

# Texas Commission on Special Education Funding Report to the 88th Texas Legislature



**Final Report**  
December 31, 2022

## Chair's Opening Remarks

I am extremely honored to chair the Texas Commission on Special Education Funding. I serve with the brightest of minds and the most caring of hearts. This Commission has sought real-world solutions to very complex funding challenges. We have researched and reviewed many funding recommendations and heard many invited and public testifiers. I believe our recommendations offer a better funding solution with more options for the continuum of our special education students across Texas. Thank you, Governor Abbott, for giving me the opportunity to serve our great state and our most fragile Texans. - Stacey Combest, J.D.

## Executive Summary

### The Commission's Charges:

Under House Bill (HB) 1525 from the 87<sup>th</sup> Legislative Session (2021), the Texas Commission on Special Education Funding (Commission) was formed and tasked with developing and making legislative recommendations for methods of financing special education in our public schools. This report fulfills the Commission's statutory charge to prepare and deliver a report recommending statutory changes to improve funding for special education.

### Recent Funding Changes:

Under HB 3, the 86<sup>th</sup> Texas Legislature (2019) increased the mainstream weight from 1.1 to 1.15, which led to an approximate \$100 million increase in state special education funding over the biennium. Senate Bill (SB) 1716 (87<sup>th</sup> Regular Session) also established a new program called Supplemental Special Education Services (SSES), creating a one-time per student grant of \$1,500 for families of students receiving special education services to obtain additional services or goods to enhance their educational experience. Sixty million dollars was appropriated over the 2022-23 biennium, and demand exceeded the appropriated funds. This has resulted in a lengthy waitlist of families wanting to access this program.

### Commission Membership:

The Commission consists of three members of the House of Representatives appointed by the Speaker of the House, three members of the Senate appointed by the Lieutenant Governor, and one member with an interest in special education appointed by the Governor as Chair. The members of the Commission are as follows:



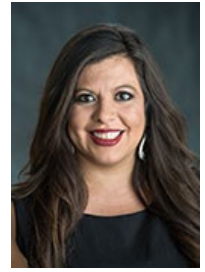
Mrs. Stacey Neal Combest, J.D., Chair



Representative Jacey Jetton, House District 26, Vice Chair



Senator Paul Bettencourt, Senate District 7



Representative Mary E. Gonzalez, House District 75



Representative Dan Huberty, House District 127



Senator Angela Paxton, Senate District 8



Senator Judith Zaffirini, Senate District 21

## Commission Meetings:

The Commission began meeting in March 2022, and held eight hearings, which included invited panels of stakeholders and two meetings for public comment.

Chair Combest named a workgroup consisting of herself, Representative Jetton, and Senator Bettencourt to assist in consolidating the recommendations heard over the various meetings and to draft the recommendations contained in this report.

## Recommendations:

The Commission recommends the following formula- and non-formula-based funding changes. All recommendations that were not approved by a unanimous vote are noted below and in the text description of the applicable recommendation.

### Formula-Based Funding Recommendations

Recommendation # 1: Transition to a Service Intensity Based Formula System.

Recommendation # 2: Provide a cost offset for full and individual initial evaluations (FIEs).

Recommendation # 3: Increase the per mile reimbursement rate for special education transportation.

### Non-Formula-Based Funding Recommendations

Recommendation # 4: Provide funds to cover the retire/rehire penalty for special education staff as a commitment to recruit and retain qualified staff.

Recommendation # 5: Provide funding for special education teacher certification exam fees for the first attempt.

Recommendation # 6: Appropriate funds to offer salary stipends for special education teachers and paraprofessionals.

Recommendation # 7: Increase local educator capacity by establishing targeted grant programs similar to TEA's Grow Your Own Program.

Recommendation # 8: Continue and provide increased funding to the SSES program. (Majority Vote 5-2)

Recommendation # 9: Increase the College, Career, and Military Readiness (CCMR) Outcomes Bonus for students served by special education.

Recommendation # 10: Provide a grant program for nonprofit agencies dedicated to working with students served by special education in public schools. (Majority Vote 5-2)

Recommendation # 11: Maintain at least the current funding levels for dyslexia and autism grants.

Recommendation # 12: Increase regulatory authority of TEA regarding nonpublic day and residential facilities to improve LEA capacity and ensure parents have accurate information regarding the State Supported Living Centers (SSLCs) as an option for students receiving significant special education services.

Recommendation # 13: Increase capacity and available options of nonpublic day programs across Texas. (Majority Vote 5-2)

Recommendation # 14: Consider Educational Savings Accounts. (Majority Vote 4-3)

## Background: Current System of Special Education Funding

While special education funding changes have been made within the last several years at the state level, the focus on overall school finance in the last several years also generated renewed interest in thoroughly reviewing the way the state funds special education. Special education in public schools is funded both through federal and state appropriations. This Commission’s report focuses only on the state financial commitments.

The state currently funds special education based on *instructional arrangements, or settings*. These formulas are based on how much time a student spends in a special education setting. The current settings-based funding model for special education in Texas has been in place since the 1990’s. This model applies a differentiated funding weight to the average daily attendance funding calculation for a student, which then determines the amount of total funding for that student. There are multiple funding weights that are differentiated to align with a presumed level of cost associated with the various setting options available in most schools. The weighted funding is pro-rated based on the amount of time the individual student is reported to spend in the respective educational setting. Additionally, the amount of time spent receiving special education services is then subtracted from the overall calculation so that the student generates general education funding for the time that they are not reported as receiving special education services and special education funding for the time they spend receiving special education services.

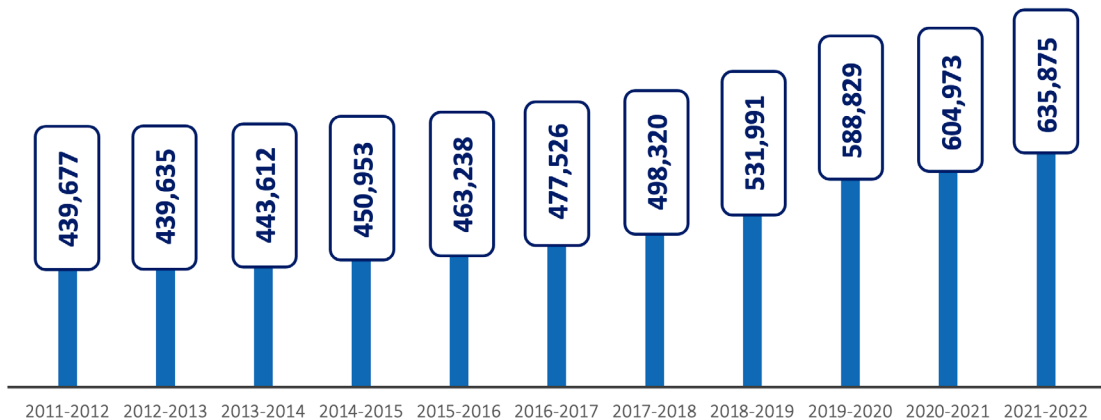
While the current funding model was intended to reflect the costs incurred by LEAs in educating students with disabilities served by special education, much has changed in the preceding 30 years regarding how special education services are envisioned by the individual student’s admission, review, and dismissal (ARD) committees, and in how and where those services are provided as outlined in a student’s Individualized Education Program (IEP).

## Why Changes are Needed

The Commission considered increasing current weights to generate a higher special education allotment within the funding system. However, after extensive investigation, the Commission strongly believes that the current funding formula must be transformed to allow the state and LEAs to provide for the student based on his or her individual needs. The Commission thereby recommends Texas change to a *service intensity-based system* so that the state funds special education based on the needs of the student rather than the placement in which the student receives services. The following data shows the increase in the population of students identified as eligible for special education services and on student outcomes.

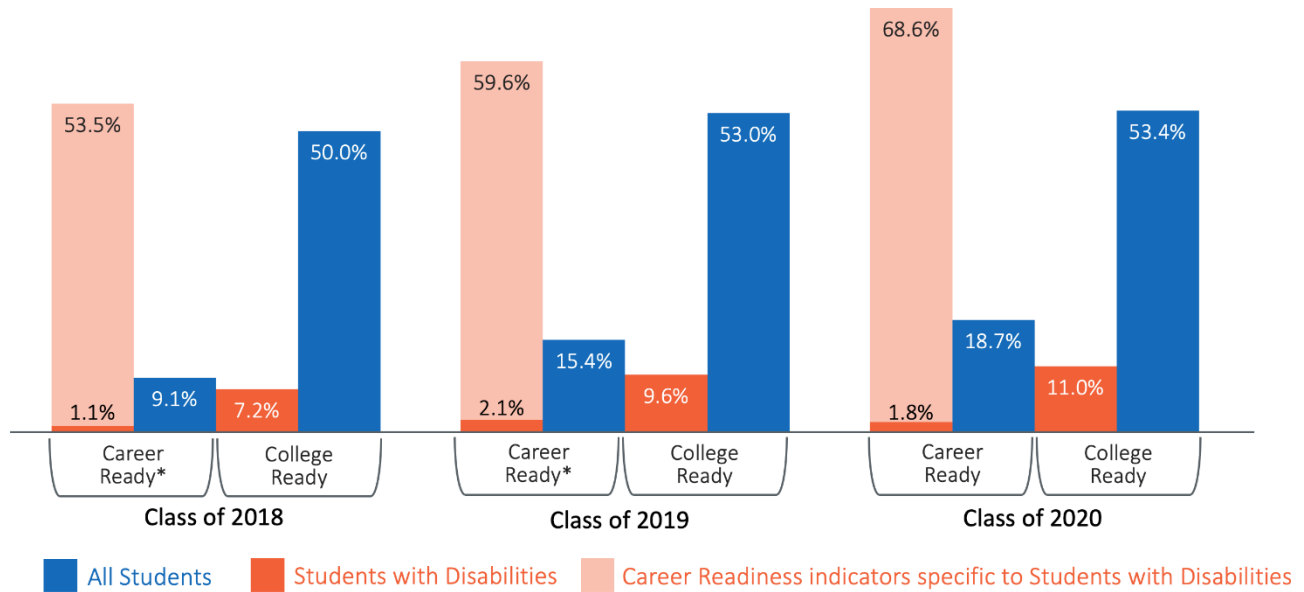
### Special Education Identification:

The number of students receiving special education services continues to increase each year. Since 2015, the student population identified as receiving special education in Texas has grown by 37.3 percent.



SOURCE: PEIMS data collection.

## College and Career Readiness of All Students and Students with Disabilities:



\* The definition of Career Ready has been adjusted over time in the A-F system. For comparison, these data feature the same indicators from 2018/2019 as were adopted for 2020.

SOURCE: TAPR Report

## Commission Recommendations

The Commission carefully reviewed and discussed all recommendations brought forth by stakeholders and individual Commission members. The following sections represent the Commission’s recommendations for consideration by the 88<sup>th</sup> Texas Legislature. As shown in the above charts, the number of students served by special education is significantly increasing in Texas. With this increase it is important that the students are served appropriately and given the opportunity to achieve at high levels, including in the state’s goals for College, Career, and Military Readiness. **The following recommendations were approved by a unanimous vote unless stated otherwise.**

### Formula-Based Funding Recommendations:

#### Recommendation # 1: Transition to a Service Intensity Based Formula System.

To fully reach Texas’ goals for academic success for students with disabilities, Texas should move to an intensity-based funding formula that considers each student’s educational arrangement and specialized services required. This formula should include multiple tiers and service groups to effectively account for the unique, individualized needs of students with disabilities. This transition should include the authority and resources for TEA to collect the necessary data and for TEA to make technical adjustments within the formula during the first few implementation years to ensure state maintenance of financial support and local district and charter maintenance of effort levels are met. TEA should follow a measured process to ensure school systems are transitioned to this formula in an efficient manner.

To do this, the Commission recommends the following two concepts: (A) Intensity of Services Tiers and (B) Service Group Funding. The tiers would represent the bulk and base of the state’s special education funding, while the service group would apply above and beyond the tiered funding when a student is eligible and receives one or more of the service groups. **While the following represents a model description of such a system that the Commission discussed, the ultimate descriptions and weights would need to be determined once the appropriate data is collected and analyzed.**

(A) *Intensity of Services Tiers*: The tiered funding consists of seven tiers, with each tier generating a higher dollar value based on the needs of students. Here, the intensity of services increases with each tier.

Students in Texas public schools who receive special education services would be categorized into one of the seven different weighted funding tiers based upon the types and number of basic special education services they receive. The tiers are associated respectively with a specific funding weight to be applied to the Basic Allotment (BA) and multiplied by the number of students in average daily attendance (ADA) in each of the tiers. An offset of the basic allotment may need to be applied depending on the appropriations and the data collected.

**Students may fall into only one of the seven weighted funding tiers.** If a situation occurs in which an individual student has characteristics across more than one tier, whether the funding associated with that student fell to the lower or higher tier would be a policy decision the legislature would make and outline in the enabling legislation.

The tiers are used in an effort to explain the intensity of services that are needed by a student. They are also used to clarify the Commission's real-world philosophy that meaningful, push-in inclusive services require more effort and more human capital, resulting in more expense to the LEA. Therefore, those tiers are weighted more heavily than those in more segregated, pull-out settings.

**Tier One.** Students in this tier receive special education services in one of the following ways:

- In a special education setting to provide direct support to a student in up to two foundation subject areas;
- In a general education setting to provide indirect support to a student in up to two foundation subject areas; or,
- A single instructional or related service is provided to meet the student's needs, such as speech or dyslexia services. Note that these services are used as an example. Students who receive these services would not be restricted to this tier and would fall under the appropriate tier determined by documented services.

**Tier Two.** Students in this tier receive push-in special education services in up to two foundation subject areas in a general education setting. This typically would be characterized as a collaborative or coteaching model.

**Tier Three.** Students in this tier receive special education services in a special education setting and are provided direct support to a student in three or four foundation subject areas.

**Tier Four.** Students in this tier receive special education services in one of the following ways:

- A general education setting with push-in supports for three or four foundation subject areas. This typically would be characterized as a collaborative or coteaching model;
- In a hospital or homebound environment because of a qualifying medical condition; or
- In a community setting primarily to provide employment supports.

**Tier Five.** Students in this tier receive special education services in all foundation subject areas and address functional goals described in the student's IEP and/or to address behavioral disabilities at a level of intensity requiring a special education self-contained setting. Currently, this level of service is known as a self-contained program.

**Tier Six.** Students in this tier receive intensive full time special education services requiring a highly specialized district program. This includes a school within a school program placement or through contracted services with a third party for on- or off-campus day treatment programming, such as non-public day programs. LEAs typically apply for reimbursement under the high-cost fund program. Under this model, the requirement for reimbursement would no longer be necessary as the cost for serving these students would be largely covered by this base intensity of service model.

**Tier Seven.** Students in this tier receive intensive full-time special education services requiring a residential placement to meet their educational needs. LEAs typically apply for reimbursement under the residential placement reimbursement program. Under this model, this requirement for reimbursement would no longer be necessary as the cost for serving these students would be largely covered by this base intensity of service model.

*(B) Service Group Funding:* In addition to placement in one of the above-described weighted funding tiers, many students also require additional services that would cause them to generate additional Service Group Funding for their LEA.



In contrast to the Intensity of Services Tiers described above, the Service Group Funding categories are applied on a multiple snapshot enrollment basis with allocations to LEAs to be prorated at six-week intervals for students to generate the respective category funding for less than an entire school year. Also, in contrast to the Intensity of Services Tiers, some students may be eligible to generate funding under multiple groups. Under this model, these individual students would generate funds for respective LEAs for every group in which they are eligible.

**Funding Group Level One.** Students who are eligible to generate funding associated with this group receive a single ancillary instructional service such as speech therapy or dyslexia therapy, and/or the student receives related services described in 34 CFR 300.34, such as physical or occupational therapy, audiological services, music therapy, and special education counseling services. Note that this group level can be used more than once and is based on each eligible service that a student receives. Students who are eligible to generate funding associated with this group would also include students who get a functional behavioral assessment (FBA) or a behavioral intervention plan (BIP).

**Funding Group Level Two.** Students who require assistive technology and/or augmented communication or audiological devices or systems would generate funding associated with this group. Examples of this would be the need for an FM audio system within the classroom to support students who are hard of hearing or a student with a disability impacting communication that requires an assistive technology communication device.

**Funding Group Level Three.** Students who require a dedicated staff member for less than half of the school day would generate funding associated with this group. Examples of this would be dedicated nursing or paraprofessional staff that are assigned to an individual student as part of a student's IEP.

**Funding Group Level Four.** Students who require a dedicated staff member for at least half of the school day would generate funding associated with this group. Examples of this would be dedicated nursing or paraprofessional staff who are assigned to an individual student as part of the student's IEP.

### **Recommendation 2: Provide a Cost Offset for Full and Individual Initial Evaluations (FIIEs).**

As part of their requirements to find all children who may need special education services within their geographic boundary, school systems conduct thousands of initial student evaluations every year to determine if students qualify for special education services. The TEA currently collects data from LEAs related to the number of FIIEs that are conducted annually. However, the state does not collect specific data on the cost of these evaluations. While overall cost is dependent on the disabilities suspected, demographic information, and the evaluations that are required for a given student, the Commission was advised of an average cost of approximately \$1,500 per evaluation. The Commission recommends that the state provide financial support for evaluations at a rate between \$250 to \$1,000 per evaluation based on the LEA data submitted to TEA annually. By projecting 100,000 evaluations in 2024, increasing by 5,000 evaluations annually, the annual cost is estimated to be between \$25 million and \$100 million.

### **Recommendation 3: Increase the Per Mile Reimbursement Rate for Special Education Transportation.**

Pursuant to TEC 48.151, the General Appropriations Act sets the rate per mile per regular eligible student, which is currently set at \$1.00 in each fiscal year of the biennium; the maximum mileage rate for special education transportation is currently set at \$1.08 per mile in each fiscal year of the biennium. The Commission recommends an increase in the rate per mile reimbursement for special education transportation to between \$1.28 and \$1.38 per mile. This would provide an estimated additional \$5 to \$15 million to school districts and charter schools per year.

## **Non-Formula-Based Recommendations**

### **Recommendation 4: Provide funds to cover the retire/rehire penalty for special education staff as a commitment to recruit and retain qualified staff.**

Texas Government Code Sections 824.602 and 825.4092 describe the withholding of benefit payments and financial payments that are required to be submitted to the Texas Teacher Retirement System (TRS) when an individual who retires from TRS returns to the school system on more than a half-time basis within twelve months of retirement. Special

education positions have historically been hard-to-staff. In today's climate, it continues to get harder to find qualified staff. LEAs are often forced to hire uncertified or inappropriately certified staff when certified or licensed professionals cannot be located. There are instances where a recently retired special education professional might return so that someone with full certification can be utilized by the LEA. However, current state law places penalties on those who return to the field within twelve months of retirement. The Commission therefore recommends that the Legislature provide funds for LEAs to cover the retire/rehire penalties associated with a recently retired employee who returns to the public school setting when qualified professionals cannot be found. This would include all types of special education positions, including teachers, related services personnel, and evaluation personnel. While it is difficult to ascertain the fiscal impact of this recommendation because the TRS does not keep specific data on the type of position to which a retiree returns, initial unofficial estimates from TRS at the time of this report indicate that approximately \$30-60 million per year would be needed to address this issue for *all* retire/rehires. For the Commission's focus, the recommendation would pertain only to special education assignments. Absent specific data on the issue, the Commission's recommendation would be for the state to appropriate between \$2 million and \$12 million per year to assist in covering the surcharge penalties for those who return to a special education position.

### **Recommendation 5: Provide funding for special education teacher certification exam fees for the first attempt.**

To assist in increasing the field of certified special education teachers, the Commission does not want certification exam fees to be a barrier. Therefore, the Commission recommends that state funds should be set aside to cover the costs of the required certification exams to become special education certified. In the last year, there were approximately 6,100 first-attempt test takers for special education certification. The Commission recommends that at least \$740,000 annually be set aside to cover the costs of these exams, which are currently set at a rate of \$116 per exam.

### **Recommendation 6: Appropriate funds to offer salary stipends for full-time special education teachers and paraprofessionals.**

Special education teachers and paraprofessionals have been considered a critical shortage area in the state for decades. The need for special education teachers and educational aides continues to increase as more students become eligible and are served by special education. Therefore, the state should consider appropriating funds to help LEAs offer stipends to certified special educators and paraprofessionals who are assigned to a special education teaching role. When reviewing data from 2021-2022, there are approximately 31,000 teachers with a special education teaching assignment and approximately 80,000 paraprofessionals employed statewide. The Commission recommends a state commitment to provide a \$1,000 to \$2,500 stipend annually for special education teachers and paraprofessionals. This would result in an approximate \$111 million to \$277.5 million state commitment.

### **Recommendation 7: Increase Local Educator Capacity by establishing targeted grant programs similar to TEA's Grow Your Own Program.**

Special education teachers; dyslexia therapists; paraprofessionals; evaluation staff, such as diagnosticians; and related service personnel, such as speech language pathologists, school psychologists, occupational therapists, physical therapists, and orientation and mobility specialists are in huge demand across Texas public schools. It is especially difficult to recruit and retain these professionals in the public school setting as many of these positions can generally work either in the public school setting or the private sector. Therefore, following the lead of similar grants of this type, the Commission recommends that the state allocate between \$5 million and \$50 million per year to establish grant programs to increase LEA capacity of all these categories of personnel to include access to certification and licensure programs in exchange for service commitments to the public school setting for a certain number of years. The programs should focus on the grow-your-own concept.

### **Recommendation 8: Continue and Provide Increased Funding to the Supplemental Special Education Services (SSES) Program.**

(This recommendation received a majority vote of 5 in favor and 2 opposed)



As mentioned above, the demand for the SSES program has far exceeded the funds appropriated to the program. The SSES program allows parents and guardians of students who receive special education services to access goods or services valued up to \$1,500 that they feel would benefit their child. The Commission recommends the continuation of this program, as well as increased funding to address the current waitlist of families eligible for this service but who have been denied based on lack of availability of funds. The Commission also recommends that students would be eligible to receive SSES grants at least twice during their Pre-K-12<sup>th</sup> grade academic career, subject to appropriations.

### **Recommendation 9: Increase the College, Career, and Military Readiness (CCMR) Outcomes Bonus for Students Served by Special Education.**

Current law provides an additional outcomes bonus to LEAs of \$2,000 per eligible graduate if the student was served by special education. This is in addition to the outcomes bonus that is generated by whether the student was categorized as economically disadvantaged or non-economically disadvantaged. The Commission recommends that this bonus be doubled to allow LEAs to focus on activities that prioritize increased outcomes for students who receive special education and related services during their school careers. The 2021 cost to the state for the CCMR bonus for students served by special education was approximately \$1.7 million, so the recommendation would be to increase the state's commitment for this endeavor by an additional \$1.7 million annually.

### **Recommendation 10: Provide a Grant Program for Nonprofit Agencies Dedicated to Working with Students Served by Special Education in Public Schools.**

(This recommendation received a majority vote of 5 in favor and 2 opposed)

The Commission heard from various representatives of private nonprofit organizations that specialize in helping families cover costs for goods and services that students served by special education in public schools often need. To assist families in accessing this assistance, the Commission recommends that the state set up a grant program that would allow for nonprofit organizations to apply, and, if approved, be available to serve families in need. This could be facilitated similar to the SSES program wherein an Education Service Center (ESC) would be charged with helping establish and regulate the program, with the support and oversight of TEA. The Commission recommends a state contribution between \$2 million and \$10 million to be used for this purpose.

### **Recommendation 11: Maintain at Least Current Funding Levels for Dyslexia and Autism Grants.**

The Commission recommends that the state continue to appropriate funds to the grant programs established in TEC §29.026 and §29.027 for autism programs and dyslexia training and remove the expiration dates in TEC §29.026(o) and §29.027(i) to reflect the continuation of those programs. The current appropriation of \$100 million to implement those programs should also be at least maintained.

### **Recommendation 12: Increase Regulatory Authority of TEA regarding nonpublic day and residential facilities to improve LEA capacity and ensure parents have accurate information regarding the State Supported Living Centers (SSLCs) as an option for students receiving significant special education services.**

There are currently no cost transparency requirements for nonpublic day and residential providers. LEAs with similar student needs can be charged disproportionate rates for the same services and needs. The LEAs report little ability to negotiate due to student needs. The Commission reviewed current and historical contracts between the LEAs and providers and found that day and residential placements can range from \$100,000-\$400,000 annually for a single student. The TEA needs expanded authority to require facilities to provide rates for review, approval and setting maximum costs, similar to the Health and Human Services Commission (HHSC) and other state agencies.

Current rules require LEAs to initiate finding a nonpublic provider and then request that TEA review and approve funding. This puts a considerable burden of capacity on LEAs and creates service delays while trying to make student service and placement decisions throughout the IEP process. The TEA should have authority to preapprove current and potential providers so that the LEAs can enter IEP meetings with knowledge for parents about their options with providers that have been reviewed by TEA.

To further increase residential capacity and give parents a final safety-net option, the TEA should partner with the HHSC to provide accurate information regarding parent options to utilize the SSLCs. Students receiving significant special education services could see considerable benefit from this residential placement because they would be served at a location that does not age-out after age 21. This information should be provided during the ARD process to all parents who have students that may be placed in a residential program.

### **Recommendation 13: Increase capacity and available options of nonpublic day programs across Texas.**

(This recommendation received a majority vote of 5 in favor and 2 opposed)

As of November 2022, over 75 percent of day program and residential facility seats are filled. Additionally, the current landscape of available programs is limited. There is limited availability of day treatment programs across the state, and the Commission heard about the costs from providers in operationalizing such programs. To assist in increasing capacity of day treatment programs in local communities, the Commission recommends that TEA establish a grant program to allow for start-up costs for new programs in communities. The total grant program funding should be between \$8 and \$10 million annually. These grants would range between \$400-500,000 each over two years to allow providers to open new facilities and programs at capacity to immediately serve students.

### **Recommendation 14: Consider Educational Savings Accounts.**

(This recommendation received a majority vote of 4 in favor and 3 opposed)

To better serve students with disabilities and unique educational requirements, the legislature should consider Educational Savings Accounts as a form of education funding. Texas should provide additional avenues for families of students with disabilities to access education services. The TEA shall develop resources for families considering ESAs to ensure they are fully informed on the resources and utilization of ESAs.

## Implementation Timeline

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The implementation of the non-formula-based recommendations described above could be implemented during the first biennium upon passage of statute and appropriation, as well as the formula-based recommendations on providing a cost offset for FIEs and the increase in the per mileage rate for special education transportation.

However, the *Intensity of Services Tiers* and *Service Group Funding* programs would both require data collection in addition to that which is currently collected from LEAs. The transition to the new formula funding model will require resources for TEA to provide robust training to LEAs to ensure the transition is implemented consistently, efficiently, and effectively. The Commission understands that the impact of the new formula must result in at least the same amount of state funding LEAs received in the most recent fiscal year prior to the implementation of the new funding model. This is necessary in order to avoid any state Maintenance of Financial Support and local Maintenance of Effort issues.

A recommended implementation timeline is described below. The timeline assumes that a statutory change would be made in the 88<sup>th</sup> Texas Legislature and, therefore, implementation would begin in the summer of 2023.

In the summer of 2023, TEA would begin training LEAs on the various new data elements to prepare them to adjust internal processes to collect that data moving forward.

By the end of the 2023-2024 school year, the new data elements will be officially described in the Texas Student Data System (TSDS) Data Standards.

The 2024-2025 school year would involve funding based on a combination of both funding systems in order to resolve the recording of the new data elements and the collection of the previous funding model.

The 2025-2026 school year would continue to involve a combination funding system, with the full implementation of the new formula model coming during the 2026-2027 school year.

## Appendix

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### Appendix A:

All Texas Commission on Special Education Funding documents and information can be found [here](https://tea.texas.gov/finance-and-grants/state-funding/additional-finance-resources/texas-commission-on-special-education-funding#:~:text=Texas%20Commission%20on%20Special%20Education%20Funding%20House%20Bill,to%20address%20issues%20related%20to%20special%20education%20funding.)  
(<https://tea.texas.gov/finance-and-grants/state-funding/additional-finance-resources/texas-commission-on-special-education-funding#:~:text=Texas%20Commission%20on%20Special%20Education%20Funding%20House%20Bill,to%20address%20issues%20related%20to%20special%20education%20funding.>)

### Appendix B:

Commission Member Letters.



# TEXAS HOUSE *of* REPRESENTATIVES

**Mary E. González**

*State Representative, District 75*

December 27, 2022

Stacey Neal Combest  
Chair, Texas Commission on Special Education Funding  
Texas Education Agency  
1701 N Congress Ave  
Austin, TX 78701

Dear Chair Combest,

The Commission on Special Education Funding took on a broad and urgent responsibility laid out in House Bill 1525 to improve the method of funding education for more than 600,000 students with disabilities, to not only transform their lives individually but the education system for a spectrum of positive outcomes. The bulk of our seven meetings reflected the seriousness and necessity of that charge, providing a wealth of information and suggestions. The report proposed for our Commission's adoption contains critical elements that should move forward with urgency in the upcoming legislative session.

Paramount among the several excellent recommendations contained in the proposed report is moving from funding special education based on student placement to funding based on service intensity. I believe the long-term effect of such a change will be transformational and of enduring value to our students with disabilities. Other recommendations, including those to update transportation funding, to provide financial assistance to districts, and to recruit and retain qualified educators, offer even more immediate benefit to students and all those who serve them.

Several proposals included in the draft report do not meet the threshold of having reasonably proved to offer a significant benefit to students in special education. Recommendations for more careful adoption could have made those regarding the Supplemental Special Education Services Program, grants for nonprofit agencies, or funding for nonpublic day programs acceptable but without such, I am not able to support those recommendations. That said, as the first thirteen recommendations stood within the draft report even without adopting offered changes, I would have been pleased to join in signing and endorsing the overall report.

Therefore, however, I am saddened I am unable to ratify the Commission report because it contains recommendation fourteen that threatens public education for students with disabilities and for their more than five million peers. Regardless of whether they are called "educations savings accounts" or something else and regardless of the particular implementation, publicly-funded vouchers for students to attend private schools has many negative implications for our state, our communities, our 5.5 million students and their families, and, most especially, for our 600,000 students with disabilities.

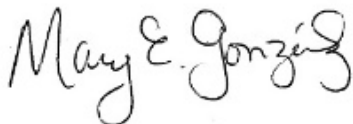
Educating students with disabilities in a private-school setting removes critical protections for students and families. Of them, the most significant protections include the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. These federal guidelines have a record spanning several decades protecting hundreds of thousands of students. Without IDEA, for example, students lose the right to have individualized education programs and placement in the least restrictive environment. Research demonstrates these two specific elements support the opportunity for students with disabilities to achieve the highest academic success.

The record illustrates private-school vouchers, whether for all students or those in special education, at best, provide no overall improvement in students' educational performance and, in the largest and most recent cases, lead to a significant decline. Particularly as students and schools struggle to make up ground lost during the pandemic, which affected students with disabilities significantly more than their peers, it is unconscionable that our state consider siphoning resources into a system that would actually serve those students less well and offer zero protections as compared to our public schools.

A publicly-funded private-school voucher does noes nothing to address the overwhelming need for more than 600,000 students receiving special education services at more than 8,000 Texas public school campuses. In fact, such a plan undermines the constitutional obligation of public schools to serve all students and specifically has a multiplied negative effect on rural communities. Our state's constitution, our statutes, and many years of case law leave no doubt that public school districts and our neighborhood public schools are obliged to serve every Texas child who comes through their doors, regardless of when the child comes or where the child was in school before. Any student with a disability, whether entering kindergarten on the first day of the school year or leaving a private school in the middle of a senior high school year must and will be served by the student's local public school.

As I would with any proposed legislation put before the House of Representatives, I must judge the Commission's report as a whole. It contains urgent elements, but the inclusion of a recommendation for private-school vouchers makes that whole unacceptable and I cannot serve my constituents, the state, the 5.5 million school children including the 600,000 living with disabilities, or my conscience were I to sign it.

Sincerely,

A handwritten signature in black ink that reads "Mary E. González". The signature is written in a cursive, flowing style.

Mary E. González, PhD  
Texas State Representative  
House District 75



## State Representative Dan Huberty District 127

December 16, 2022

Members of the Commission on Special Education Funding,

I have been honored to serve on the Commission on Special Education Funding during the 87<sup>th</sup> Interim Session. I want to thank the Commission for all their hard work, especially Chair Combest and the Texas Education Agency for their work in pulling the final report together.

While it is my intent to vote for the final report, I cannot support Recommendation #14 which states “*Consider Educational Savings Accounts: To better serve students with disabilities and unique educational requirements, the legislature should consider Educational Savings Accounts as a form of education funding. Texas should provide additional avenues for families of students with disabilities to access education services. The TEA shall develop resources for families considering ESAs to ensure they are fully informed on the resources and utilization of ESAs.*”

When crafting HB 1525, and in particular the language that created the Commission on Special Education Funding, the intent was to address the gap in funding that exists between what the LEAs spend and what was funded by the State. This final report proved that the State is underfunding the LEAs by more than \$1.8 Billion Dollars. So, instead of diverting funds from General Revenue to fund an ESA, the Commission should first recommend that the State fully fund the “GAP” that currently exists.

Once the State has fully funded the provisions and costs of special education services required to provide a Free and Appropriate Public Education (FAPE) for all eligible students within the public education system the legislature should also consider additional funding mechanisms that support families’ access to services and other resources as identified in this report. This allows more comprehensive services for students with disabilities as categorized by federal law. These services could include social, medical, therapy, behavioral, and community services. These services fall outside of an LEA’s obligation to provide FAPE but may indirectly support a child’s educational success or other positive life outcomes.

Finally, as Recommendation #14 is a policy debate that I am certain will be had in the 88<sup>th</sup> Legislature, I respectfully request that the funding recommendations to fix the current system stand on their own, just as we did with the Commission on Public School Funding in the 85<sup>th</sup> Interim Session. As the formulas have not been adjusted in over 30 years, now is the time to have an honest debate about the State’s obligations to Special Education Students, without introducing a policy debate on ESAs that could prove to be detrimental to the passage of this critical legislation.

Sincerely,

A handwritten signature in black ink that reads "Dan Huberty".

Dan Huberty  
State Representative District 127



Vice Chair, Natural Resources and  
Economic Development  
Texas Judicial Council  
Chair, Eagle Ford Shale  
Legislative Caucus



**Judith Zaffirini**  
State Senator, District 21  
President Pro Tempore, 1997

Committees  
Higher Education  
Local Government  
State Affairs

December 27, 2022

Stacey Combest, Chair  
Texas Commission for Special Education Funding  
1701 N. Congress Ave.  
Austin, TX 78701

Dear Chair Combest:

Thank you for your leadership and hard work as Chair of the Texas Commission on Special Education Funding. I appreciate the opportunity to share my perspective regarding our report to the 88<sup>th</sup> Legislature. I support eight of its twelve recommendations, especially those related to establishing an intensity service-based funding formula that would allocate resources more effectively and removing incentives for local education agencies (LEA) to place children outside the general classroom to receive funding for services. I voted for the recommendation to provide funding to cover the retire and rehire penalty for special education staff, but, as I stated, believe it would be more efficient to waive it in these cases. Accordingly, I intend to file legislation to this effect.

I respectfully declined to sign the report, however, due to my strong concerns about Recommendations 8, 10, 13, and 14 because they divert funds from public special education without sufficient accountability, economic viability, or protections. Alternatively, LEAs could purchase the necessary supplemental items and services for special education. Similarly, instead of a grant for nonprofit organizations, directly funding schools or established government programs would result in more accountability while maximizing taxpayer dollars. This Commission, however, recommends entrepreneurial financing for nonpublic day program providers despite more than 20 percent capacity remaining.

Most significantly, I believe that the Legislature has a duty to protect children. When a parent or guardian uses an educational savings account, essentially a school voucher, to transfer a child with a disability from public to private school, federal anti-discrimination laws such as the Individuals with Disabilities Education Act no longer apply. This means, for example, the child with a disability loses his or her right to a free and appropriate education while the parents and guardians lose the right to participate in placement decisions.

I look forward to continuing to work with Lt. Governor Patrick, legislative colleagues, families, advocates, and you to provide meaningful special education funding reform this session. My prayer is that the Lord will continue to bless and inspire you.

Very truly yours,

A handwritten signature in cursive script that reads "Judith Zaffirini".

Judith Zaffirini