



**STATE OF VERMONT**  
**OFFICE OF THE STATE AUDITOR**

**MEMORANDUM**

**To:** Joint Fiscal Committee  
**From:** Doug Hoffer, Auditor of Accounts  
Susan Mesner, Deputy Auditor of Accounts  
**Date:** August 30, 2013  
**Subject:** Special education

Section E.130 of Act 50 (2013) charged the Office of the State Auditor with reviewing the feasibility of conducting a performance audit of special education in Vermont. Our office was directed to consider whether a performance audit could:

1. identify differences and causes thereof, in special education services provided among Vermont school districts and other jurisdictions;
2. identify opportunities to improve special education planning, budgeting and financial controls;
3. evaluate educational outcomes for special education students;
4. provide strategies for delivery of cost-effective special education services without compromising service quality.

As a first step, our office conducted a review of legislative history related to special education and compiled a summary (see Attachment A). The record shows that the subject of special education has received considerable attention from the General Assembly, and we examined in greater detail the four most recent pieces of legislation that focused on or had provisions relating to special education—Act 117 of 2000, Act 68 of 2003, Act 82 of 2007, and Act 156 of 2011.

Staff parsed the various provisions in these legislative acts to identify individual requirements in the legislation and whether the required actions had been taken. Reports were obtained, interviews conducted, legislative testimony reviewed, and data collected. Act 117, in particular, had extensive requirements, many of which relate to the areas identified in Act 50. The attached matrix (see Attachment B) maps some of the major products of these four pieces of legislation, as well as some independent but related reports, to the four areas identified above.

Perennial concerns over the growth in special education expenditures account for the preponderance of reports in areas (2) and (4) of the matrix. We obtained education spending data from the Agency of Education for the years 2000-2012, and the annual and cumulative growth in special education versus general education at the committee's meeting.

The office also researched performance audits conducted by other states and found 13 relevant reports. We found a similar emphasis in other states to past Vermont legislative initiatives, that is, a particular focus on controlling the costs of special education while improving the administration and delivery of needed services to students.

We found a number of recurring themes in our research on Vermont's special education system. The twin goals of cost control and better service delivery remain the core issues, but attached to those broad goals are long-standing concerns expressed by the various stakeholders related to 1) the funding formula, particularly the complexity, high administrative costs, and resultant lack of flexibility in serving students; 2) the individualized education program (IEP), particularly the lack of uniformity across school districts; 3) the unusually high dependence on aides, or paraprofessionals; and 4) the cost shift from the Agency of Human Services to Education. Despite considerable work done by the legislature, agency staff, special education professionals, academic researchers, superintendents and school boards on these issues over the past two decades, achieving consensus on possible solutions continues to elude policy makers, service providers, administrators, and parents alike.

Act 50 included language that required this office to "define a scope and plan that could be used to guide the performance audit process if one is determined to be feasible." This has proved challenging, in part due to the extensive work already done in this state on the subject of special education. This has spurred internal conversations about what is missing and where value could be added by our office to the ongoing discussion, which we intend to address in our presentation to your committee.

## Attachment A

# SUMMARY OF LEGISLATION ON SPECIAL EDUCATION IN VERMONT

**1960s** -- Vermont school districts, beginning in the 1960s, started to take over the administration of existing private schools that had been founded by the VT Association for Retarded Citizens and to develop special classes in local schools. In 1968, the VT legislature passed two bills that accelerated the development of local special education (SPED) programs.<sup>1</sup>

**1970s** -- Act 207 (1972; S 98) established a 10-year funding plan and a funding system that reimbursed school districts for 75% of approved mainstream SPED personnel.

In 1976 Congress passed the Education of the Handicapped Act (PL 94-142); act has been amended a number of times and now known as the Individuals with Disabilities Education Act (IDEA); basic requirements have remained the same and provide the framework for SPED services in VT.

**1980s** -- Throughout the 1980s, SPED expenditures expanded at a rapid rate and state funding failed to keep pace. In 1986-87 period, funding problems became critical when the state reduced the funding expected by local districts three times.<sup>2</sup>

Total statewide SPED costs were unknown because spending was local and not reported to the State; also, there was no common definition as to what qualified as special education costs. A study by the Department of Education (DOE) found that “the funding system [at the time] restricted schools’ attempts to design alternative programs to meet student needs and seemed to reward the placement of students in categorical, restrictive and expensive placements.”<sup>3</sup>

Governor Kunin appointed a special commission to examine the impact of the S.98 funding formula and to make recommendations for change. Their findings and recommendations resulted in passage of Act 235 in 1988, which created a new funding system for special education that no longer funded specific programs and instead reimbursed districts for portions of the SPED expenditures, after distribution of a block grant based on the number of students eligible for special education. Additionally, a task force was formed to find ways to reduce the burden of regulation and paperwork in special education.

**1990s** -- Two years later, in 1990, Act 230 revised the funding formula so that the block grant portion was based on total student membership (census-based funding) rather than SPED student counts, and it allowed funds to be used on remedial and compensatory education.

In 1992 a study of the effects of Act 230 was begun, which resulted in the publication of five reports between 1992 and 1997. According to a 1998 report by DOE, the study findings coupled with data gathered by the department about the new funding formula indicated that 1) the new funding system provided

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<sup>1</sup> “A Profile of Special Education Finance Reform in Vermont,” Deborah L. Montgomery, March 1995, American Institutes for Research, State Analysis Series, p. 3.

<sup>2</sup> Montgomery, p. 4.

<sup>3</sup> “Vermont’s Act 230 and Special Education Funding and Cost Study,” VT Department of Education, p. 1, January 1995.

better information and more flexibility in the use of funds, 2) more students received support services, 3) positive educational results were reported, and 4) concerns remained regarding the implementation of Act 230 and the increasing costs of special education.<sup>4</sup> Act 230 was reauthorized by Act 157 (1996), which “reaffirmed the directions set by Act 230 and maintained the goal of developing a more cost effective and integrated system of support services.”<sup>5</sup>

In 1993, a new DOE ruling became effective that established a core staff level of special service providers for each district

The Equal Educational Opportunity Act (Act 60) of 1997 and its technical amendment, Act 71 (1998), made significant changes in special education funding and created two entities to examine SPED issues.

--The Blue Ribbon Commission on Special Education Costs was appointed by the governor in 1998 and charged with producing two reports to covering a range of topics, including whether school districts with high per pupil SPED spending should be reimbursed for those costs at a lower rate than those with lower per pupil SPED spending.

--The Special Education Program and Fiscal Review Panel was created by in Act 71 to study school districts and their delivery of special education. It had two particular areas of focus: (1) to work with DOE on the annual SPED cost report and the collection and analysis of data, and (2) to work with DOE on reviewing spending patterns in school districts. Several reports were published, including reviews of five Vermont school districts.

Act 71 also mandated that increases in actual statewide expenditures for special education be limited to 5.5% for FY 2000, 4.5% in FY 2001, and in FY 2002 and each year thereafter to a percentage linked to the State & Local Government price index. (Caps repealed in 2000 by Act 117 but new limitations on spending increases were imposed.)

In July 1998, DOE issued the “Special Education Cost Report,” which provided a history of special education funding and considerable data on staffing, student counts and spending, and it stated that “costs have been increasing at a rate nearly double the costs of general education.”<sup>6</sup> Another report from the same time period cited an increase during the 1990s in professional staff of 42%, in paraprofessional staff of 139%, and in overall special education expenditures of over 100%.<sup>7</sup>

**2000s** -- Act 117 (2000) was a sweeping piece of legislation passed with the explicit intent of providing services to help school districts contain increases in total special education spending, while continuing to deliver appropriate services to all Vermont students.

Act 117, directed the commissioner and state board of education (BOE) to develop and implement a plan to 1) reduce statewide increases in SPED costs while continuing to meet the needs of all students; 2) increase the capacity of general education to meet the needs of more students outside special education;

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<sup>4</sup> “Special Education Cost Report,” VT Department of Education, p. 6, July 1998

<sup>5</sup> “Special Education Cost Report,” p. 5

<sup>6</sup> “Special Education Cost Report,” p. 3

<sup>7</sup> “Special Education Spending in Vermont’s Public Schools,” Vermont Tiger, p. 3.

3) use cost-effective practices; and 4) operate SPED programs consistently across the state and within state and federal requirements. The commissioner was required to recommend to the governor and general assembly a fiscally sustainable formula for funding special education on or before Jan. 15, 2004. (The DOE was unable to find such a recommendation.)

Act 117 also required a study of how special education services are provided. That study recommended that 1) the State acknowledge how service provision has evolved, particularly away from human service agencies to school districts, with a concurrent shift in funding from the General Fund to the Education Fund and local school taxpayers; and 2) continued study is needed on existing funding streams and their relationship to best practice protocols in special education.<sup>8</sup>

Three years later, Act 68 (2003) required the commissioner and secretary of human services to develop a cost containment plan to include the formula requested in Act 117 and “written with enough detail to enable the senate and house appropriations and education committees to prepare legislation to implement the plan for introduction in January 2004.” (Our office was unable to find that this report was ever produced.)

Act 82 (2008) required additional reporting by the commissioner related to the identification of and data on high and low SPED spending districts. Further, it required DOE to assist high-level spending districts by identifying “reasonable alternatives” and developing a remediation plan, with penalties if the district fails to implement the plan.

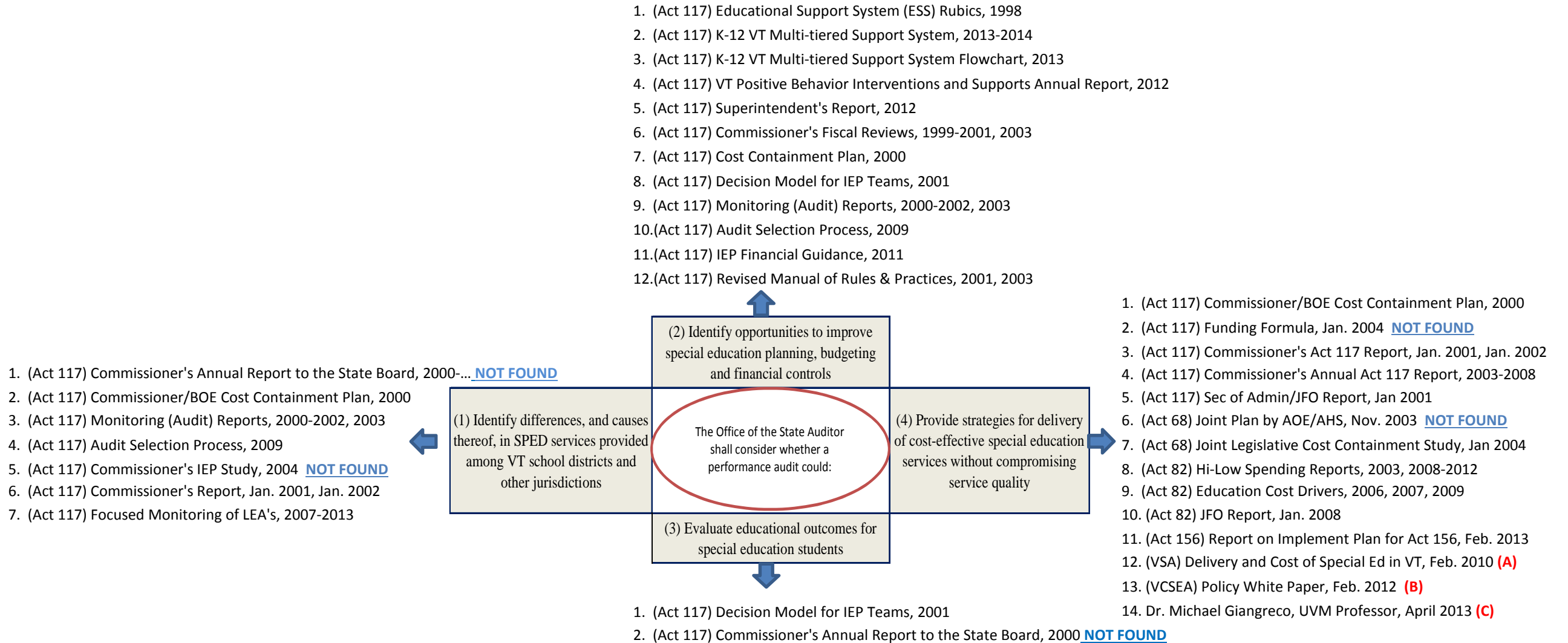
SPED was addressed in 2009 Challenges for Change legislation: the incentives challenge was to improve special education student outcomes, including graduation rates and employment, while spending 5% less in FY11 than in FY10, and 7.5% less in FY12 than in FY10 (Act 68, Secs. 6 & 9(c)(6)) – struck in budget adjustment act of 2012 (Act 3)

Act 156 (2012) created a working group to develop a detailed plan for the transition of SPED staff employed by school districts to employment by supervisory unions, to be fully implemented by July 1, 2014. The report by the working group was issued February 2013.

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<sup>8</sup> “Report on the Provision of Special Education Services,” Stephanie Barrett, Joint Fiscal Office, and Stuart Savage, Department of Finance & Management, January 2001, p. 5.

**MATRIX OF DOCUMENTS REQUIRED BY SPECIAL EDUCATION LEGISLATION MAPPED TO ACT 50 (2013) AREAS OF RESEARCH**

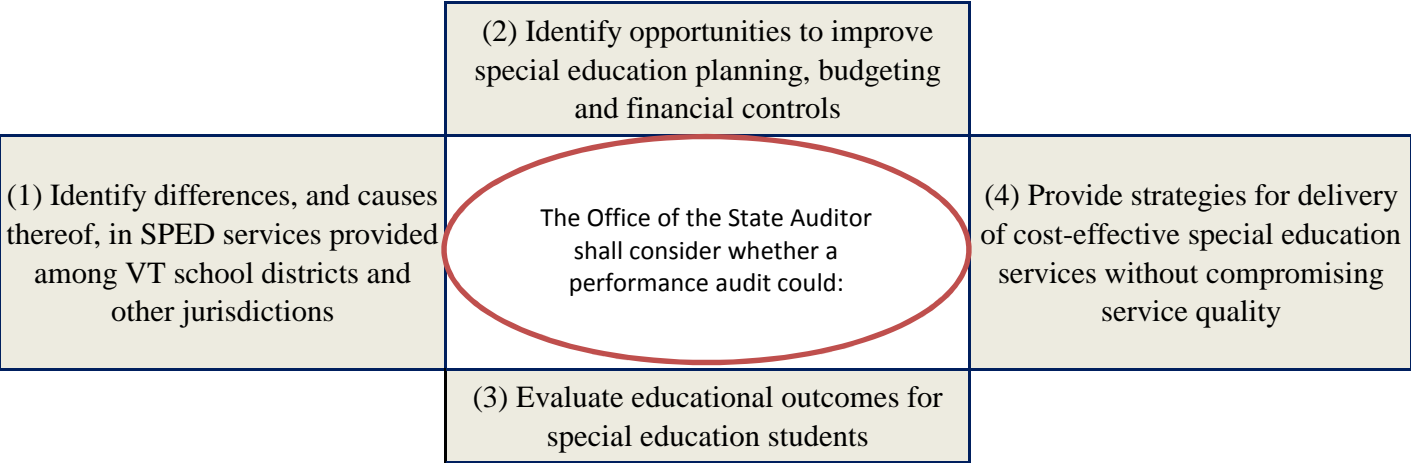


**(A)** Testimony provided to House Education Committee by the Vermont Superintendent's Association (VSA) on 2/17/10

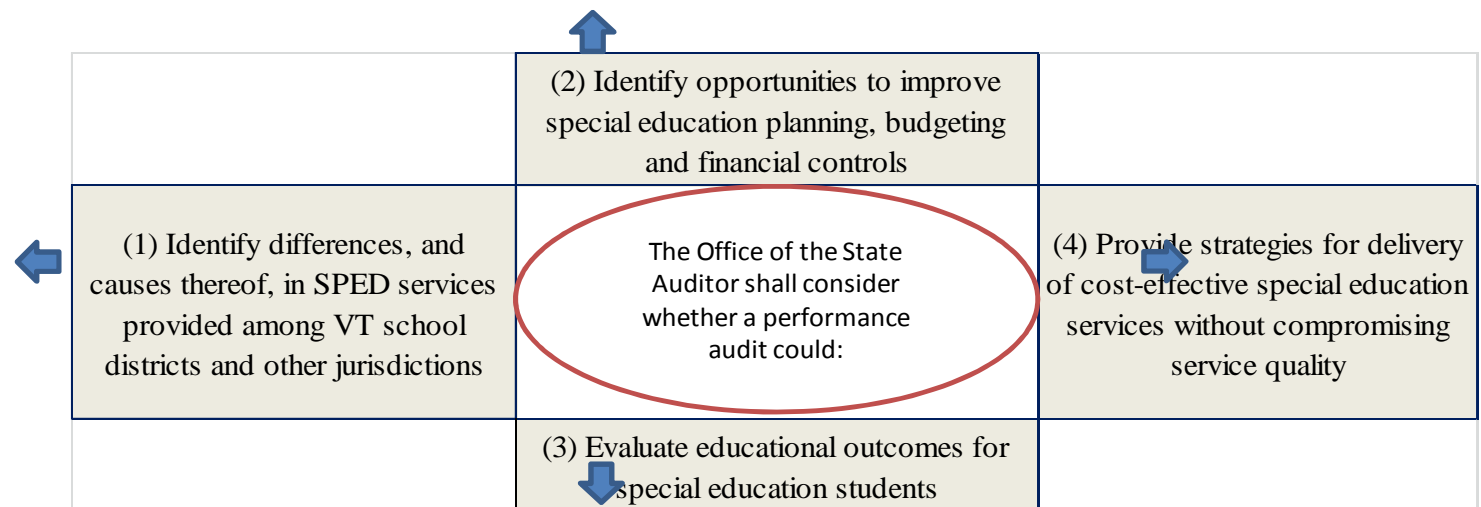
**(B)** Testimony provided to Senate Education Committee by the Vermont Council of Special Education Administrators on 3/29/12

**(C)** Testimony provided to House Education Committee by Dr. Michael F. Giangreco, UVM Professor on 4/25/13





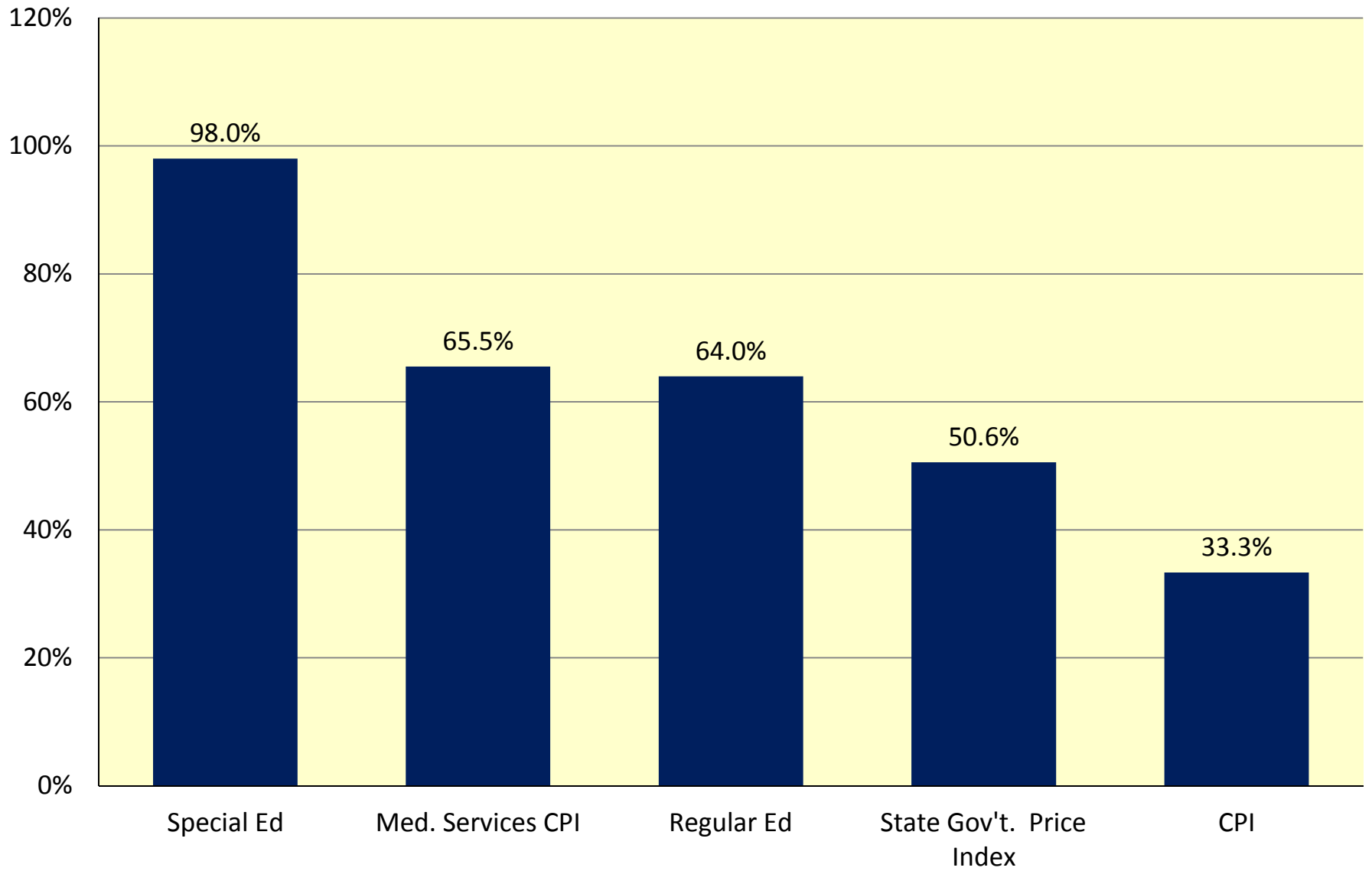




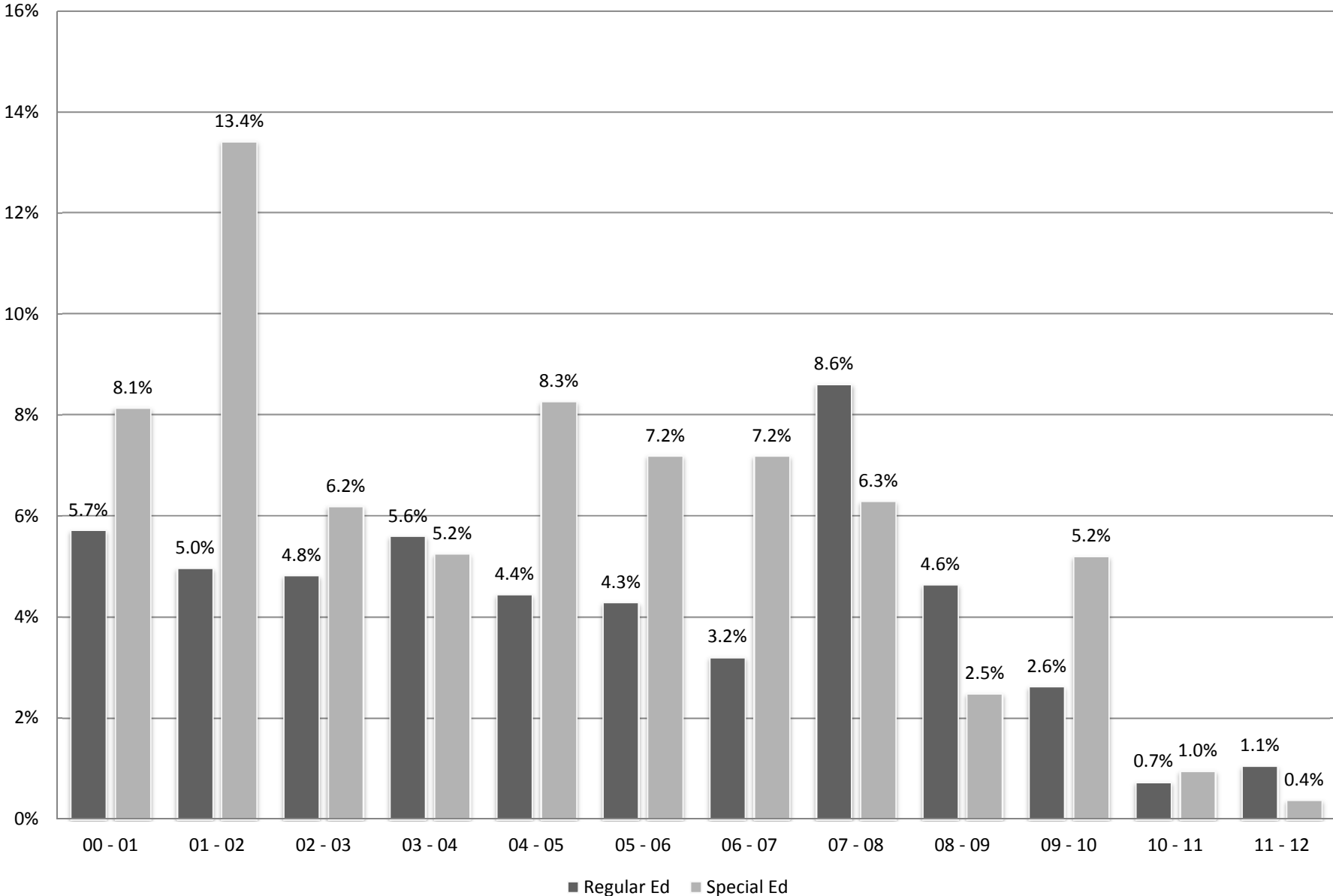




### Percent change 2000 - 2012



# Annual percent change in expenditures



### Performance Audits of Special Education

			Legislative Areas Addressed by the Audit Report				Other Info Found in Report
	State/City	Date of report	(1) Identify differences/causes in SPED services among school districts	(2) Identify opportunities to improve SPED planning, budgeting, and financial controls	(3) Evaluate educational outcomes for SPED students	(4) Provide strategies for delivery of cost-effective SPED services w/o compromising service quality	
1	Georgia	Oct-10	N/A	<ul style="list-style-type: none"> <li>Enhancing program management by development of financial and operational requirements <i>Rpt pg 26-27</i></li> </ul>	<ul style="list-style-type: none"> <li>Tracking the academic progress of students so academic impact of program can be measured. <i>Rpt pg 18-21</i></li> <li>Assessing educational outcomes. <i>Rpt pg 12-18</i></li> </ul>	<ul style="list-style-type: none"> <li>Recommendation for the need of sufficient data in order to assess cost effectiveness of SPED programs. <i>Rpt pg 21-23</i></li> </ul>	N/A
2	Kansas	Dec-07	N/A	<ul style="list-style-type: none"> <li>State Aid (and capping the amount of funding) for excess costs of SPED. <i>Rpt pg 7-15</i></li> </ul>	N/A	N/A	N/A
3	Kansas	Oct-09	N/A	<ul style="list-style-type: none"> <li>Catastrophic funding for SPED. <i>Rpt pg 19-20</i></li> </ul>	N/A	N/A	N/A
4	Michigan	Nov-01	N/A	<ul style="list-style-type: none"> <li>Fiscal related reviews of school district SPED Programs and SPED monitoring &amp; oversight. <i>Rpt pg 22-32</i></li> </ul>	<ul style="list-style-type: none"> <li>IEP's, progress evaluations, and continuous quality improvement process. <i>Rpt pg 15-22</i></li> </ul>	N/A	N/A
5	Minnesota	Mar-13	<ul style="list-style-type: none"> <li>Analysis of various SPED instructional settings. <i>Rpt pg 30-33</i></li> </ul>	<ul style="list-style-type: none"> <li>Monitoring SPED Programs, fiscal requirements, and student eligibility for services. <i>Rpt pg 71-79</i></li> </ul>	<ul style="list-style-type: none"> <li>Methodology for assessing SPED student's performance. <i>Rpt pg 33-40</i></li> </ul>	N/A	<ol style="list-style-type: none"> <li>Cost Drivers &amp; Incentives <i>Rpt pg 61-69</i></li> <li>Disability Categories <i>Rpt pg 19-22</i></li> </ol>

	State/City	Date of report	(1) Identify differences/causes in SPED services among school districts	(2) Identify opportunities to improve SPED planning, budgeting, and financial controls	(3) Evaluate educational outcomes for SPED students	(4) Provide strategies for delivery of cost-effective SPED services w/o compromising service quality	
6	Montana	Dec-05	N/A	<ul style="list-style-type: none"> <li>Improving Analysis and Reporting of Funding Information. <i>Rpt pg 9-14</i></li> </ul>	N/A	N/A	1. SPED funding components. <i>Rpt pg 6-7</i> 2. Legislative direction on use of SPED Funds. <i>Rpt pg 15-23</i>
7	New Jersey	Jul-13	N/A	<ul style="list-style-type: none"> <li>Monitoring &amp; onsite reviews of private schools for SPED students. <i>Rpt pg 5-8</i></li> </ul>	N/A	N/A	N/A
8	New York	Dec-12	N/A	<ul style="list-style-type: none"> <li>Fiscal &amp; program monitoring. <i>Rpt pg 7-11</i></li> <li>Audit disallowances and Recoveries. <i>Rpt pg 13</i></li> </ul>	N/A	N/A	N/A
9	Ohio	Sep-12	N/A	<ul style="list-style-type: none"> <li>Implementation of a budgeting process. <i>Rpt pg 6-7</i></li> <li>Improving accuracy &amp; validation of financial reporting. <i>Rpt pg 10-14</i></li> <li>Implementing strategic staffing plans. <i>Rpt pg 14-15</i></li> </ul>	<ul style="list-style-type: none"> <li>Improving IEP processes and student reporting. <i>Rpt pg 9-10</i></li> <li>Staff training. <i>Rpt pg 15-17</i></li> </ul>	<ul style="list-style-type: none"> <li>Providing more intensive early intervention strategies for at-risk students. <i>Rpt pg 7-9</i></li> </ul>	N/A
10	Portland, Oregon	Aug-11	N/A	<ul style="list-style-type: none"> <li>Improving financial management weaknesses. <i>Rpt pg 26-39, 53-54</i></li> </ul>	N/A	<ul style="list-style-type: none"> <li>Strategies to better manage SPED costs. <i>Rpt pg 40-51</i></li> </ul>	1. SPED funding. <i>Rpt pg 19-22</i>
11	Washington	Feb-06	N/A	<ul style="list-style-type: none"> <li>SPED excess cost accounting methodology. <i>Rpt pg 5-20</i></li> <li>Alternative methodologies. <i>Rpt pg 21-31</i></li> </ul>	N/A	N/A	N/A

	State/City	Date of report	(1) Identify differences/causes in SPED services among school districts	(2) Identify opportunities to improve SPED planning, budgeting, and financial controls	(3) Evaluate educational outcomes for SPED students	(4) Provide strategies for delivery of cost-effective SPED services w/o compromising service quality	
12	Washington	Dec-01	<ul style="list-style-type: none"> <li>Developing Standards of Service. <i>Rpt pg 16; 21-24; 69</i></li> </ul>	<ul style="list-style-type: none"> <li>SPED Oversight. <i>Rpt pg 9-11</i></li> <li>Comparing SPED costs across districts. <i>Rpt pg 14-15; 19-21</i></li> </ul>	N/A	N/A	1. Audit methodology includes focus sessions with District Reps, SPED Advisory Council, and SPED Coalition. <i>Rpt pg 21-22; 67</i>