

Special Education Mandate History
Funding and Legislative Intent
Questions and Answers Prepared by the Legislative Analyst's Office
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The eight activities identified by Commission on State Mandates (COSM) as required by state law—and in excess of federal requirements—all stem from the legislation creating the state's Master Plan for Special Education (MPSE): Chapter 797, Statutes of 1980 (SB 1970, Rodda). State requirements regarding these eight activities have changed minimally since this time. Given the importance of Chapter 797, therefore, we reviewed the special education funding system and the legislative intent during the years before and after enactment of Chapter 797.

How was special education funded in the 1970s?

During the 1970s, special education was funded by the state, federal, and local governments. The state provided its aid pursuant to 28 categorical funding programs. These funding programs generally allocated aid based on pupil handicapping condition, rather than reimbursing local education agencies for the type of services needed.¹ During this era, state aid typically covered about 50 percent of total special education costs in California; the remaining costs were paid by local education agencies (about 45 percent) and the federal government (less than 5 percent).

After Proposition 13 passed in 1978, the state provided a one-time bail out to local governments, including local education agencies. One year later, the state established a new local government financing system (Chapter 282, Statutes of 1978, [AB 8, Greene]). Assembly Bill 8 provided local education agencies with a higher level of state support for special education services. As Figure 1 (see next page) illustrates, in 1977-78 (the year before Proposition 13), local education agencies paid 47 percent of total costs (\$1,033 per special education student) and the state paid 50 percent. By 1979-80, the local education agencies' share of cost dropped to 28 percent (\$698 per student), while the state's share grew to 67 percent. Thus, implementation of AB 8 provided an increased level of state support for the special education program and reduced the share of costs paid by local education agencies.

¹ Beginning in 1974, the state also offered special education funding under an alternative, optional financing system (similar to the funding model later enacted in Chapter 797). These "early Master Plan" districts served only a small number of students. Accordingly, in our discussion of the special education funding system of the 1970s, we describe the traditional funding model.

Figure 1				
Nonmaster Plan (Traditional) Special Education Program Funding Per Student^a				
<i>1976-77 Through 1979-80</i>				
	Federal	State	Local	Totals
1976-77	\$47 3%	\$985 54%	\$789 43%	\$1,822
1977-78	\$72 3%	\$1,091 50%	\$1,033 47%	\$2,196
1978-79	\$143 6%	\$1,536 64%	\$712 30%	\$2,391
1979-80	\$143 6%	\$1,683 67%	\$698 28%	\$2,524

^a Fiscal data from *Financing and Administration of Special Education Programs for Handicapped Pupils*, Office of Auditor General, January 1980. Enrollment data for 1976-77 and 1977-78 from *Special Education Financing Warrants Review*, Office of the Auditor General, March 1979. Enrollment data for 1978-79 and 1980-81 from *Estimated Special Education Program Costs for California Special Education 1979-80*, California State Department of Education 1980.

Throughout the 1970s, total government special education expenditures increased. This growth in costs stemmed from inflation, natural enrollment growth, and program changes to meet higher federal standards. Specifically, in 1975, Congress passed Public Law 94-142, mandating that by September 1978 all handicapped children be provided with a “free and appropriate public education.”

What was the purpose of the state’s MPSE?

The Legislature wanted to reorient its special education delivery system to focus on providing services to children, rather than categorizing children by handicap. To implement this comprehensive reform of special education, the Legislature enacted Chapter 797 which:

- Reverted all special education funding appropriated through the *1980-81 Budget Act*. (These funds had been appropriated pursuant to earlier special education financing systems.)
- Provided a higher level of resources for special education pursuant to a new funding model.

Was the Legislature aware that the state’s MPSE would create a mandate?

The Legislative Analyst’s Office (LAO) and Department of Finance (DOF) bill analyses of Chapter 797 document that the Legislature and administration were aware the measure would impose a state-mandated local program. In enacting Chapter 797, the Legislature and Governor relied upon their fiscal staff analyses which indicated that:

- The increased state funding provided in the measure would be sufficient to offset the mandated costs in 1980-81.
- An increased level of state funding would be provided in future budget acts.

Did the state increase its funding for special education?

In Chapter 797, the Legislature provided a total of \$619 million in state aid for special education (\$557 million for special education services and \$62 million for transportation).² This amount reflects an approximately \$160 million increase in state support for special education over the prior year, and a \$90 million increase in state aid over the amount required by then current law. The \$90 million increase in state funding was the basis for our office’s contention in 1980 that the revenues provided in the bill would be sufficient to offset any state-mandated costs. As Figure 2 indicates, the higher level of state funding provided by Chapter 797 for special education services (\$557 million) has been maintained since 1980, including increases to offset the effect of enrollment growth and inflation.

Figure 2	
State Has Maintained Support for Special Education	
<i>(Dollars in Millions)</i>	
Chapter 797, Statutes of 1980 ^a	\$557
Adjustment for special education enrollment growth to 1998-99	177%
Adjustment for inflation to 1998-99	184%
Chapter 797 amount adjusted for enrollment growth and inflation to 1998-99	\$1,818
State appropriation for special education in 1998-99	\$2,165
State Support in Excess of Chapter 797	\$347

^a Excludes \$62 million for transportation.

Were the LAO and DOF analyses correct in asserting that state funds would be sufficient to offset state-mandated costs?

Our review of the materials submitted to the COSM suggests that the LAO and DOF mandate analyses were correct. The increased funding provided by Chapter 797 (and appropriated in annual budget acts thereafter) appears to have been sufficient to offset the cost of the state-required elements in the Master Plan. While the overall special education program’s costs have grown faster than anticipated, the cost increases have

²Chapter 797 specifies that surplus funds in one item could be transferred to any other item.

resulted from higher-than-expected costs to meet the federal mandate, not because the cost to comply with the eight state-mandated activities have exceeded the funding increase provided in Chapter 797 (and incorporated with growth in subsequent budget acts). In addition, the state-local share of total special education costs is higher than anticipated in 1980, because the federal government has not provided special education aid at the levels promised.³

Did the state agree to cover the cost of the federal mandate?

During the course of debate regarding the special education mandate, we have heard statements suggesting that the state agreed in 1980 to assume *all* increased costs to meet the state and federal special education mandates—and provide additional local relief. In the development of any significant legislation, differing statements regarding the measure’s intent and costs typically emerge. To ascertain the legislative and administrative intent with regards to the financing elements of Chapter 797, we believe it is best to examine the fiscal system enacted in the measure and the bill analyses commenting on the development of that fiscal system.

From our review of the fiscal elements of Chapter 797, we conclude that the Legislature intended its increased support to pay for the state-mandated costs associated with the Master Plan. (That is, the state’s first priority was that its money pay for its constitutional obligation.) Our review further indicates that the Legislature anticipated that its increased state aid might also:

- Offset some marginal costs of bringing noncomplying districts into conformity with the 1975 federal special education standards. (The deadline for districts to comply with the federal law had already passed.)
- Provide a measure of local fiscal relief.

With reference to the two last objectives, however, we find no evidence that the Legislature’s intent was to *guarantee* sufficient state support to ensure their realization.

We base our conclusions on several factors. First, the historical record is clear that the Legislature and administration were aware that Chapter 797 imposed a state mandate and knew this funding obligation could not be waived. Proposition 4 (which placed the state-mandate provisions into the Constitution) was approved by the voters just eight months earlier. The Legislature did not include language in Chapter 797 seek-

³ Congress passed PL 94-142 in 1975, with the intent of paying 40 percent of the national average excess cost of special education by 1981. Federal aid, however, has never exceeded 12.5 percent of such costs. In 1992-93, this shortfall was calculated to be about \$745 million in California.

ing to “disclaim” its funding obligations (as it had in legislation to create the early Master Plan, Chapter 1247, Statutes of 1977). Rather, the fiscal bill analyses consistently note that the measure imposed a constitutional obligation on the state—and comment on the sufficiency of the funds appropriated in the legislation to offset this obligation.

Second, Chapter 797 does not declare the Legislature’s intent to pay all increased costs to comply with the federal special education requirements. Rather, Chapter 797 limits state aid to amounts that, in some cases, clearly are *below* the amount needed to meet federal requirements. For example, Chapter 797 specifies that the state would not reimburse local education agencies for special education enrollments that exceed 10 percent of general student enrollments. In reviewing this enrollment cap, it is important to point out that the Legislature set the cap at a *lower* level than the federal government used to calculate its special education aid. Thus, the funding model enacted in Chapter 797 intentionally denies state aid for services to some handicapped students who are eligible for federal special education aid. In its enrolled bill analysis, the DOF calls this 10 percent cap “one of the most significant fiscal aspects” of Chapter 797. From this information, it appears that the Legislature and administration wished to help local education agencies meet the federal standards, but did not commit to paying all the increased costs of the program.

Third, the funding model enacted in Chapter 797 clearly indicates the Legislature’s unwillingness to commit to providing local fiscal relief, or to making any long-term commitment regarding state expenditures for special education. Specifically, the Legislature included a powerful fiscal “safety valve” in Chapter 797, allowing the state to unilaterally and unconditionally reduce its total special education costs in any year. Specifically, Article 10 of Chapter 797:

- Directs that state special education aid be prorated among local education agencies if the budget act does not appropriate sufficient money to fund all local costs.
- Does not require state funding shortages be made up in future years.⁴

Thus, our review of the financing model in Chapter 797 suggests that the state was aware of its constitutionally mandated reimbursement obligation and took care to as-

⁴ The importance of this proration factor as a state fiscal “safety valve” was apparent from the very earliest days of the MPSE. We comment on the proration factor in our 1981-82 and 1982-83 volumes of the *Analysis of the Budget Bill*. For example, in 1982-83, we wrote “Existing law does not require the state to fund a deficit in the MPSE should one arise . . .” If there is a deficit in 1981-82, and if the state chooses not to fund it, the available funds will be prorated among the local school agencies claiming reimbursement.”

sure that this funding obligation was met. The Legislature clearly wished to provide a higher level of state aid in order to improve special education services and offer local fiscal relief. The Legislature, however, limited its promises and offered no guarantees.

Why didn't Chapter 797 specifically link state funding to the eight activities?

During the course of the COSM's debate, we have heard some suggest that state special education funds not be counted as a mandate offset because the funds were not explicitly appropriated to cover the cost of the eight state-required activities. (Instead, the state gave local education agencies broad flexibility over the use of the funds.) In reviewing this suggestion that unrestricted state subventions not count as mandate offsets, we would like to offer our perspective as the Legislature's chief fiscal advisor.

The Legislature enacted and funded the MPSE as a *program*. Similarly, the claimants challenged the MPSE as a *program*. It was only last year—after extensive work by the COSM—that the distinction between the measure's state-required *versus* federally-required elements has been documented. While the Legislature was aware in 1980 that Chapter 797 imposed a state mandate, it would have been impossible at that time to earmark special education funding with this level of precision.⁵

We also point out that the provision cited as requiring such detailed accounting (Government Code Section 17556 [e]) was enacted several years *after* the Legislature passed Chapter 797. At the time the Legislature enacted Chapter 797, the primary source of guidance on the matter of reimbursement was the California Constitution. The Constitution simply calls for a “subvention of funds to reimburse” local government; it does not say that the funds must be earmarked to reimburse specific program activities. Thus, at the time the Legislature was enacting Chapter 797, the Legislature would have no reason to think that the significant funds it subvented would not be “counted” as reimbursing state-mandated local costs.

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⁵Such an effort to earmark funds also would have been contrary to the Legislature's goals for the Master Plan program, which sought to provide maximum flexibility to local education agencies to adjust program resources to meet pupil needs.