

1 **POLICY: FEDERAL FUNDING FOR SPECIAL EDUCATION**

2 **COMMITTEE: EDUCATION**

3 **TYPE: NCSL POLICY DIRECTIVE DRAFT**

4 The nation's legislators support equal opportunity for all citizens and support the
5 purposes and spirit of the Education for All Handicapped Children Act of 1975. This law
6 and its subsequent amendments, including the Individuals with Disabilities Education
7 Act (IDEA) of 1990 and subsequent reauthorizations in 1997 and 2004 mandates that
8 states provide a free and appropriate education (FAPE) and procedural safeguards for
9 all children with disabilities without regard to costs incurred by the states and local
10 school districts.

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12 ~~States have enacted their own statutes and regulations to comply with federal laws and,~~
13 ~~in many cases have gone beyond what is mandated by the federal government in~~
14 ~~providing services. State and federal laws and regulations, combined with the extensive~~
15 ~~and increasingly complex case law that has developed around this act, have made the~~
16 ~~practice of delivering services to students with disabilities complex and costly for states~~
17 ~~and communities.~~

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19 The original federal special education law and its subsequent amendments include a
20 provision that authorizes the federal government to fund 40 percent of the average per
21 pupil expenditures (APPE) in K-12 nationwide, an estimate at the time of the excess
22 cost for educating a special education student that the federal government would bear.

23 Since its enactment, the federal government has appropriated funds at levels between 8
24 and 17% of APPE. ***Congress attempted to address this issue in the***
25 ***reauthorization of the Individuals with Disabilities Education Act in 2004 by***
26 ***setting voluntary spending targets in a “glide path” to full funding by 2011.***
27 ***However, Congress failed to appropriate the authorized level of funds, and states***
28 ***received \$57.1 billion less than they would have had if Congress had kept its***
29 ***commitment.***

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31 ~~The U.S. Department of Education Budget Service estimates that FY 2010~~
32 ~~appropriations of \$11 billion leave states and localities \$16 billion under the 40% mark.~~
33 ~~Cumulative federal funding gaps since 1977 have left states and localities with a \$261~~
34 ~~billion unfunded federal mandate.~~

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36 Federal support for special education is critical. State and federal laws and regulation,
37 combine with the extensive and increasingly complex case law that has developed
38 around special education, have made the practice of delivering services to students with
39 disabilities complex and costly for states and communities. In fact, ~~R~~recent reports
40 indicate that actual spending for special education services is 95% above APPE – not
41 40%. ~~In effect, this means that the federal government is paying less than half of what~~
42 ~~was promised (17 % of the 40% of APPE promised), which is half of what it costs states~~
43 ~~and localities to comply with the law (95% of APPE).~~

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45 In a system already strapped for funds, federal statutory and regulatory changes further
46 erode support for special education services by passing procedural and compliance
47 costs to the states. The latest IDEA reauthorization enacted in 2005 added 20
48 “performance indicators” of which nearly half—according to the Department of
49 Education—are indicators of compliance with federal law not measures of student
50 achievement.

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52 For 32 years the Congress has put off meeting its commitments to special education
53 funding. In the 2004 reauthorization, the Congress attempted to address this issue by
54 setting voluntary spending targets in a glide path to full funding by 2011. The targets
55 were ignored in the first cycle of appropriations after the reauthorization and in
56 subsequent budget cycles.

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58 **Given these circumstances,** NCSL strongly urges the Congress to honor its original
59 commitment and fully fund 40 percent of the Average Per Pupil expenditures (APPE) for
60 Part B services as authorized by the Act, **appropriate the moneys to fully fund the**
61 **40% of Average Per Pupil expenditures (APPE) statutorily authorized in Part B of**
62 **IDEA.** and to move Part B allotments for special education from the discretionary side
63 to the mandatory side of the federal budget. **One way for Congress to strengthen its**
64 **commitment to special education would be to move the Part B allotments for**
65 **special education from the discretionary to the mandatory side of the federal**
66 **budget.** Moving the Part B allotments for special education from the discretionary to
67 the mandatory side of the federal budget would provide the federal government and.