KANSAS OFFICE of
REVISOR of STATUTES
LEGISLATURE of THE STATE of KANSAS
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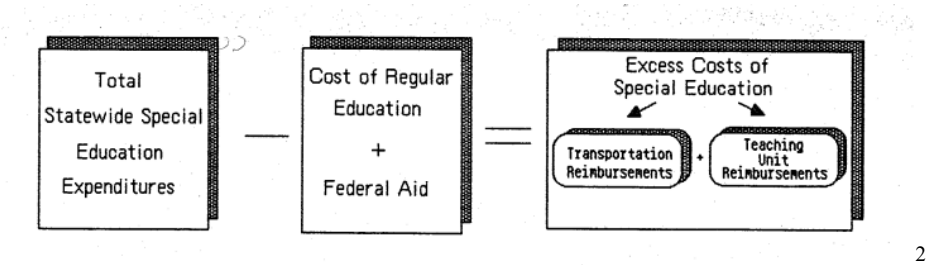
# MEMORANDUM

To: Education Funding Task Force
From: Office of Revisor of Statutes
Date: August 13, 2025
Subject: Legislative History of the Statewide Excess Cost Formula and Funding Rate in K.S.A. 72-3422

K.S.A. 72-3422 establishes a statutory formula that the state uses to determine the total amount of special education state aid to appropriate to school districts each year. The formula calculates the statewide excess cost[1] for the provision of special education. The statute then provides that, subject to appropriation acts of the legislature, the total amount of special education state aid that shall be received by school districts is 92% of such statewide excess cost. This memorandum summarizes the legislative history of such formula and funding rate.

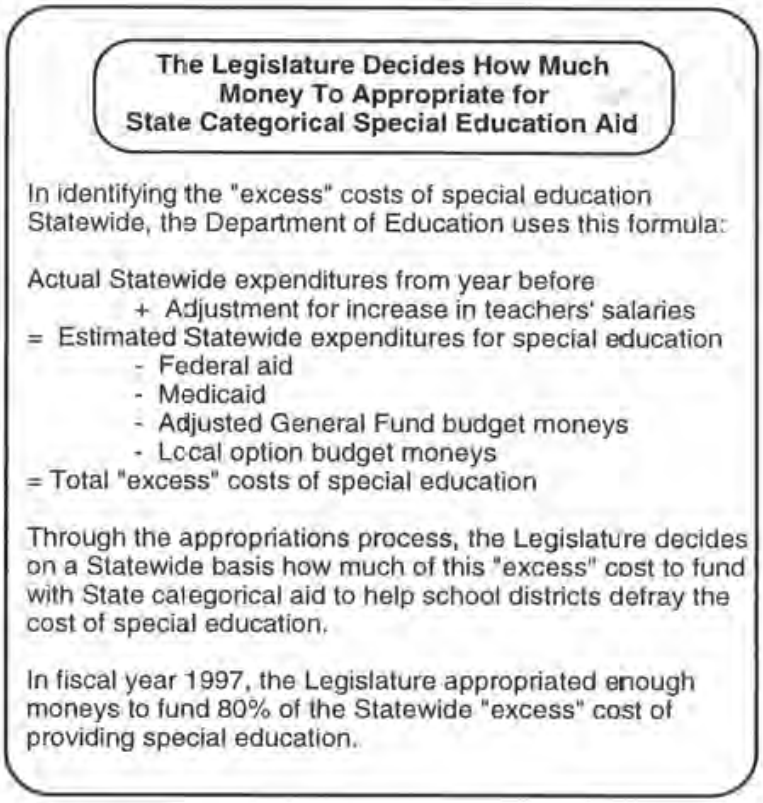
## LEGISLATIVE HISTORY OF THE STATEWIDE EXCESS COST FORMULA AND FUNDING RATE

For as long as the state has provided special education state aid to school districts, the state has utilized a funding model that uses statewide excess cost to determine the appropriation of special education state aid. The following graphics from special education funding audits conducted in 1985 and 1998 by the legislative division of post audit display the state's historical use of the statewide excess cost formula:




[2]

[1] "Excess cost" generally refers to the additional cost of providing special education to students with disabilities that is above and beyond the average annual per-student cost to provide a regular education.
[2] *Options for Containing Special Education Costs in Kansas*, Legislative Division of Post Audit, 2 (March 1985).



[3]

In 2005, the legislature enacted such statewide excess cost formula into statute as a part of the legislature's response to the Kansas supreme court's rulings in the *Montoy v. State* school finance litigation.[4] In *Montoy*, plaintiffs challenged the overall constitutionality of the school finance system and specifically challenged the constitutionality of the state's special education funding.[5]

In 2003, the *Montoy* district court held the state school finance system unconstitutional.[6] On the issue of special education funding, the district court found that the state "further diminishes the availability" of general educational funds because the legislature only reimburses 85% of the statewide excess cost which causes districts to transfer at least 15% of their general fund dollars to provide for special education.[7]

[3] *Reviewing Issues Related to Funding for Special Education,* Legislative Division of Post Audit, 6 (October 1998).
[4] L. 2005, ch. 152, § 10; 2005 HB 2247, §10.
[5] *Montoy v. State*, 275 Kan. 145, 147–50 (2003) (*Montoy I).*
[6] *Montoy v. State*, No. 99-C-1738, 2003 WL 22902963, at 49 (Kan. Dist. Ct. Dec. 2, 2003).
[7] *Id*.

In *Montoy II*, the Kansas supreme court held that the district court's findings were supported by substantial competent evidence and upheld the district court's ruling that the state's school finance system was unconstitutional.[8]

During the 2005 regular session, and in response to *Montoy II*, the legislature revised the school finance formula and increased funding.[9] With respect to special education funding, the legislature codified the statewide excess cost formula and enacted a statutory plan to increase special education state aid funding based on the following funding rates:

- SY 2005-2006 = 85% of statewide excess cost.
- SY 2006-2007 = 88% of statewide excess cost.
- SY 2007-2008 and each school year thereafter = 91% of statewide excess cost.[10]

In *Montoy III*, the Kansas supreme court evaluated whether the legislature achieved constitutional compliance. The Kansas supreme court held that the Legislative response "falls short of providing constitutionally adequate funding for public education."[11] Regarding special education, the court took note of the legislature's plan to increase special education state aid funding and found that the increase for the 2005-2006 school year would only result in an additional $17.7 million for special education state aid.[12] The Court noted that such increase stands in contrast to the 2001 Augenblick & Myers study which recommended an increase of nearly $102.9 million for special education state aid.[13]

In response to *Montoy III,* during the 2005 special legislative session, the legislature further increased school funding levels, including for special education state aid. As part of such response, the legislature amended its statutory plan to increase special education state aid as follows:

- For SY 2005-2006 = 89.3% of statewide excess cost.
- For SY 2006-2007 and each school year thereafter = 92% of statewide excess cost.[14]

In *Montoy IV,* the Kansas supreme court approved of the legislature's school finance revisions and determined that the additional funding appropriated by the legislature brought the

[8] *Montoy v. State*, 279 Kan. 817 (2005).
[9] L. 2005, ch. 152, § 10; 2005 HB 2247, § 10.
[10] L. 2005, ch. 152, § 10; 2005 HB 2247, § 10.
[11] *Montoy v. State*, 279 Kan. 817, 832–33 (2005) (*Montoy III)*.
[12] *Id.*
[13] *Id.*
[14] L. 2005, ch. 2, § 17 (Special Session).

school finance formula into constitutional compliance.[15] The Court noted specifically that special education state aid "increased from 85% at the time of *Montoy II* to 92%, and provides by 2008-09 an additional $111.5 million in new funding."[16]

In the 2006 regular session, the legislature maintained the 92% funding rate in K.S.A. 72-3422 for the ensuing 2006-2007 school year and each school year thereafter.[17] Such funding rate has remained in statute since.

*Statewide Excess Cost Formula – Statutory Revision*

Generally, the statutory formula to determine statewide excess cost has remained relatively unchanged since its enactment in 2005. The most noteworthy statutory revision to such formula occurred in 2024 through the enactment of section 14 of 2024 SB 387. This amendment revised step two of the statewide excess cost formula to require a slightly different method to determine the average annual per-student amount of regular education dollars expended upon students that receive special education. To determine such amount prior to such amendment, step two began with an assessment of all school district general fund and local option budgets, excluding certain weightings[18], and then the formula determined the average annual per-student amount of regular education dollars expended upon students that receive special education from the combined general fund and local option budget amounts.

The 2024 amendment separated the calculation of the regular education dollars expended from general funds and local option budgets. Now, step two of the formula begins with a determination of school district general fund amounts, not local option budgets.[19] The formula then determines the average annual per-student amount of regular education dollars expended from the general fund. After such general amount is determined, the formula then factors in the regular education dollars that come from school district local option budgets by multiplying the average local option budget authorized percent across all school districts by the average annual per-student amount of regular education dollars expended from the general fund.

[15] *Montoy v. State,* 282 Kan. 9, 21–22 (2006) (*Montoy IV*).
[16] *Id*. at 22.
[17] L. 2006, ch. 197, § 7.
[18] The following weightings are excluded from the calculation: Special education and related services weighting, transportation weighting, bilingual weighting, career technical education weighting and at-risk student weighting.
[19] The calculation now requires a determination of the total weighted full-time equivalent enrollment of all students, excluding certain weightings, multiplied by the BASE aid amount.