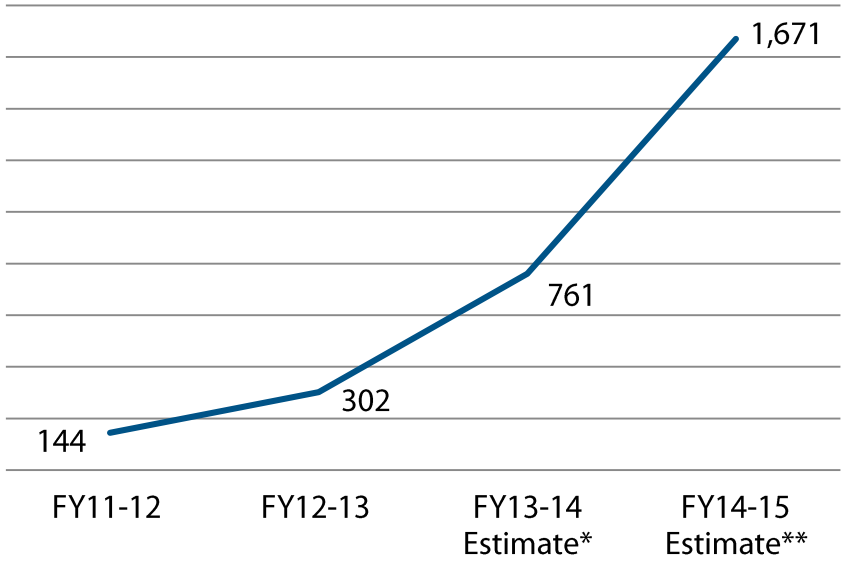
Three-quarters of ESA recipients are guardians of students with disabilities.[15] Many parents perceive that the public education system has failed them, and apply to ESAs in search of better ways to educate their child. The number of ESA enrollments of students with disabilities is projected to explode by over 700 percent with expenditures increasing by well over 900 percent in only three years (see table 5 and table 6).[16] To control this growth, an annual cap of 5,480 new students has been imposed on the program between 2015

[15] Fleming, Aiden. "Memorandum: FY 2015 Empowerment Scholarship Estimate." Letter to Joint Legislative Budget Committee. 30 May 2014. MS. Arizona.

[16] Ibid.

and 2019.[17] However, almost ten percent of state funding allocated to special education is projected to be diverted to private options in 2015.[18] This poses a real cause for concern for the students who are left behind as well as for the students who leave.

Table 6
Number of ESA Recipients, FY 2012-2015



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, no accountability for results through any standardized test, and no requirement to serve children with disabilities under IDEA or to provide the student with an IEP. Further, private schools have complete control over admission, enrollment policies and curriculum and are not subject to IDEA laws which, not unlike charter schools, can pose a barrier to admission for students with disabilities.

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. Thus, 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, but unfortunately, rights that some parents and students with disabilities are struggling to achieve.

[17] Ibid.

[18] Ibid.

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?