

## **Results of 2013 Survey: Special Education Trends and Best Practices**

The NJSBA Special Education Task Force surveyed school district superintendents and special education directors on the trends and practices affecting the financing and delivery of services. The survey was modeled after one that was issued in 2007 as part of the NJSBA-sponsored project, “Financing Special Education in New Jersey,” and was designed to identify changes in cost-drivers and strategies over the past six years, as well as new trends in special education.

Survey responses were collected from May 2 through August 12, 2013.

Approximately one-quarter, or 142, of the state’s 570<sup>1</sup> operating school districts participated in the 2013 survey. Responding districts are located in the following regions of the state: North, 42.3%; Central, 33.1%; and South, 24.6%.<sup>2</sup> All 21 counties are represented in the results.

The responding districts are distributed by grade organization as follows: elementary (K-6/K-8), 52.1%; K-12, 38.7%; secondary (7-12/9-12), 6.4%; and vocational, 2.8%.<sup>3</sup>

When distributed across the New Jersey Department of Education’s district factor groups, a measure of socio-economic status, the majority of responding districts are found to be located in middle-income and wealthy communities.<sup>4</sup> Seven of the respondents are former Abbott districts. However, when considering the student enrollment of the responding districts, rather than the number of responding districts, there is a somewhat more balanced representation among the various socio-economic levels.<sup>5</sup>

The student population of the responding school districts represents 23.2% of the statewide enrollment for 2012-2013.<sup>6</sup>

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<sup>1</sup> The number does not include the state’s 10 educational services commissions and 3 jointure commissions.

<sup>2</sup> The state’s three regions comprise the following counties: NORTH (Bergen, Essex, Hudson, Morris, Passaic, Union, Sussex, and Warren); CENTRAL (Hunterdon, Mercer, Middlesex, Monmouth, Ocean, and Somerset); and SOUTH (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem).

<sup>3</sup> The response rate from districts in each of the grade organizations corresponds roughly to the following statewide proportions: Elementary, 47.8%; K-12, 37.7%; Secondary, 8%; and Vocational, 2.7%.

<sup>4</sup> The District Factor Groups measure a community’s population based on six factors related to income, occupation and educational levels. The most recent district factor grouping is based on 2000 U.S. Census data. It includes eight categories, ranging from A, lowest, to J, highest. The proportion of responding districts within four pairings of these groups follows: A and B, 14.8%; CD and DE, 20.4%; FG and GH, 29.6%; and I and J, 32.4%. Vocational school districts constitute 2.8% of the respondents. (When all 570 operating school districts are divided into these pairings, the proportions are as follows: A and B, 18.6%; CD and DE, 26.3%; FG and GH, 28.9%; and I and J, 22.5%. Vocational and vocational-special services school districts make up 3.7% of the state total. The percentages do not include special services-only districts.)

<sup>5</sup> When broken down according to the District Factor Group pairings, the student population represented in responding districts is as follows: A and B, 25.8%; CD and DE, 17.4%; FG and GH, 25%; and I and J, 30.5%. Vocational schools account for 1.3% of the student population in the responding districts.

<sup>6</sup> Using student population groups based upon those in the New Jersey Department of Education’s “Taxpayer Guide to Education Spending,” the responding districts fall into the following enrollment categories: 0 – 400 students, 15.5%; 401 – 750, 15.5%; 751 – 1800, 33.1%; 1801 – 3500, 17.6%; and 3501 or more, 18.3%.

**Cost Drivers**

The 2013 survey asked school district officials to rate the impact of various factors on district special education costs since 2007-2008. Respondents rated each factor on a scale of 3 to 0 as follows: Large impact (3); Moderate impact (2); Small impact (1); No impact (0). The nine factors provided in the survey questions included—personnel, autism spectrum programs, in-class support for inclusion in general education classroom, out-of-district placement; transportation, increase in classified students, assistive devices, related services, and due process/litigation. Respondents were also given the option of designating “other.”

As in 2007, the three factors with the highest composite rating are personnel, out-of-district placement and transportation.

<b>Impact on Special Education Costs</b>	
<b>2013</b> Composite Rating	<b>2007</b> Composite Rating
1. Personnel (2.54)	1. Personnel
2. <b>Out-of-district placement</b> (2.47)	2. Transportation
3. Transportation (2.34)	3. <b>Out-of-district placement</b>

When the results are narrowed down to “large impact” factors, the rankings change:

<b>‘Large Impact’ on Special Education Costs - 2013</b>	
Factor	Percentage of Respondents
1. Out-of-district placement	61.3%
2. Personnel	60.8%
3. <b>Autism spectrum programs</b>	51.6%
4. Transportation	49.4%

The 2007 survey did not list “autism spectrum programs” as a choice when asking respondents to identify special education cost drivers. However, it was mentioned as a factor by

respondents who identified “other” cost-drivers. The NJSBA task force included it as a choice in this 2013 survey question because of trends observed by task force members, as well as the findings of the 2007 NJSBA-sponsored study.<sup>7</sup>

Other large-impact cost factors, identified in the 2013 survey, included “increase in classified students,” identified by close to 40% of school officials. Also cited frequently was “In-class support for inclusion in the general education classroom,” identified by 36.1% of respondents.

The 2007 survey included “due process” as a possible cost-driver in special education. While school officials did not cite “due process” as often as other factors, they did identify it as problematic in other parts of the survey.<sup>8</sup> Similarly, in the 2013 survey, “due process/litigation” received a composite rating of 1.54, ranking just above “assistive devices.” However, in a separate query, school officials most frequently identified placing the burden of proof on the party challenging a child’s individual education program (IEP), rather than on the school district as is now the case, as a change in law needed to control special education costs.

<sup>7</sup> Molenaar, Mari, Ed.D. and Michael Luciano, *Financing Special Education in New Jersey*, New Jersey School Boards Association, September 2007, p.5 ([www.njsba.org/specialeducation](http://www.njsba.org/specialeducation)) “The main cost drivers in special education are tuition and transportation for out-of-district placements, programs for students with autism, related services and resource programs.”

<sup>8</sup> *Ibid*, p.64. “‘Due process,’ which was one of the ten factors specified on the list, ranked last among the cost factors... Nonetheless, due process was a frequently listed concern in separate survey questions addressing needed regulatory change and the cost, financing and effectiveness of programs. Due process involves parental rights to challenge a student’s individual education program.”

For example, a special education director from a K-12 school district in southern New Jersey stated the following in the 2013 survey:

The largest impact on special education is that the “Burden of Proof” is placed on the district. In ALL other legal situations, the burden of proof is placed on the plaintiff, not the defendant. Because the burden of proof is on the district, parents can make frivolous accusations and claims that are not warranted but needlessly provided because the legal fees outweigh the cost of services. Personnel that know this take the side of the parent. This costs the district greatly. If you sincerely want to reduce the cost of special education, transfer the burden of proof back to the plaintiff.

### **Trends and Strategies Affecting Costs since 2007**

The task force considered several findings of the 2007 study concerning trends affecting the cost and delivery of special education services.

The **classification rate** (excluding speech) has leveled off at about 15% of the entire student population. The placement rates have remained essentially unchanged over the past ten years.<sup>9</sup>

...the number of preschool teachers more than doubled from 436 in 1995 to 943 in 2005. This may reflect the increasing number of preschool students with disabilities and the **severity of their disabilities**.

The U.S. Office of Special Education and Rehabilitative Programs cited New Jersey for having the highest proportion of students with disabilities in **separate settings** (both public and private).<sup>10</sup>

Educators often talk of blurring the lines between regular and special education. Even after classification, students are likely to continue receiving most of their **instruction in the general education class**. ...teachers are being asked to differentiate more, adapt to in-class support models, and spend more time on IEP accommodations in general education classes.<sup>11</sup>

[**Shared services** are] already occurring to a large extent in transportation, classes for students with low-incidence (or severe) disabilities, related services, child study team services, and professional development. ... there are impediments that work against additional sharing.<sup>12</sup>

To assess the current impact of these and other trends, the task force asked school officials to indicate their districts’ experiences since 2007-2008 with the following: frequency of classification; severity of classifications; frequency of *declassification*; out-of-district private placements; out-district public placements; sharing programs and services with other school districts; and inclusion in the general education classroom.

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<sup>9</sup> *Ibid*, p.6

<sup>10</sup> *Ibid*, p.7

<sup>11</sup> *Ibid*, p.14

<sup>12</sup> *Ibid*, p.7

Respondents indicated if these trends or strategies “increased,” “remained constant” or “decreased” since 2007.

Increases in “inclusion” were cited most often (67.5% of respondents), followed by “severity of classifications” (55.3%) and “frequency of classification” (48.4%). Conversely, the growth of inclusion likely resulted in the largest number of school officials identifying “out-of district private placement” and “out-of-district public placement” as two trends that are decreasing. In spite of those results, the survey shows that out-of-district placement remains a cost driver.

<b>Trends and Strategies Affecting Special Education Costs since 2007</b>				
	Increased	Constant	Decreased	N/A
<b>Frequency of classifications</b>	<b>48.4%</b>	44%	6.3%	1.3%
<b>Severity of classifications</b>	<b>55.3%</b>	43.4%	1.3%	0%
Frequency of declassification	8.9%	76.4%	10.8%	3.8%
Out-of-district private placements	34.6%	34%	<b>22.6%</b>	8.8%
Out-of-district public placements	26.9%	51.9%	<b>14.4%</b>	6.9%
Shared services	26.3%	45%	2.5%	26.3%
<b>Inclusion</b>	<b>67.5%</b>	30.6%	0.6%	1.3%

A special education director from Morris County described additional costs associated with inclusion:

With budget constraints and keeping our more involved students in district, there are other "soft costs" that increase. Assistive technology, assistants and training are all factors that cost, but are necessary if a district is to maintain the integrity of its programs and services.

**Inclusion**

The 2007 NJSBA-sponsored study noted efforts to promote inclusion, including a state New Jersey project “to help improve and expand in-school programs for the disabled...to bring more special education students back to their local districts.”<sup>13</sup> Meeting the least-restrictive environment requirement of the federal and state special education statutes and regulations has posed staffing and financial challenges to school districts, the earlier study found. Additionally, since the publication of the report, the U.S. Department of Education<sup>14</sup> and the New Jersey Legislature<sup>15</sup> have addressed the issue of access to extra-curricular activities by students with disabilities.

<sup>13</sup> *Ibid*, p.27

<sup>14</sup> See: Galanter, Seth M., “Guidance on the obligations of public elementary and secondary schools under Section 504 of the Rehabilitation Act of 1973, United States Department of Education, Office for Civil Rights,” January 25, 2013 at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>, and *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics*, No. GOA-10-519, at 1, 31, United States Government Accountability Office, June 2010 at <http://www.gao.gov/assets/310/305770.pdf>

<sup>15</sup> P.L. 2009, ch. 109 ([www.njleg.state.nj.us/20082009/PL09/109 .HTM](http://www.njleg.state.nj.us/20082009/PL09/109 .HTM)), and N.J.S.A. 18A:11-3.2 *et seq.*

For its 2013 survey, therefore, the NJSBA task force asked school officials about the type of personnel and equipment they have used to support inclusion.

Personnel

To respond to the query, “*What type of personnel is used in your school district to support inclusion?*” respondents were provided the following seven selections and asked to indicate all that applied: 1:1 (personal) aide; bus aide; classroom/instructional aide; shadowing; co-teacher (special and subject certified staff); adapted physical education; and extra-curricular support (e.g., athletic programs). Respondents were also able to describe “other” types of personnel.

Over 90% of the superintendents and special education coordinators indicated that their districts use “co-teachers (special and subject-certified staff)” to support inclusion. “Classroom/instructional aide” was cited by 86.9% of respondents. Over 80% of respondents noted the use of 1:1 aides.

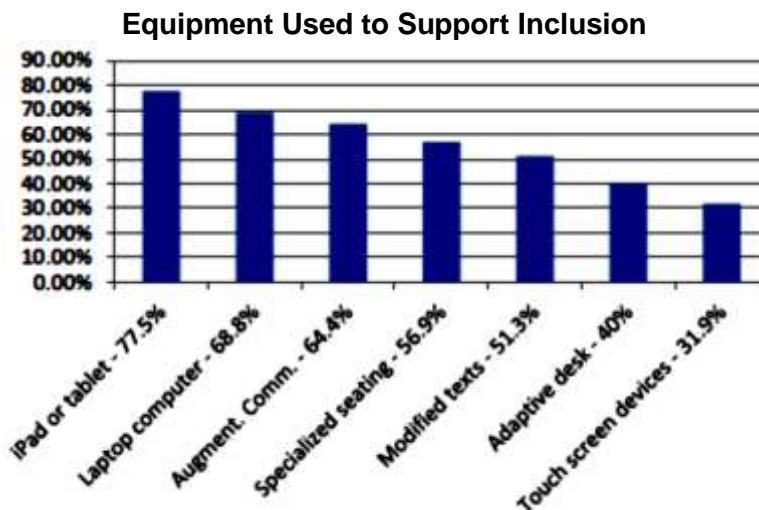
In addition, over 12% of the respondents identified the need for other types of staff to support inclusion. Most frequently cited were behaviorists or behavioral consultants. Other examples included nurses, transition-to-work coordinators, and specialists in academic intervention and parent training/information.

Personnel to Support Inclusion	
Position	Percentage of Respondents
1. Co-teacher	90.6%
2. Classroom aide	86.9%
3. 1:1 personal aide	82.5%
4. Bus aide	42.5%
5. Adapted physical education	41.3%
6. Extra-curricular support	27.5%
7. Shadowing	22.5%

Equipment

In response to the question, “*What type of equipment is used in your district to support inclusion?*” the superintendents and special education directors chose among the following: specialized seating; adaptive/modified desk or table; augmentative communication; modified texts; laptop computer for personal use; iPad or tablet; and touch screen devices.

Responses indicated that since 2007 districts have adopted new technology to support inclusion efforts. In 2013, 77.5% of the superintendents and special education directors indicated that their districts used iPads or tablets to help special education students in the general education classroom. Over two-thirds identified laptop computers as equipment used for this purpose, while 31.9% said their districts use touch screen devices.



The 2007 NJSBA-sponsored study found augmentative communications devices to be among one of the most commonly used assistive devices, along with FM amplification systems, recorded books, and learning software.<sup>16</sup>

In 2013, augmentative communication devices were cited by 64.4% of respondents. In addition to the types of equipment provided as choices, respondents to the most recent survey cited interactive white boards and hearing assistive devices as equipment used to support inclusion.

## Shared Services

Previous research conducted or sponsored by NJSBA, state agencies and higher education shows that a large number of local school districts engage in shared services.<sup>17</sup> For more than three decades, the sharing of services has been promoted through state policy initiatives, such as the Inter-local Services Act<sup>18</sup>, the REDI<sup>19</sup> and REAP<sup>20</sup> funding and grant programs, the Uniform Shared Services and Consolidation Act<sup>21</sup> and state education regulation.<sup>22</sup>

NJSBA partnered with the Institute on Education Law and Policy at Rutgers-Newark on a study, *Shared Services in School Districts: Policies Practices and Recommendations*, in 2007. A survey conducted as part of the project indicated that 97 percent of school districts in four representative counties engaged in shared services with other school districts, municipalities, counties or other entities. The services most frequently cited were transportation, insurance, supplies and special education classes, identified by 56% of the respondents.<sup>23</sup> Additionally, 53% of the participating districts cited physical therapy, occupational therapy and speech therapy as a shared services, while 31% indicated the sharing of child study team services.<sup>24</sup>

*Financing Special Education in New Jersey*, the 2007 study sponsored by NJSBA, also asked school officials about special education services they shared with other districts. Most frequently cited were “transportation,” followed by “physical therapy, speech and occupational therapy” and “child study team services.”<sup>25</sup>

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<sup>16</sup> Molenaar and Luciano, p.69

<sup>17</sup> Institute on Education Law and Policy of Rutgers, The State University of New Jersey, and the New Jersey School Boards Association, *Shared Services in School Districts: Policies Practices and Recommendations, Appendices*, 2007, pp. 2-9. (<http://www.njsba.org/news/research/shared-services/appendices.pdf>)

<sup>18</sup> P.L. 1973, ch. 208; N.J.S.A. 40:8A-1 *et seq.* See New Jersey State League of Municipalities website at [http://www.njslom.org/interlocal\\_interlocalservicesact.html](http://www.njslom.org/interlocal_interlocalservicesact.html).

<sup>19</sup> Regional Efficiency Development Initiative, P.L. 1999, c. 60 ([http://www.njleg.state.nj.us/9899/Bills/PL99/60\\_.HTM](http://www.njleg.state.nj.us/9899/Bills/PL99/60_.HTM)); N.J.S.A. 40:8B-14 *et seq.*

<sup>20</sup> Regional Efficiency Aid Program, P.L. 1999, c.61 ([http://www.njleg.state.nj.us/9899/Bills/PL99/61\\_.HTM](http://www.njleg.state.nj.us/9899/Bills/PL99/61_.HTM)); N.J.S.A. 54:4-8.76 *et seq.*

<sup>21</sup> P.L. 2007, ch.63 ([http://www.njleg.state.nj.us/2006/Bills/PL07/63\\_.HTM](http://www.njleg.state.nj.us/2006/Bills/PL07/63_.HTM))

<sup>22</sup> “School District Fiscal Accountability, Efficiency and Budget Procedures,” N.J.A.C. 6A:23A (<http://nj.gov/education/code/current/title6a/chap23a.pdf>)

<sup>23</sup> IELP-Rutgers Newark and NJSBA, *Shared Services in School Districts: Policies Practices and Recommendations*, pp. 27-28 (<http://www.njsba.org/news/research/shared-services/report.pdf>). The four counties included in the survey were Bergen, Burlington, Essex and Somerset.

<sup>24</sup> *Ibid*, p.27

<sup>25</sup> Molenaar and Luciano, p.65



For the current survey, the NJSBA Special Education Task Force concentrated on the types of services being shared, the entities that school districts partner with, and changes in law and regulation that would further promote sharing.

Shared Service Partners

In response to the query, *Identify special education programs, services and personnel that your district currently shares with, or purchases from, other entities*, the 2013 survey offered school administrators a menu of 17 services. The officials identified the ones that they currently share and the entity with which they partner. The five entities were “Neighboring school district(s),” “Consortia,” “Educational Services Commission,” “Jointure Commission” and “Special Services School District.”

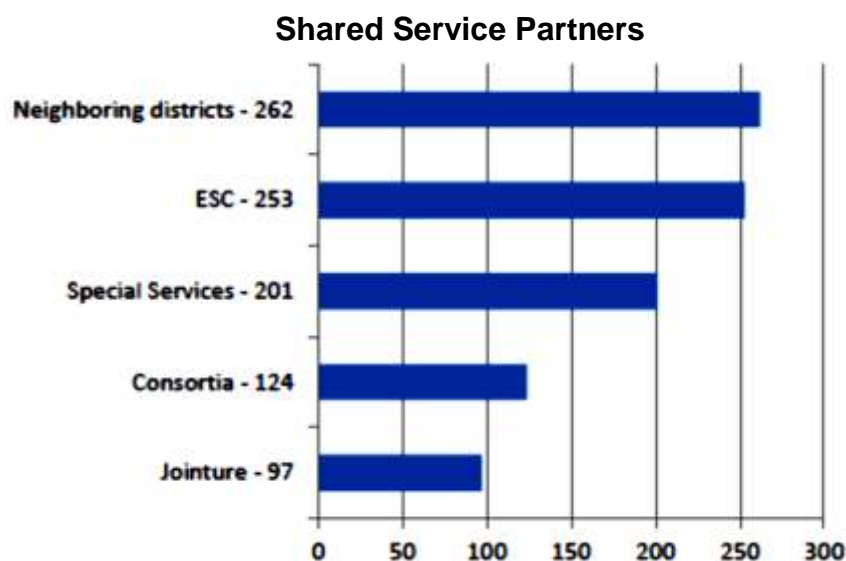
Four service areas are shared by a majority of the respondents: Transportation (92.5%); Professional development (73.4%); Occupational therapy/physical therapy (OT/PT) services and/or evaluations (59.7%); and Extended school year programs (59.2%).

- Approximately half of the school officials whose districts share **transportation services** identified “Educational Services Commission” or “Jointure Commission” as the provider.
- **Professional development** was delivered in cooperation with “Neighboring school district(s)” or “Consortia” in 58% of the cases.
- **OT/PT** was provided in cooperation with “Neighboring school districts” or “Consortia,” according to 38.8% of the respondents, and by “Educational Services Commissions” in another 30% of the cases.
- Over 44% of the school officials indicated that they provided **extended school year programs** with “Neighboring school districts” or through “Consortia.” In 27.6% of the cases, the program was offered through a “Special Services” school district.

Service	Percentage of Respondents Indicating that Service Is Shared	Entity Sharing or Providing Service				
		Neighboring school district(s)	Consortia	Educational Services Commission	Jointure Commission	Special Services School District
Transportation	92.50%	25%	14.10%	37%	14.10%	9.80%
Professional Development	73.40%	41.60%	16.80%	17.70%	9.70%	14.20%
OT/PT (services and/or evaluations)	59.70%	16.20%	22.50%	30%	6.30%	25%
Extended school year programs	59.20%	40.20%	4.60%	14.90%	12.60%	27.70%
Self-contained classes	52.10%	41.30%	2.70%	12%	14.70%	29.30%
CST evaluations	46.90%	23.30%	10%	43.30%	1.70%	21.70%
Speech therapists	43.70%	20%	12.70%	34.60%	5.40%	27.30%
Parent training	41.30%	32%	18%	22%	12%	16%
Behaviorist	38.70%	6.50%	30.40%	23.90%	10.90%	28.30%
1:1 Aides	30.90%	21.10%	2.60%	36.80%	13.20%	26.30%
CST personnel	30.30%	33.30%	8.30%	22.20%	5.60%	30.60%
Home-based programs	26.10%	10%	20%	40%	10%	20%
Community-based instruction	17.40%	20%	0%	35%	20%	25%
Counseling services	15.20%	11.80%	17.60%	17.60%	11.80%	41.20%
Social skills program	14.80%	5.90%	23.50%	41.20%	5.90%	23.50%
Family/sibling support programs	13.50%	46.70%	13.30%	6.70%	0%	33.30%
Athletic and co-curricular activities	13.20%	64.30%	0%	0%	7.10%	28.60%

The 2007 NJSBA-sponsored study found “child study team services” to be the third most frequently cited shared service. In the 2013 survey, “CST evaluations” ranked as the sixth most cited shared service, identified by 46.9% of superintendents and special education directors. “CST personnel” was cited as a shared service by 30.3% of respondents.

New Jersey has eight special services school districts, established to provide programming for students with severe physical and learning disabilities, and ten educational services commissions and three jointure commissions, founded to provide shared services, such as special education programming and transportation, to member districts. Generally, these units serve limited territories, usually a county and/or surrounding region. While respondents frequently cited these entities as sources of shared services, they indicated that the largest number of shared programs, services and personnel were obtained through individual arrangements with neighboring school districts (262).



The survey also gave respondents the opportunity to provide information on shared service arrangements with non-school entities. Twenty-seven school officials provided examples, including OT/PT through hospitals and subcontractors; behaviorist programs through a university and private contractors, home-based programs through private contractors, and professional development through regional academy.

Potential Shared Services

The 2013 survey asked superintendents the open-ended question, *What other types of special education services could be shared to manage costs?* The examples most frequently indicated that, *with one addition*, potential growth in shared services remains concentrated in the same areas identified by the 2007 NJSBA-sponsored study.<sup>26</sup> These areas include the following:

- Special classes for students with low-incidence disabilities and autism spectrum disorder;
- Related services, including OT/PT and counseling;
- Behaviorist/applied behavioral analysis;
- Child study team services;
- Transportation, and
- Professional development.

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<sup>26</sup> Molenaar and Luciano, p.66



The additional growth area identified in the 2013 survey encompasses career training and transition.

<b>Potential Shared Services</b> <i>Five Most Frequently Cited</i>	
<b>2013</b>	<b>2007</b>
1. <b>Special classes</b>	1. <b>Related services</b>
2. <b>Related services</b>	2. <b>Special classes</b>
3. <b>Behaviorist/applied behavior analysis</b>	3. <b>Transportation</b>
4. <b>Child study team services</b>	4. <b>Behaviorist/applied behavior analysis</b>
5. <b>Job coaching/transition services</b>	5. <b>Child study team services</b>

Other replies involve shared staffing, including the following: special education administrators, teachers (multi-sensory reading, deaf education), psychologists, nurses, assistive technology specialists, autism service consultants, out-of-district placement specialists, adaptive physical education teachers, and paraprofessionals.

An administrator in an elementary school district in central New Jersey cited the potential for public school-private school partnerships and the need for less state-applied red-tape to establish such arrangements:

The private school public school partnership is an initiative I am undertaking at this time. If a state-recognized private school and a district want to partner, it should be a streamlined process because the nature of this arrangement is a win-win for both institutions but definitely for kids.

A small district may save more money by hiring part-time personnel, rather than sharing services, according to an elementary school district special education coordinator:

The assumption that sharing is always the most cost effective method may in some cases be incorrect. Many small districts have addressed costs by hiring part-time rather than full-time staff. We recently hired a new speech therapist. In an effort to contain costs, we reached out to our Ed Services commission but found it was significantly more expensive to contract through them even with the savings of no health benefits.

The special education director in a central New Jersey high school district noted that overemphasizing cost will not benefit quality of service:

...while cost is a driving factor, minimizing costs is not necessary a one-to-one match in delivering least-restrict educational services.

**Impediments to Shared Services**

The 2013 special education survey posed the following open-ended query to superintendents and special education administrators: *Describe any impediments your district has encountered in attempting to share special education services.*

Over half (51.3%) of the respondents identified obstacles to sharing services, encompassing logistics, personnel, finances, attitude and federal/state regulation. Just over 7 percent stated that they found no impediments. The remainder indicated that the query did not apply to their districts.

The chart below provides a breakdown of impediments identified by the survey respondents.

<b>2013 Survey</b>	
<b>Impediments to Sharing Special Education Services</b>	
<u>Frequency</u>	<u>Factor</u>
21.4%	<b>PERSONNEL/STAFFING</b> <ul style="list-style-type: none"> <li>• Availability of staff</li> <li>• Staff travel times</li> <li>• Continuity of staffing</li> <li>• Inadequate support when sharing administrator</li> <li>• Difference in job descriptions</li> <li>• Differences in pay scales/workloads</li> </ul>
20.4%	<b>LOCAL CONTROL</b> <ul style="list-style-type: none"> <li>• Lack of authority over services</li> <li>• Reluctance to accept students from other districts</li> <li>• Concern about management/oversight</li> <li>• Differences in policy, beliefs, expectations</li> <li>• Control over placement</li> </ul>
12.2%	<b>TRANSPORTATION</b> <ul style="list-style-type: none"> <li>• Distance</li> <li>• Start and end times</li> </ul>
12.2%	<b>SCHEDULING</b> <ul style="list-style-type: none"> <li>• Difference in school day and calendar</li> <li>• Conflicting staff schedules</li> </ul>
9.2%	<b>COST</b> <ul style="list-style-type: none"> <li>• Apportionment</li> <li>• Charges by shared-service entities</li> </ul>
7.1%	<b>PARENTAL RESISTANCE</b>
6.1%	<b>PLANNING/TIME CONSTRAINTS</b>
5.1%	<b>LACK OF PROGRAMS</b> <ul style="list-style-type: none"> <li>• Accessibility</li> <li>• Availability</li> </ul>
3.1%	<b>STATE AND FEDERAL STATUTE AND REGULATION</b>
3.1%	<b>SPACE</b>

In the NJSBA-sponsored 2007 special education study, respondents cited similar concerns, although “scheduling” and “transportation” were the two factors most frequently mentioned.<sup>27</sup>

Another NJSBA-sponsored study published in 2007, on shared services in general, identified impediments based on analysis of statute and regulation, implementation of policy, and community attitudes. In addition to statutory/regulatory obstacles, the researchers identified the following impediments: local control; poor relationship with municipal government; lack of direction from the New Jersey Department of Education, and inexperience in sharing services.<sup>28</sup>

<sup>27</sup> Molenaar and Luciano, p.66: “Scheduling (75), transportation (62), supervision (52) and cost allocation (40) were cited most frequently as difficulties in sharing services. Balancing needs (28), space constraints (19) and planning-training (18) were indicated as well. The impediments that would be very difficult to overcome were control issues, such as local loyalty and territoriality (38), reluctance to share (17), and parent rights perceptions (12). Six districts mentioned the resistance to share with other socio-economic populations.”

<sup>28</sup>IELP Rutgers-Newark and NJSBA, pp.58-60

Significantly, the study also identified local interpretation of least-restrictive environment requirements as an obstacle to sharing services. The report cited a provision of New Jersey Administrative Code addressing “Placement in the least restrictive environment.” The current wording of the regulation follows:

Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that...[s]pecial classes, separate schooling or other removal of a student with a disability from the student's general education class occurs *only when* the nature or severity of the educational disability is such that education in the student's general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily. (*Emphasis added.*)<sup>29</sup>

The researchers observed, “...this provision – and, in general, the requirement to place students in [the] least restrictive environment – could be interpreted (and apparently has been interpreted by some) to allow placement in a program in a neighboring school district, jointure commission or educational services commission *only when* a suitable program could not be provided in the student’s home district.” (*Emphasis added.*)<sup>30</sup> They concluded, “...the concept of least restrictive environment need not preclude shared services or joint provision of special education programs.”<sup>31</sup> Further, the final report stated, “All public school programs should be considered equally ‘restrictive,’ in an effort to promote efficiency without excluding students with disabilities or diluting their programs.”<sup>32</sup>

## **Changes in Law/Regulation**

Through an open-ended question, the survey asked superintendents and special education director to identify changes in law and regulation that would enable them to manage costs. More than one-third of the school officials participating in the 2013 Special Education Task Force survey identified the adjudication process for special education program challenges, especially due-process and burden of proof, as an area in need of change.

Over 21% of all responses to the question identified placement of the burden of proof on school districts, rather than on the party bringing the challenge, as a problem. A 2007 New Jersey statute places the burden of proof in cases challenging a child’s IEP on the school district, rather than on the party bringing a complaint.<sup>33</sup> During the legislative process, school officials and school board attorneys expressed concern that the statute would increase legal fees and staff time to review and prepare documents and make fear of litigation a factor in reaching an agreement on an IEP challenge.<sup>34</sup> The statute was enacted following a 2005 U.S. Supreme Court decision,

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<sup>29</sup> *N.J.A.C. 6A:14-4.2*

<sup>30</sup> IELP Rutgers-Newark and NJSBA, p.57

<sup>31</sup> *Ibid*, p.56

<sup>32</sup> *Ibid*, p.57

<sup>33</sup> *P.L. 2007, c. 331* ([http://www.njleg.state.nj.us/2006/Bills/PL07/331\\_.HTM](http://www.njleg.state.nj.us/2006/Bills/PL07/331_.HTM)); *N.J.S.A. 18A:46-1.1*

<sup>34</sup> Kaye, Donna M., Esq., “The Pendulum Swings Again: A new law changes the burden of proof in special education cases,” *School Leader*, May-June 2008, Vol. 38, No. 6, NJSBA, pp. 12, 15, 40, 42. ([http://www.njsba.org/legal\\_02/pendulum-swings-again.htm](http://www.njsba.org/legal_02/pendulum-swings-again.htm)). “Some school board attorneys suggest that when the district bears the burden of demonstrating the appropriateness of a student’s program rather than requiring the parents to first demonstrate a specific problem, the district is placed in the difficult position of disproving a negative that has not been clearly defined. This can increase the length of cases because it requires the district to present additional rebuttal testimony and evidence after the parents present their position. While the number of special

*Schaffer v. Weast*, which placed the burden of proof in such cases on the plaintiff, usually the parents in the absence of state legislation directing otherwise. School officials also suggested statute and code to address the costs of out-of-district placement (13.4%), changes in state and federal funding (10.7%), and relaxation of restrictions on class size (8/7%).

<b>What changes in law or regulation would enable your school district to better manage special education costs without affecting program quality and availability?</b>	
<b>Frequency</b>	<b>Change Needed</b>
38.9%	<b>Adjudication Process</b> <ul style="list-style-type: none"> <li>Place burden of proof on party bringing complaint (21.5%)</li> <li>Eliminate parents' unilateral ability to obtain independent education evaluations (8.1%)</li> <li>Remove hearing process from Office of Administrative Law/Create Special Panel (4.7%)</li> <li>Increase OAL knowledge of special education issues (4.7%)</li> </ul>
13.4%	<b>Out-of-district placement costs</b> <ul style="list-style-type: none"> <li>Cap tuitions for public and private separate settings</li> <li>Eliminate private schools' ability to bill post-audit after conclusion of fiscal year</li> <li>Allow pro-rated tuition payments, so that receiving institution does not retain full year's payment when student is moved back to district</li> <li>Require student to remain in home district program for period of time before being eligible for private placement</li> <li>Eliminate parents' right to make unilateral placement at district expense</li> </ul>
10.7%	<b>Funding</b> <ul style="list-style-type: none"> <li>Expand expenditures covered by Extraordinary Special Education Aid</li> <li>Provide incentive funding for early intervention strategies</li> <li>Full funding of federal IDEA</li> <li>Fund mental health services</li> <li>Transportation</li> </ul>
8.7%	<b>Allow larger class sizes and more flexibility for age ranges</b>
6.7%	<b>Promote inclusion</b> <ul style="list-style-type: none"> <li>Require professional development for general education teachers</li> <li>Allow dual-certification teachers (elementary education/special education) to teach classes in which students have individual education programs</li> </ul>
6%	<b>Clarification/relaxation of requirements</b> <ul style="list-style-type: none"> <li>Responsibility for evaluations when student is in private setting</li> <li>Roll back state requirement to those of federal government</li> <li>Clarification of OT/PT guidelines</li> </ul>
2%	<b>Allow teachers to serve as case managers</b> (An equal number of respondents opposed the concept)
2.7%	<b>Composition of child study teams</b> <ul style="list-style-type: none"> <li>Eliminate requirement that team include learning disabilities teacher consultant</li> </ul>
	<b>Other comments:</b> <ul style="list-style-type: none"> <li>Eliminate state testing requirement for special education students</li> <li>Regionalize/consolidate small school districts</li> <li>Classify some related services as medical costs to obtain reimbursement from insurers</li> </ul>

As part of NJSBA's 2007 study, *Financing Special Education in New Jersey*, a survey asked school officials to suggest statutory and regulatory concerns. Areas most in need of attention

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education cases reaching due process may not be enormous, school officials know that even one due process matter can take an enormous toll on district resources." (p.40)

were out-of-district placement costs and federal and state funding, according to respondents.<sup>35</sup> The report also noted that special education directors believed placement of the burden of proof on the plaintiff, rather than the school district, would expedite resolution of disputes.<sup>36</sup>

**Determining Staffing Levels**

The survey asked respondents to identify the process used to determine special education staffing levels and the factors that entered into the decision.

In over one-third of the responses, the school officials cited the student’s IEP or individual needs as a driving force in staffing. A large number of responses referenced state administrative code governing the delivery and staffing of special education programming<sup>37</sup>, particularly rules pertaining to class sizes and staffing ratios.

<i>What process does your district follow to determine staffing levels for special education programming?</i>	
<u>Frequency</u>	<u>Process</u>
34.4%	IEP/Student Needs
18.9%	Administrative Code
15.6%	Collaboration/Consultation
12.3%	Analysis of Data and Projections
9.0%	Enrollment
6.6%	Least Restrictive Environment Requirements
3.2%	Other factors

A number of administrators described collaborative work by administrators, child study teams and other professional staff to determine programming and staffing, as well as methods and tools to analyze data, including software programs, before reaching such decisions.

Descriptions of collaborative efforts and analyses methods follow:

When an IEP meeting is held, the information regarding the meeting's outcomes is inputted into an excel spreadsheet with formulas. This information is compared with the school's data system. With coordination between district and school level administration, staffing needs are determined. Please note that during the entire school year, there is a strong articulation between teachers, Child Study Team members and administration regarding the importance of facilitating student independence and what the facilitation should look like. In addition, the instructional aides receive professional development regarding facilitating student independence and data collection.

*Special Education Director  
Regional high school district, Central New Jersey*

<sup>35</sup> Molenaar and Luciano, p.65: “Primary concerns were the high cost of out-of-district placements (tuition – 43% and transportation – 13%) and inadequate state and federal funding (44%). Next most frequently cited were the issues of age range, class size, due process and burdensome paperwork.”

<sup>36</sup> *Ibid*, p.14: The U.S. Supreme Court decision of 2005 (*Schaffer v. Weast*) shifted the burden of proof to the plaintiff (usually parents) in due process cases, i.e., challenges to a child’s placement or IEP. The 2007 study found that directors of special services supported this decision since it will help clarify issues in dispute earlier in the process, thereby increasing the possibility for resolution.

<sup>37</sup> *N.J.A.C. 6A:14-4.1 et seq.* (<http://www.nj.gov/education/code/current/title6a/chap14.pdf>)



Beginning in January, case managers determine course projections. The guidance department prepares course sections, which are compared against current numbers of teaching assignments. Projections for incoming students from the elementary schools are also factored in. If the numbers increase significantly, additional staffing is proposed.

*Superintendent  
Regional high school district, Northwest New Jersey*

Each February/March, my CST and I meet with each special education/general education teacher separately to discuss the needs of each classified student. They make recommendations for programming for the next year. The information is collated, and a plan for the distribution of staff is made. This is revised as the annual reviews occur...

*Special education director  
Elementary school district, Camden County*

We conduct early projections beginning in December/January of each year and move the children forward into the next grade. [The projection includes] all new referrals in-process and those we can anticipate. At that point, we estimate the staffing requirements for the upcoming school year, leaving some room for late referrals. This process is followed again in May after many of the annual reviews are completed and after most of the new referrals are initiated. However, referrals are unpredictable, and parents frequently make referrals in late June. We also have students who move into the district during the summer. Consequently, this can be a difficult process to negotiate.

*Special education director  
K-12 district in Bergen County*

Staffing levels are determined by IEP driven needs along with current testing data. Many of our students are placed in general education settings. With staffing needs, we have been extremely conscientious about hiring dual certified staff which has supported our needs tremendously.

*Special education director  
Vocational school district*