

Research Report

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Individual Education Plan

The Case For Choice For Texas Students With Disabilities

By

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SCHOOL CHOICE AND STUDENTS WITH DISABILITIES

During the 2002-3 school year 11.6 percent of Texas public school children were enrolled in special education programs - with a total of 491,259 children receiving special education services. Statewide, districts spent \$1.9 billion on special education programs, averaging just over \$3,900 in additional spending per special education student. Statewide, enrollment in special education programs as a percentage of total student population rose 17 percent between the 1991-2 and 2002-3 school years.¹

School choice opponents often object to school voucher programs based upon the notion that private schools would discriminate against students with special needs, thus making competition between public and private schools unfair. Competition for students is a fine idea, but there must be a “level playing field” between public and private schools on issues such as special education.

School choice programs can in fact be designed in such a way to substantially benefit children with disabilities. In a number of important ways, school choice for children with disabilities would not only benefit those children exercising the ability to transfer, but also those choosing to remain in the public system. The available evidence on school voucher programs and special education children establishes that private schools are willing to serve special needs students and are already doing so in existing voucher programs, including one of the nation’s largest voucher programs designed exclusively for disabled students (Florida’s McKay Scholarship Program). Rather than prohibiting the creation of a school choice program, students with special needs have perhaps the most to gain from the creation of such a program.

SPECIAL EDUCATION: PROGRESS AND PROBLEMS

In 1975, Congress passed the Education for All Handicapped Children Act, renamed in 1990 the Individuals with Disabilities Education Act (IDEA). Before the passage of this landmark legislation, public school discrimination (including simply refusing to educate children with disabilities) against children with disabilities was legal and common. In 1973, it was estimated that as many as one million students had been denied access to public schools due to disability. Since 1975, the number of students in special education programs nationwide has grown 65 percent, to about 6.1 million in the 1999-2000 school year, which represents 8.2 percent of the U.S. student body.²

IDEA requires public schools to provide a “free and appropriate public education” to students with disabilities. Public schools are required to identify children in need of special education services through the process of crafting an Individual Education Plan (IEP), performed by district officials with participation of a child’s parents or guardian. Either the school district or parents can initiate the IEP process. Parents who believe that a school district has failed to provide an appropriate education to their children have the ability to sue for redress.

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Despite the fact that IDEA represents vitally important civil rights legislation in defending the equal protection rights of children with disabilities in public schools, many aspects of the law have come under severe criticism. Generally speaking, public school teachers and administrators have expressed frustration with the amount of paperwork required by IDEA, special education parents often express frustration and even outrage that their children are not receiving the sort of help they need from school districts. A growing body of evidence, from both Texas and other states, points to racially biased outcomes in special education whereby minority children are more likely to receive disability labels, especially in predominantly White public schools.³ Finally, taxpayers foot the bill for a system simultaneously proving costly and ineffective in terms of student outcomes. In fact, the Economic Policy Institute estimates that nationwide public schools spend as much as *38 percent* of each new tax dollar on special education.⁴

One area of complaint involves the cost of special education programs to taxpayers and to district officials in terms of compliance costs. Despite massive investment of resources, many parents with children in public school special education programs express dissatisfaction with the level and types of services their children receive. The “compliance model” used by the special education system, which emphasizes procedure and forms over children’s actual learning gains, is largely to blame. Critics of the system also note the compliance model has failed to ensure widespread compliance with special education laws, while generating a number of perverse outcomes.⁵

One such outcome is that a growing number of dissatisfied parents are bringing “private placement” lawsuits against public school districts. Nearly 2 percent of all special education students nationwide attend private schools paid for by public school districts that fail to provide an adequate education. Everything between abusive behavior on the part of school district officials to failure to fill out the voluminous paperwork requirements have resulted in parental victories in such cases. The results of these suits are sometimes punitive, creating “Cadillac” private placement judgments where children attend private institutions at costs far exceeding what the public schools spent on their education.

Predictably, the ability to afford the attorney fees and other costs of private placement lawsuits so their children can attend private schools serves as a substantial hurdle to utilizing the court system for redress of special education disputes, regardless of who may be at fault. The overwhelming majority of special education children, therefore, remain in public school districts strained by legal expenses running into tens of thousands of dollars each year, even in serious cases of district negligence. According to some observers, the current special education system is a complex maze in which districts spend more time filing paperwork to avoid lawsuits than providing the services children need. As a result, the vast majority of special education children and their families find themselves trapped in an often unresponsive system focused more on avoiding suits than upon student achievement.

The largest growth in special education populations is among children classified as having a “specific learning disability.” The specific learning disability diagnosis is

infamously vague in nature, resulting from a perceived disparity between the intellectual capacity of a child and his or her actual academic performance. Such a diagnosis can be the result of an actual neurological condition, but can also be the result of poor quality general instruction if not rigorously evaluated. Students with learning disabilities constituted only 21 percent of all disabilities when Congress passed the IDEA in 1975, but by 1998 that figure more than doubled, to 46 percent. During the same period, the rates for more objectively diagnosed disabilities, such as blindness, mental retardation or emotional disturbance have remained essentially flat.⁶

Recent medical research into learning disabilities demonstrates a strong link between ineffective reading instruction and later learning disabilities. Analysis by a team of medical doctors, led by Dr. Reid Lyon of the National Institutes of Health, presented evidence that improper reading instruction has led to an enormous increase in the number of students labeled as having specific learning disabilities. The medical evidence strongly suggests that children who do not receive proper reading instruction in the early grades develop learning deficiencies, which are easily mistaken for learning disabilities.

Such “teaching disabled” children require extensive remediation to be brought to grade level in reading. Yet unlike children with a neurological disorder that later develops into a learning disability, teaching-disabled children have conditions that could have been prevented with proper reading instruction in the early grades. Lyon’s medical team found that rigorous early reading instruction could reduce by 70 percent the number of students identified as learning disabled. Lyon and his coauthors estimate that, nationwide, nearly 2 million children have preventable learning disabilities.⁷

VOUCHERS AND DISABLED CHILDREN: CLEVELAND, MILWAUKEE AND FLORIDA

Unlike the portrait of school vouchers and private schools painted by opponents, existing school voucher programs do serve children with disabilities. For example, the Milwaukee Parental Choice Program provides no additional funds for children with disabilities, but requires participating private schools to accept students on a random lottery basis. Accordingly, participating schools estimate that between 12 and 15 percent of students receiving vouchers under the program warrant special education designations, similar to the percentage of students in the Milwaukee district with Individualized Education Plans (IEPs).

Much the same process occurs in the Cleveland Scholarship and Tutoring Program. Daniel McGroarty interviewed private school administrators concerning disabled students attending private schools with the Cleveland vouchers. One private school administrator noted that some of the children transferring from public schools with disability labels did not test out as having disabilities in the private setting, raising the specter of budget related over-classification in the Cleveland public schools. “It’s like there’s a bounty on these kids; in the public system, special needs brings special funding,” the administrator noted.

The administrator went on to relate the story of a 10 year-old boy enrolled his school with a Cleveland program voucher and a “special needs” designation from his former public school. “His file was full of evaluations and reports, but when we sat him down with our counselors, we found that no one had ever really talked to the child... We got his mother some help, and he just blossomed. Thing was, in the public school he would have been labeled special needs all the way through. The way I saw it, the public schools thought they were penalizing us, sending us these kids. On our end, it was lemons to lemonade.”⁸

FLORIDA’S MCKAY SCHOLARSHIP PROGRAM

Florida has taken the lead in special education reform with the creation of the McKay Scholarship Program. Launched in 1999, the program allows parents who are dissatisfied with the quality of their children's education to seek other public and private options without having to resort to court action. The program equalizes opportunity for students of varying economic backgrounds, not just those whose parents can afford the cost of litigation.

More than 9,000 students enrolled in the McKay program for the 2002 school year. Of 547 private schools that applied to accept McKay Scholarship children, 214 are nonreligious and 332 are religiously affiliated schools. The disability profiles of students exercising choice through the program fairly closely matches the population of disabled students in the Florida public school system, meaning that private schools are serving children with a full spectrum of disabilities.

A recent survey demonstrates extremely strong support for the McKay Scholarship program from the parents of disabled children. Manhattan Institute scholars Jay Greene and Greg Forster recently released the first empirical study of the McKay program. The Manhattan scholars conducted a parental satisfaction survey of both parents who had used the program to transfer out of public school and parents who had used a McKay scholarship to transfer but had subsequently returned to a public school.

The results of the survey demonstrate that parents strongly favor the program. For example, 92.7 percent of current McKay participants are satisfied or very satisfied with their McKay schools while only 32.7 percent were similarly satisfied with their public schools. McKay parents found that their child’s class size dropped dramatically, from an average of 25.1 students per class in public schools to 12.8 students per class in McKay schools. In public schools, 46.8 percent of disabled students were bothered often and 24.7 percent were physically assaulted, while in McKay schools only 5.3 percent were bothered often and 6.0 percent were assaulted.

Perhaps most telling of all, over 90 percent of parents who had withdrawn their child from the program believe it should continue to be available to those who wish to use it.⁹ The results of the survey demonstrate that the McKay Scholarship Program has produced

something rather rare in the arena of public policy: a program that creates substantially improved outcomes for beneficiaries while only utilizing existing resources.

SPECIAL EDUCATION IN PREVIOUS TEXAS SCHOOL CHOICE LEGISLATION

In 2003, a bipartisan group of Texas legislators introduced House Bill 2465 to create the Freedom Scholarships program, a pilot school choice program for 11 large Texas districts. Similar to the provision of the Milwaukee program, the Freedom Scholarship program required participating public and private schools to admit students on the basis of random lottery in cases when schools had more applicants than positions available.

In addition, House Bill 2465 made students with disabilities in the 11 participating districts eligible to have their Freedom Scholarships supplemented by the special education funds provided to the public school. The Texas Freedom Scholarship Program therefore treated students with disabilities precisely as the McKay Scholarship Program treats Florida's disabled students - and in a superior fashion to the Milwaukee and Cleveland programs. Providing the additional funds for children with disabilities creates opportunities for students to select a school appropriate for their needs.

In addition, House Bill 2465 required participating schools to comply both with the 42 U.S.C. Section 2000d et seq. and its subsequent amendments with respect to nondiscrimination on the basis of race, color, or national origin and the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments with respect to nondiscrimination on the basis of disability in admissions.¹⁰

HB 2465: IMPACT ON DISABLED STUDENTS IN ELIGIBLE PUBLIC SCHOOL DISTRICTS

House Bill 2465 would provide the parents of disabled students in the eligible districts a greater array of choices over the education of their children. Children with disabilities in eligible districts would have the ability to seek a transfer to another public or qualifying private school of their choice with a Freedom Scholarship near to the full amount spent upon their education in their current public school.

House Bill 2465 leaves procedural rights of a child vis-à-vis their current public school district completely unchanged. Currently, parents dissatisfied with the effort of the current school in educating their child (a sadly common phenomenon) would have no recourse short of picking up and moving to another school district that might provide the services parents want for their child but are unmet by the child's current school or to file a lawsuit against the district. With a Freedom Scholarship, such parents would have the ability to seek another educational setting for their child that better suits the individual needs of the child without having to move.

Access to such an option would institute a not so subtle change in the balance of power between parents and school district officials, especially for parents unlikely to avail

themselves to attorneys specialized in special education law and procedure. School districts will either have to satisfy such parents regarding the education of their children, or else make way for someone who will do so. The program would encourage district officials to shift their focus from one of compliance with federal laws and regulations to the even more important subject of student outcomes and satisfying parents.

If there is any criticism on the special education provisions in House Bill 2465, it might be that it did not go far enough in offering choice to nearly 500,000 Texas public school students with disability classifications. The Florida experience demonstrates that states can offer choice for disabled students on a statewide basis in a productive fashion. Texans should not be any less bold in seeking to improve the education options for special needs students.

SCHOOL FINANCE, SCHOOL CHOICE AND SPECIAL NEEDS FUNDING

The success and widespread participation of Florida's private school community in serving the needs of special education students demonstrates that school choice is not at all incompatible with serving students with disabilities. In fact, Harvard economist Dr. Caroline Hoxby noted in testimony before the Texas House of Representatives that public schools have been complaining that they have not been receiving enough funds for special education students for years and that they could therefore hardly complain if special education students departed with their presumably inadequate funds.

Hoxby's notion is in fact supported by figures presented to the Texas Legislature by officials from Regional Education Service Center 20. Public school officials in Texas relate that the state and federal government inadequately fund special education in Texas. Representatives of Education Regional Service Center 20 recently presented information before the House Select Committee on Public School Finance regarding the disparity between special education funding and special education spending in the San Antonio, Northside, Northeast, Alamo Heights and Floresville Independent School Districts.

In each district, representatives provided figures showing that districts spent hundreds of thousands to millions of dollars more on special education services than the funding they received from state and federal sources. While school district expenditures exceeded government funding for special education, the decision to spend monies above and beyond government funds was a decision made by the districts. The exact nature of excess expenditure is unknown. Whether additional monies were necessary or simply elective spending was not identified. Nor is it known if these expenditures were required to underwrite the cost of delivering government-mandated services.

In San Antonio ISD, Education Regional Service Center 20 figures show a disparity of \$8,163 more spent than received per full time equivalent special education student. The disparity figures for the Northside, North East, Alamo Heights and Floresville districts were \$3,536, \$4,521, \$7,992 and \$2,949 respectively.¹¹

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Any disparity between special education funding and special education spending must come at the expense of general education spending. Because education dollars are limited, money is diverted away from regular classroom instruction when districts decide to spend additional funds above and beyond government funding for special education.

The Education Regional Service Center 20 figures, for example, show that the San Antonio ISD spent over \$17 million more on special education services than received from the state. Under HB 2465, every special needs student departing from San Antonio ISD with a Freedom Scholarship, despite having special education funding included, would lift a substantial funding burden from the district, freeing resources to either focus more on the remaining special education students, or for general education programs, or for some combination thereof.

CONCLUSION: CHOICE FOR THOSE WHO NEED IT MOST

A true “individualized education plan” for a disabled child means that the child’s parents should have input not only about what the plan will be, but also with which service providers will execute the plan. An individualized plan is entirely meaningless if the school district does not provide the proper resources, staff and effort called for in the plan. As a monopoly provider of services, any or all of these things are often lacking in public schools. Far from an impediment to the implementation of a more generally applicable choice program, choice represents a vital opportunity to aid the education of students with disabilities. Florida’s experience with choice for disabled students demonstrates that when provided choice, the parents of special needs parents believe that their children are much better served.

ENDNOTES

¹ Figures are from the Texas Education Agency Pocket Edition and Academic Excellence Indicator Reports, both available on the internet at <http://www.tea.state.tx.us/>.

² Hearings before the Select Subcommittee on Education of the Committee on Education and Labor, 93d Cong., 1st session, 1973. Cited in Wade F. Horn and Douglas Tynan, "Time to Make Special Education 'Special' Again," in Chester E. Finn, Jr., Andrew Rotherham and Charles Hokanson (eds.) *Rethinking Special Education for a New Century*. Publication of the Thomas B. Fordham Foundation and the Progressive Policy Institute, available on the internet at http://www.edexcellence.net/foundation/topic/topic.cfm?topic_id=15.

³ See Daniel J. Losen and Gary Orfield. 2002. *Racial Inequity in Special Education* (Cambridge: Harvard University Press, 2002), introduction, <http://gseweb.harvard.edu/%7Ehepg/introduction.html> and Matthew Ladner and Christopher Hammons. 2001. "Special but Unequal: Race and Special Education," in Chester E. Finn, Jr., Andrew Rotherham and Charles Hokanson (eds.) *Rethinking Special Education for a New Century*. Publication of the Thomas B. Fordham Foundation and the Progressive Policy Institute, available on the internet at http://www.edexcellence.net/foundation/topic/topic.cfm?topic_id=15.

⁴ Richard Rothstein and Karen Hawley Miles, "Where Has the Money Gone? Changes in the Level and Composition of Education Spending" (Washington, D.C.: Economic Policy Institute, 1995).

⁵ Patrick J. Wolf and Bryan C. Hassel, "Effectiveness and Accountability (Part 1: The Compliance Model)" in Chester E. Finn, Jr., Andrew Rotherham and Charles Hokanson (eds.) *Rethinking Special Education for a New Century*. Publication of the Thomas B. Fordham Foundation and the Progressive Policy Institute, available on the internet at http://www.edexcellence.net/foundation/topic/topic.cfm?topic_id=15.

⁶ For a discussion of the economic and environmental factors behind disability rates, see Jay P. Greene, "The Myth of the Special Education Burden," Education Week, June 12, 2002, available on the internet at www.edweek.org/ew/newstory.cfm?slug=40greene.h21.

⁷ Lyon, G. Reid, Jack M. Fletcher, Sally E. Shaywitz, Bennett A. Shaywitz, Joseph K. Torgensen, Frank B. Wood, Anne Schulte and Richard Olson. 2001. "Rethinking Learning Disabilities" in Chester E. Finn, Jr., Andrew Rotherham and Charles Hokanson (eds.) *Rethinking Special Education for a New Century*. Publication of the Thomas B. Fordham Foundation and the Progressive Policy Institute, available on the internet at http://www.edexcellence.net/foundation/topic/topic.cfm?topic_id=15.

⁸ McGroarty, Daniel. 2001. "The Little Known Case of America's Largest School Choice Program" in Chester E. Finn, Jr., Andrew Rotherham and Charles Hokanson (eds.) *Rethinking Special Education for a New Century*. Publication of the Thomas B. Fordham Foundation and the Progressive Policy Institute, available on the internet at http://www.edexcellence.net/foundation/topic/topic.cfm?topic_id=15.

⁹ Greene, Jay and Greg Forster. 2003. "Vouchers for Special Education Students: An Evaluation of Florida's McKay Scholarship Program," The Manhattan Institute, available on the internet at http://www.manhattan-institute.org/cr_38.pdf.

¹⁰ The text of House Bill 2465 can be viewed on the internet at <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=02465&VERSION=2&TYPE=B>.

¹¹ Education Region Service Center 20 testimony to House Select Committee on Public School Finance, 9/10/2003 http://www.capitol.state.tx.us/psf/9_10_03/Smith-Stavinoha%20Presentation.pdf, page 13.



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