

Executive Summary

Colorado is one of forty-seven states that provides designated supplemental funding for students with disabilities, and one of seventeen that provide this funding in multiple tiers, for different categories of students with disabilities. First, all students with disabilities are funded at a base level of \$1,250. Then, students with more intensive special-education needs are funded with an additional allocation that equaled \$1,876 in the 2018–19 school year. This funding is partially protected by Amendment 23 of the State constitution.

Colorado's two funding tiers are intended to differentiate funding for students with different disabilities. However, because it uses two tiers instead of the more common 3–6 tiers, the State is unable to finely tailor its allocations to students' specific needs, especially at the more severe end of the disability spectrum. This creates particular challenges for small and rural districts, which operate on narrow financial margins and are less able to absorb high costs for individual students. The State could better target its funding by introducing additional tiers.

Special education funding is currently distributed as two per-pupil dollar amounts, separate from program funding. Funding provided in this way requires more legislative maintenance than weighted funding, and is harder to compare against other weights and factors. The State could modify its system by allocating this funding using multiple weights applied to the base amount.

Colorado's current allocations for Special Education students are quite low by national standards, especially when the State's top funding tier is compared with the highest weights in other states. The upper tier is also quite vulnerable to state funding cuts or persistently low appropriations, and the State's high-cost fund is small, leaving many districts struggling to cover the expenses associated with particularly high-need students. It is worth considering whether the funding provided is sufficient to truly meet students' needs, or to allow districts to properly honor students' federally protected rights to free and appropriate public education. The State should prioritize increasing both its regular per-pupil special education funding allocations and its high-cost fund.

The policy options laid out would bring the State's policies closer to those of others. Funding is more commonly provided through weights than set dollar amounts, and is generally allocated within formula funding, subject to a state-local division of responsibility. Nearly all states that use multiple funding levels for special education use more than two tiers, and funding levels in other states are generally much higher than those in Colorado. High-cost funds are typically more substantial in other states, as well.

The amount of Tier B dollars per student depends on the total size of the appropriation under the Exceptional Children's Educational Act (ECEA), which supports special education. First, Tier A dollars are allocated for all students receiving special education services. Then, funds are distributed for specific purposes, including child-find evaluations and educational orphans. After this, the remaining dollars in the appropriation are added to the minimum \$20 million and divided equally among Tier B students. Though Tier B funding is capped at \$6,000 per student, allocations were just \$1,876 per eligible student in the 2018–19 school year. (With the additional \$22 million added in the last legislative session, this amount should increase to roughly \$3,000 per student in 2019–20.)

Special education funding is mentioned in Amendment 23 of the State constitution and is included along with other categorical programs in a group for which total funding must increase each year by at least the rate of inflation.

II. Assessing Colorado's current policy

Differentiation for different levels of student need

By including two different funding tiers in its special education funding system, Colorado is attempting to provide support that is tailored to students' different levels of need. This is an important policy goal. However, Colorado sorts students into just two categories based on their disabilities—the lowest number of any state using a tiered system for funding special education.

This relatively low degree of differentiation assumes that the service requirements associated with the grouped disability types have similar costs. This is questionable and not supported by research. Due to differences in state policy and demographics, there will be significant variation in both the relative and absolute cost of service provision from state-to-state. But generally, disabilities like blindness and autism have higher average costs than emotional or intellectual disabilities.

If funding levels are set at a high enough rate relative to the average cost of all disability types, then cost variations are not a significant problem for large school districts. Large enrollments allow differences to balance out. Small, remote districts have a more difficult time because they are more often statistical outliers. Figures 1 and 2 below demonstrate this problem in Colorado. As school districts become more rural the more variation there is in the percentage of SPED students enrolled. Meaning that rural districts are more likely to have far more (or far fewer) students in special education than the median. This is especially pronounced when looking at only the highest-cost disability types, in Figure 2. If a district has far more SPED students than the average, receiving services much more expensive than typical, the current two-tier model will struggle to account for and accommodate these factors.

Fig. 1: All Special Education Enrollment by District Type

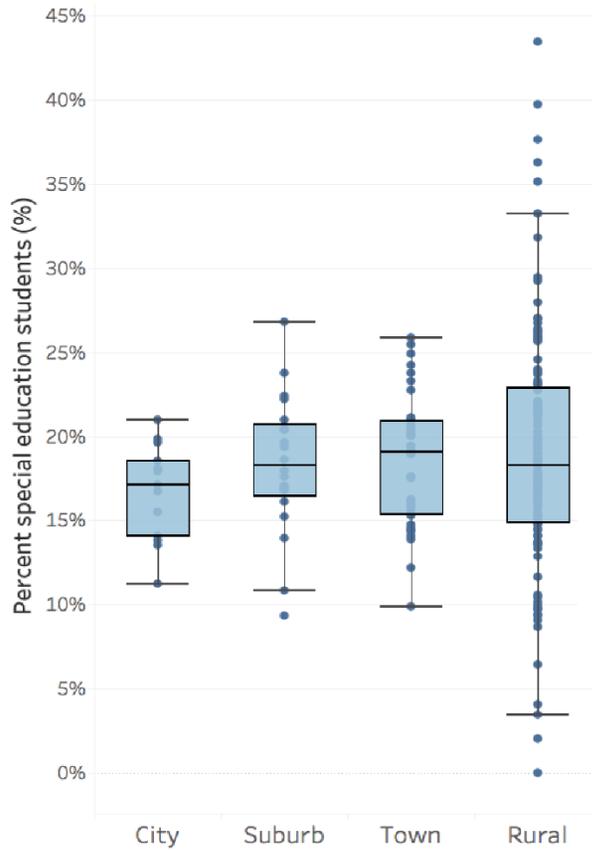
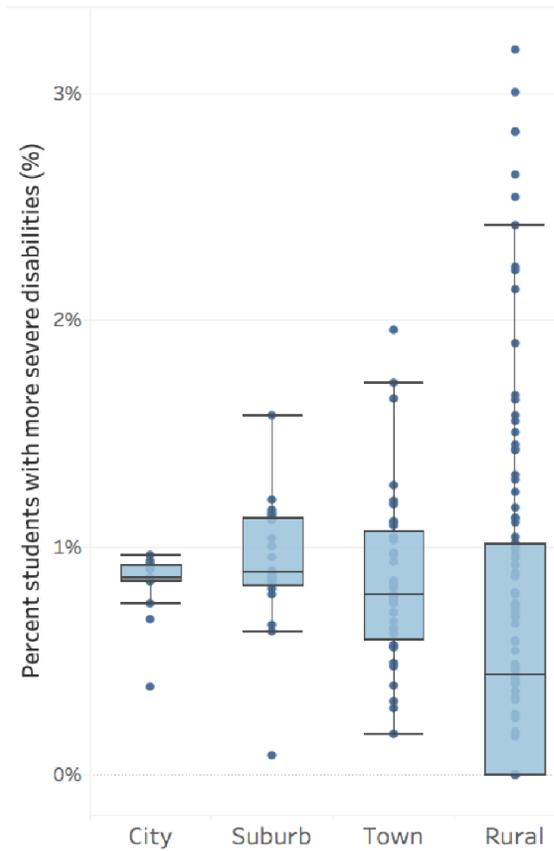
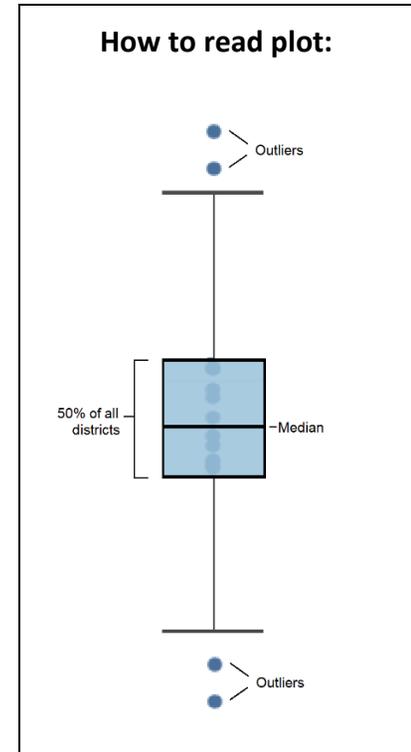


Fig. 2: Higher-Need Special Education Enrollment* by District Type



*Enrollment includes: MD, DB, VI, & TBI



Form of the funding allocation used to support students with disabilities

The funding provided for students with disabilities through the ECEA currently goes out as a dollar amount, separate from and in addition to the program funding that is allocated through the base amount and the various weights and factors. There are downsides associated with allocating this funding through set dollar amounts instead of through a weight applied to the district's base. Dollar allocations must be addressed by the legislature in every budget, increasing exposure to the political process and the risk of outside interests playing a part in level setting. Weights, on the other hand, are self-maintaining; their value adjusts automatically along with the base amount and are only reset when there is a specific action. Relatedly, providing all student-need support through weights ensures that proportional equity can be maintained as appropriations change. Once a certain percentage of the base amount has been assigned, that percentage can stay constant relative to the base and other weights, regardless of the overall dollar amount in the system.

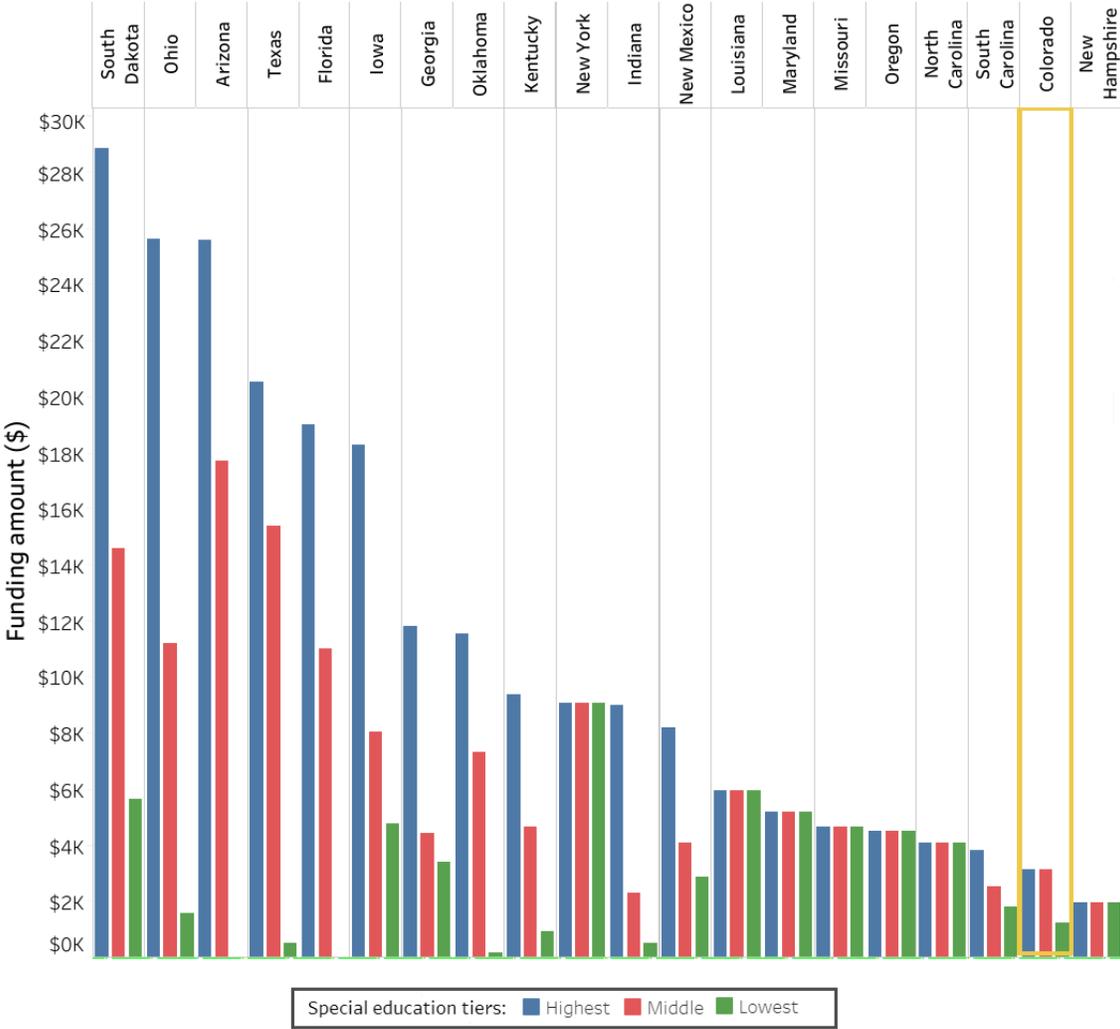
Moreover, because this support is provided as a categorical allocation rather than as part of total program funding, there is no local share deducted. This means that funds are not awarded in a manner sensitive to each district's capacity to raise local revenue, raising equity concerns.

Size of the allocations supporting students with disabilities

Students in Tier A generate \$1,250, per pupil. Given the State's 2018–19 base amount of \$6,768.77, this amounts to an effective funding weight of 0.185. This is likely appropriate for some students in this category, such as those with speech and language impairments, but it is unlikely to provide enough support for others in Tier A, such as those with significant orthopedic impairments. The Tier A amount has remained the same since 2006–07, and the State's own Special Education Fiscal Advisory Committee has reported that the allocation has not kept pace with increases in costs.

As a matter of theoretical policy, students in Tier B can generate up to \$6,000 in additional funding. However, while there is a \$20 million floor on Tier B appropriations, the amount ultimately provided is determined by how much funding is available in the ECEA allocation once other distributions are accounted for. In 2018–19, the Tier B supplement was just \$1,876. When this is added to the Tier A amount, these students receive a total boost of \$3,126, for an effective weight of 46%. This is far below the amount allocated for the highest-need students in nearly all other states. Figure 3 below shows the value of the highest, middle, and lowest SPED funding tier in each state for which such valuations are relevant. This comparison shows how relatively low Colorado's funding is compared to other states. (When the additional \$22 million appropriated this past session is considered, Colorado's top-line amount increases to around \$5,260—in line with Maryland. An improvement, but still on the low end.)

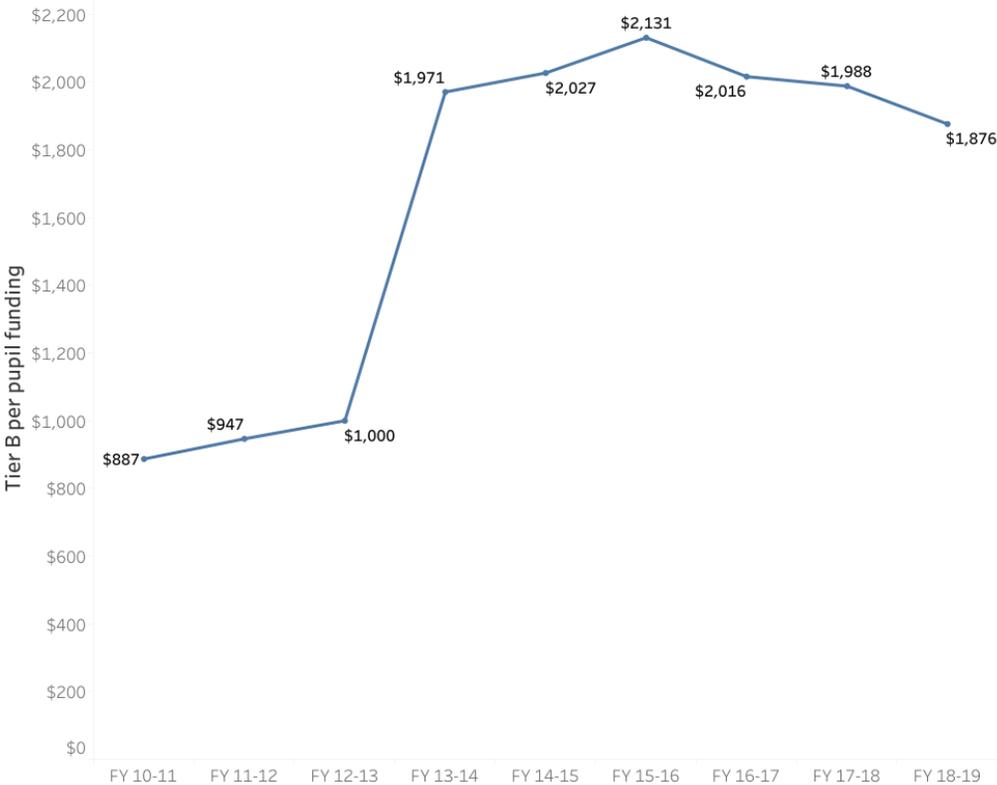
Fig. 3: Value of Special Education Funding Tiers by State (FY18)



Additionally, and as a point of comparison, the Special Education Fiscal Advisory Committee only considers requests for high-cost reimbursement when costs exceed \$25,000 for in-district placements or \$40,000 for out-of-district placements. (These reimbursements are discussed further below in the subsection “Funding for high-cost students with disabilities.”) These thresholds are far above the total per-pupil amount of \$3,126 for students in Tier B, and even well above \$7,120, the maximum possible amount if the Tier-B cap was reached. The significant gap between the standard funding amount and the “high-cost” threshold is sure to leave many students’ needs unmet by state funding and therefore paid for through local revenues.

It is important to note that there is almost no other state with a policy of funding special education students at a level based on the amount of money left over after an initial appropriation. While there is a funding floor of \$20 million (now \$42 million) written into statute, the combination of using an overall dollar amount rather than a student-driven weight and leftover appropriations mean that funding is unreliable, and ensures that funding will fluctuate for reasons that have nothing to do with student need. These fluctuations can be seen in Figure 4 below, which shows how per-pupil Tier B amounts have changed over time.

Fig. 4: Tier B Funding Per Eligible Pupil by Year



Funding for high-cost students with disabilities

Colorado maintains a high-cost fund to support districts tasked with providing special education services to students with especially resource-intensive needs. This is tremendously important. As the legislature acknowledged this year in its bill establishing the high-cost special education trust fund, “each year, a small number of cases... become extraordinarily expensive, threatening to jeopardize the administrative unit’s ability to provide equal access to each child and to maintain financial stability.”

On the whole, however, the size of the high-cost fund is not sufficient to truly account for the costs associated with educating these students. The State reserves \$4 million for high-cost special education: \$2 million for in-district placements and \$2 million for out-of-district placements. These amounts have fallen far short of total requests. In FY2018–19, districts sought reimbursement for \$9.1 million in in-district high costs and \$10.4 million in out-of-district high costs from the previous year, making the State’s \$4 million allocation sufficient to cover just 20% of the applications. FY2017–18 payouts were similar at 21% of the requested funds, and the year before, the \$4 million allocation fell even farther to just 15%. It is also possible that these numbers underestimate unmet need, if districts are not applying for reimbursement under the assumption they will be denied (making it not worth the staff time). The State’s new trust fund is a signal of its commitment to addressing this issue. However, as it stands, income and interest from a principal of \$2.5 million will not close the gap between appropriations and students’ resource needs.

It is worth considering how burdensome these unmet needs may be for districts, especially small and rural districts that operate on slim financial margins. In 2004, the Special Education Expenditure Project (SEEP) at the American Institutes for Research estimated that the total per-pupil outlays associated with the highest-cost students with disabilities—those at or above the 95th percentile of the expenditure distribution—were \$39,909 in elementary grades and \$35,924 in secondary grades.² (These numbers have likely only increased in the intervening years.) Assuming a student is funded at Colorado’s highest current special education level, with the base amount and both Tier A and Tier B funding, that amounts to just \$9,849.77—roughly a quarter of the SEEP estimate for high-cost students. Without sufficient high-cost funding to cover these needs, districts will be left with the tab for tens of thousands of dollars per pupil.

III. Policy options for special education funding in Colorado

Differentiation for different levels of student need

With its starting point of two tiers of special education funding, Colorado might proceed in one of three ways.

- 1) Colorado could maintain the current structure of its special education funding allocations, which are already intended, to a limited degree, to be responsive to differences in student need.

The benefits of this approach are that no statutory changes would be required, and no budget adjustments would need to be made. Moreover, the high-cost fund could be said to provide a further level of differentiation, however modest. However, the allocations do fall

² <https://www.air.org/sites/default/files/SEEP8-Characteristics-of-High-Expenditure-Students.pdf>

short of their current goals: Tier A and Tier B both encompass a broad range of disabilities, making it unlikely that the two funding levels are appropriate to all students included within them. As a result, the tailoring of funding to need is not as strong as it could be.

- 2) If the State wishes to maintain the fundamental design of its special education allocations but increase responsiveness to student need, it could do so by significantly increasing appropriations for Tier B (something the state has already demonstrated movement on), and using the high-cost fund to support services for many more students. This possibility is discussed more at length in the subsection below titled “funding for high-cost students with disabilities.”
- 3) A more fundamental solution would be to add additional tiers to the special education funding system, at levels defined in state code. States commonly use 3–6 funding tiers in systems of this type; Colorado could be guided by those norms. Under such a policy, students would be counted in only one tier (as opposed to the current system, in which all students are funded at the Tier A level and then some are additionally funded through Tier B).

In order to accomplish this change, the State would have to amend Colo. Rev. Stat. § 22-20-114 to describe a new method of funding distribution. No constitutional change would be required.

This change would have the clear benefit of aligning state funding to student’s needs. It would afford the opportunity to provide more funding, on a reliable basis, for students with the most profound disabilities, and to redirect funding currently allocated for students who, while in Tier B, may not have resource needs quite as large. It would also allow districts to budget more effectively, knowing that the State is providing a set amount for each student with disabilities. Downsides include the need for changes to State code and the challenge of properly assigning different disabilities to the appropriate tiers. The largest issue would be the dearth of currently appropriated dollars however, the impact being either a relative lack of variation in dollar amounts for each tier or a need for significantly higher investments into the category to ensure that placement into a higher tier has a meaningful impact on funding.

Form of the funding allocation used to support students with disabilities

Given the practice of distributing special education funding through a dollar allocation rather than through a weight applied to the base amount, the State could take one of two approaches.

- 1) The State could continue to allocate special education funding in the current manner, through a dollar amount allocated outside the formula calculation.

This approach would have a few benefits. First, it avoids the need for any changes to statute or to district budgets. Second, funding for students with disabilities is protected by Amendment 23 to the Colorado Constitution as one of the categorical allocations that, together, must increase annually. Any change to its distribution would likely cause some concern about how to ensure that the State remains in compliance with Amendment 23. Maintaining the current structure would allow dollars to be longitudinally comparable without any data transformation, and would avoid any confusion about how to count a reformed categorical allocation as part of the overall group of categoricals. However, the current system has its downsides: Weights have a number of advantages over dollar allocations, including reduced legislative maintenance, comparability with other student-need funding, and a consistent division of the overall funding pie. The fact that this allocation is handled outside the total program calculation also raises equity concerns, because districts with high local tax receipts nonetheless receive this amount entirely out of State funds.

- 2) The State could convert the existing special education allocation into two (or more) new formula weight for students with disabilities. These weights would be applied to the base amount to generate supplemental funding for special education. In this way, total categorical funding would remain the same, but the structure of its distribution would change.

In order to accomplish this change, the State would have to amend Colo. Rev. Stat. § 22-20-114 to describe a new method of funding distribution. No constitutional change would be required, though protections to the funding would need to be put in place to maintain compliance with Amendment 23, including a careful implementation of weights to ensure that after local-share calculations are completed the state allotments are still at the necessary levels.

This approach has a couple pluses. First, the conversion of special education funding to a weight would take advantage of all the benefits of funding through weights generally. Also, by bringing these dollars into the total program funding calculation as a weight, the State would make them subject to the local share. This would allow the State to redirect some of the funding currently being sent to high-local-revenue districts for special education students, allowing those dollars to be invested in needier districts. This approach solves an area of structural concern associated with the State's current system. However, the chief disadvantage of this tack is simply the amount of current funding in the per-pupil special education distribution. The low level of funding presently allocated for special education students would produce quite a low weight. However, this concern would need to be addressed through allocations, and does not have a significant bearing on structure design, itself.

Size of the allocations supporting students with disabilities

The funding provided for students with disabilities in Colorado is notably lower than that provided for these students in many other states. The State has a number of options with regard to these funding levels.

- 1) The State could choose to make no change to its allocations. While the funding levels may be low compared to other states, Colorado may set its own priorities in this area.

This approach has the arguable benefit of allowing the State to use its funds for other priorities. It also avoids any needed changes to budget planning, and requires no amendments to State code or to the State constitution. The downsides are that the resource needs of students with disabilities are real, and the level of support currently provided is almost certainly insufficient to meet those needs. This is an especially acute concern with regard to students with disabilities, whose right to a free and appropriate public education is federally protected. Districts are required to provide the services necessary to afford students this education access regardless of the support they receive from the State. As such, districts with high special education costs will find themselves spending more local dollars on this area, potentially pulling funds away from other programs and priorities in order to meet the legal mandate.

- 2) Colorado could substantially increase the appropriation through the Exceptional Children's Educational Act, or through the school finance bill (the mechanism used this past session to allocate \$22 million additional for Tier B).

This approach has the benefit of providing increased support for students with more acute needs, without requiring a significant change to allocation systems or to State law. It would, of course, require additional State investment. Additionally, unless the law were amended, Tier B amounts would remain capped at \$6,000 per eligible student (for a total of \$7,250 in support for those students from both tiers), which would still likely be insufficient for students with particularly resource-intensive disabilities. This change would also do little to address the instability of funding high-need special education students based on available funds in a fluctuating annual appropriation.

- 3) Colorado could take the dual step of substantially increasing its funding for special education and specifying levels of support for additional tiers of disability funding.

In order to make this change, the State would have to amend Colo. Rev. Stat. § 22-20-114 to specify a new set of tiers and would need to appropriate funds accordingly.

This approach would have the advantage of more fully and fittingly supporting students with disabilities, in line with federal law and national best practices. It would more efficiently and

effectively allocate dollars to those that need it and narrow the gap between the highest Tier amount and the high-cost threshold. Its downsides include increased costs and the need to make legislative changes.

Funding for high-cost students with disabilities

Given the relatively low amount appropriated for Colorado's high-cost fund, there are two approaches the State could take.

- 1) The State could choose to make no change to its appropriations for this fund. While the funding levels may be low for the high-cost fund on its own, the State could appropriate more money for special education generally, and could better differentiate its funding tiers, mitigating the impact of higher-need students somewhat through a more automatic process.

This approach requires no legislative changes with regard to the high-cost fund specifically, and has the benefit of focusing more on improving the fundamental special education funding system than on potential outliers. However, special education does indeed involve outlier cases—students with high-cost disabilities that nevertheless must be served in the public school system. These cases are especially onerous for small or rural districts that struggle to spread costs over a small population and tax base.

- 2) The State could appropriate more funding for the high-cost fund.

This approach would not require any changes to State code or the State constitution. It has the clear benefit of better supporting high-need students and the districts that serve them. The chief downside is the added cost to the State.

- 3) The State could both appropriate more funding for the high-cost fund and lower the threshold above which costs are considered for reimbursement.

This approach, too, would not require any changes to State code or the State constitution, only to the practice of the Special Education Fiscal Advisory Committee. Providing more high-cost funding does more to support students already recognized as high-need and the districts that serve them, and lowering the eligibility threshold would allow the State to recognize more students as requiring especially resource-intensive services. This change would also narrow the gap between the regular special education funding provided between Tier A and Tier B and the high-cost threshold. The main downside is, again, the added cost to the State.

IV. Funding for students with disabilities in other states

General structure

Forty-seven states currently provide specific funding for special education.³ There are a range of approaches to providing this funding, including per-student funding that varies depending on students' disabilities or service needs; per-student funding that is uniform across all students with disabilities; funding prospectively for particular expenses, such as special education teachers, devices, and transportation; funding retrospectively based on reimbursement for reported expenses, and a handful of other approaches.

Differentiation for different levels of student need

The most common system for funding special education is one in which students with disabilities may be funded at one of multiple levels depending on their specific disabilities or needs. 17 states, including Colorado, use some form of this approach.

Of these, 11 states employ systems with 3–6 funding levels. These include:

- New Mexico, where students with disabilities are funded at one of four levels based on the level of services they receive.
- Indiana, where students with disabilities are funded at four levels based on their particular diagnoses.

Only one state other than Colorado uses two funding levels for students with disabilities—and only on an interim basis. Nevada's current funding system has two funding levels, but the state passed a new funding law in 2019, yet to be implemented, that would change this system.

Form of the funding allocation used to support students with disabilities

25 states provide their special education funding through per-pupil distributions, using either a single per-pupil funding level or assigning students to multiple funding tiers. Of these, a majority—17 states—do this through weights applied to the base amount. These include:

- Kentucky, where three weights are assigned to the base amount for students with different disabilities.
- South Carolina, where ten weights are assigned to the base amount for students with different disabilities.

The rest, including Colorado provide special education in the form of one or more dollar amounts. These include:

³ Tallies current as of the 2018 legislative session.



- New Hampshire, where a single supplemental dollar amount is apportioned for each student with a disability
- South Dakota, where six different supplemental dollar amounts are assigned to students with different diagnoses.

Size of the allocations supporting students with disabilities

The highest current funding level for a student with disabilities in Colorado is \$3,126 over and above the base amount. This level is below the *lowest* funding tier in the policies of multiple states. It is perhaps no surprise, then, that funding for Colorado’s Tier B students lags well behind parallel allocations in many other states. As a point of comparison, consider funding for students with speech impairment and vision impairment across several states. Speech-impaired students are eligible for Tier A funding only in Colorado, and are similarly assigned to the lowest tier of funding in most states. Vision-impaired students are in Tier B in Colorado, and tend to also be funded at the highest level in other states. These comparisons make clear that while Colorado’s Tier A amount is similar to that in at least some states, its Tier B amount is far below parallel allocations elsewhere.

State	Base Amount	Speech Impairment Supplemental Funding Amount	Vision Impairment Supplemental Funding Amount
Colorado	\$6,768.77	\$1,250.00	\$3,126.00 (\$5,260*)
Kentucky	\$3,981.00	\$955.44	\$9,355.35
Oklahoma	\$3,042.40	\$1,216.96	\$11,561.12
Georgia	\$2,463.78	\$3,424.90	\$11,801.01
Ohio	\$6,010.00	\$1,578.00	\$12,841.00

* Estimated Tier B supplement after \$22 million increase

Funding for high-cost students with disabilities

Because high-cost funds are employed when regular special education funding falls short, it is challenging to compare high-cost funding alone across states. It is difficult to assess the sufficiency of different states’ high-cost funding without holding the regular funding amount constant.

That said, there are other states whose high-cost funds are more explicitly tied to other elements of school funding in their states. In Louisiana, for instance, high-cost dollars are set aside for students whose educations cost more than three times the state average. Missouri and New Mexico use systems that are essentially the same as Louisiana’s. Massachusetts similarly allocates funding for those whose educations cost more than four times the state’s base per-pupil amount. In this way, these states commit themselves to recognizing that a student’s services impose especially high costs when they are too far out of sync with other

students' needs, rather than when they exceed an arbitrary and moveable threshold, as is the case in Colorado. Such an identifiable standard allows district officials and community members to hold the state accountable for appropriating enough funding for high-cost students.

V. Conclusion

Colorado's support for students with disabilities represents a number of strong policy goals. Funding is provided in two tiers, intending to be responsive to need, and the State has a high-cost fund meant to cover costs associated with students whose needs are especially intensive.

However, the funding amount overall is low by national standards, as is the appropriation for the high-cost fund. The level of differentiation in the system is fairly minimal; the provision of categorical funding through a dollar amount rather than a weight has downsides; and the separation of special education from total program funding decreases equity.

The State might improve policies through increased allocations for both regular and high-cost special education; conversion of the categorical allocation to weights; and/or greater differentiation of special education funding for students of different need levels.