

No IDEA: How Massachusetts Blocks Federal Special Education Funding for Private and Religious School Students

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Executive Summary

During the past 12 years, thousands of children in the Commonwealth of Massachusetts have been denied in fact (*de facto*) the special education services to which they, according to Federal Civil Rights Law (*de jure*), are entitled.

This has largely occurred because of the Commonwealth's long-held and erroneous assumption that Massachusetts's special education laws are both *de facto* and *de jure* more generous in their provisions for private school children with special needs than those which are provided to them through the federal *Individuals with Disabilities Act* (IDEA).

De facto, however, and on account of the even longer-standing *de jure* legal landscape in the Commonwealth that prevents the flow of state and local funds to private or faith-based schools, thousands of children with special needs who attend those schools have been denied in a quite unrelenting *de facto* manner the special education services to which they are entitled.

This paper attempts to (1) present how and why this state of

affairs has persisted for so long and (2) offer recommendations which, if implemented, would correct these wrongs that so negatively impact in Massachusetts thousands of private school students.

The authors of this paper attempted to interview officials from the Massachusetts Department of Elementary and Secondary Education (DESE). A spokeswoman for the department declined.

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Introduction & Background

Like so many private school children, Denny is a gifted child who also has special needs. To Denny's parents, it is extremely important that Denny attend the same Catholic school that his siblings have. Being a valued part of their parish community, the school also possesses a mission that comports well with the values that they, as parents, want to pass onto to *all* of their children.

Denny's mother recently wrote:

Like his older sister, Denny is enrolled in a suburban Catholic elementary school in our home town. Concerns about Denny's academic progress began in Kindergarten. He was lagging behind his classmates in alphabet memorization and was unable to recite numeric order past the number 13. The decision

was made, however, to promote him to Grade 1 with hopes that it was just developmental.

In reality, Grade 1 proved to be more difficult and the academic gap widened. Anxiety set in and a happy little 6-year old showed early signs of depression. Through much perseverance, however, Denny made sufficient progress to be promoted to Grade 2.

Within the first few months of Grade 2, it was observed once again that Denny was falling behind rapidly. The other students were now reading while Denny was still struggling with phonetics. Within a few months, Denny was examined by a neurologist and diagnosed with dyslexia. It was recommended that he receive specialized instruction in the area of reading.¹

As strange as it may seem to some people today, in the not-too-distant past it was a struggle for children such as Denny with learning disabilities to receive the same educational opportunities as other children. This was a struggle that both public school *and* private school children bore.

As late as 1970, American schools educated only one in five children with disabilities. At the time, many states even had laws excluding from public schools certain students who were "deaf, blind, emotionally disturbed, or mentally retarded."²

In 1975, Congress passed the *Education for All Handicapped Children Act*. At that time, nearly 1.8 million children with disabilities had been excluded from receiving an education that addressed their special needs.³

In 1997, the name of this Act changed to the *Individual Disability Education Act* (IDEA). IDEA requires each state to ensure that all eligible public and private school children with disabilities receive a free and appropriate public education.³ As a result, more than 6.9 million children with disabilities now receive special education and related services.

Rather than being warehoused in a separate location, more than 62 percent of these children are now enrolled in general education classrooms during 80 percent or more of their school day. Furthermore, early intervention services are being provided to more than 340,000 infants and toddlers with disabilities.⁴

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Each year, the federal government allocates billions in IDEA dollars to the states, which in turn apportion their respective federal allocations to their local education agencies (LEAs).⁵ In fiscal year 2018, Massachusetts received more than \$255.5 million in IDEA for both public and private school students.⁶

The IDEA law includes comprehensive guidelines on how the private school students' allocations and services should be determined. Among the guidelines are specific directives on how LEAs are to collaborate with private schools to make and finalize those determinations. Chief among those means

of determination is a process that the law calls "child-find." Each LEA is obligated to test any child who is suspected by his/her parents of having one or more disabilities. This applies to private school students who reside both within and outside the LEA.

The LEA must also engage in "consultation" throughout the school year. This process involves "timely and meaningful" meetings between private school officials, private school parents, and LEA officials.

These consultation meetings determine "how, where, and by whom special education and related services will be provided."⁷ However, before any positive and impactful conclusions about these matters can come from these consultation meetings, a matter called "proportionate share" must first be determined.

This matter is incredibly important to private school students and their families because, unlike their public school counterparts, private school students do not have to IDEA services an individual entitlement. Rather, the private school students who qualify for special education services in any given LEA attain, collectively, a "proportionate share"⁸ of the total IDEA funds that the federal government has allocated to that particular LEA. In other words, unlike their public school counterparts who each have a guaranteed individual entitlement to IDEA services, private school children are granted a "group entitlement." This means that not all special needs children will receive services. During the consultation process that occurs between LEA officials and private school officials, the questions of where, how, by whom and *to whom* special education and related services will be provided are, as mandated by the law, supposed to be answered.

For private school students with disabilities around the nation, the upshot of this "answering" is that some and, hopefully, *most* will receive services.

The Massachusetts Department of Elementary and Secondary Education (DESE) failed to provide proper guidance to LEAs about the aforementioned "proportionate share" process. As a result, many deserving Massachusetts private school students with disabilities have been denied the services to which they are entitled. This unfortunate reality is due to DESE's interpretation and mistaken application of the Commonwealth's anti-aid or "Blaine" amendment.⁹

The Reality of Blaine

The Massachusetts Constitution's first anti-aid provision, which is synonymous with the so-called "Blaine Amendment" that is operative in the constitutions of 37 other states, dates back to 1854 and is rooted in anti-Catholic bigotry.¹⁰

The Commonwealth's anti-aid provision states:

No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned . . .

Massachusetts's Blaine Amendment, enshrined within Article XVIII of the state Constitution,¹¹ completely disallows public aid to private schools.

However, since its adoption of the Blaine Amendment in 1855,¹² the Massachusetts Legislature has passed legislation that provides to private school students the opportunity to access state and locally funded special education services. This legislation reads:

*[T]he school committee of every city, town or school district shall identify the school age children residing therein who have a disability, . . . diagnose and evaluate the needs of such children, [and] propose a special education program to meet those needs . . .*¹³

This legislation further specifies that "the special education provided by a school district to a private school student shall be comparable in quality, scope, and opportunity for participation to that provided to public school students with needs of equal importance."¹⁴

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However, in its regulatory interpretation of Article XVIII of the Massachusetts Constitution, DESE has interpreted Blaine to mean that special education services provided with state and local funds cannot be provided on private school grounds. Instead, these services may be offered at public schools or a “neutral” location. DESE has never explicitly defined exactly

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what “neutral” means. As a matter of practice, services are *only* offered at public schools, and the public school at which the services are offered is the school located in the municipality in which the student *resides*.

For example, a student who resides in Sharon and attends a private school in Brookline would have to travel back to Sharon to receive services. Publicly funded transportation to and from public schools where students may receive such services is, as a matter of practice, also not offered. Practically speaking, then, this means that if

special needs children are to receive the state-funded special education services to which they are entitled by state law, both those children’s school day and their parents’ work day must consistently be interrupted. For both children and their parents, this interruption is not only constant, but also punishing.

Children must miss precious instructional time in their own classrooms. Parents must take time off from work. For so many of these children and their parents, this is an untenable situation that places impossible demands upon them.

It is important to observe and remember that, in general, the parents of special needs children who choose to send their children to private schools pay similar amounts in federal taxes as public school parents. Despite this and for the two reasons presented above, parents who choose to send their special needs children to private schools must make a difficult choice between assenting to their children not receiving special education services or paying out-of-pocket for those services.

One might wonder how a state that so prides itself on its educational system can justify this. Ironically, the Commonwealth does so by pointing to its own special education laws and assuming that those laws are both *de facto* and *de jure* more generous in their provisions to private school children with special needs than those provided to them under federal law (IDEA). However, *de facto*, nothing could be further from the truth.

Beyond what we know to be the situation “on the ground,” the erroneousness of the Commonwealth’s assumption is conclusively proved by taking a 10,000-foot look at the situation. Seventeen percent of students in Massachusetts’s public schools receive special education services, whereas *less than 1 percent* of private school students do.¹⁵ Again, the primary reason for this lamentable reality is the state’s requirement that private school students with disabilities must receive special education services not on their private school campuses, but at local public schools.

In the name of avoiding any actual or perceived “support” of private schools, DESE, in effect, denies services to private school children notwithstanding their entitlement to receive such support.

Denny’s mother feared that it might be next-to-impossible for her to ensure that she could both send Denny to a private school that provided to Denny the education that she and her husband wanted for Denny *and* ensure that Denny would be able to receive the special education services he needed. And so, Denny’s mother and father — like so many other hard-working and sacrificing private school parents — were faced with a daunting prospect.

Denny’s mother writes:

It was recommended that he receive specialized instruction in the area of reading. Attending a Catholic elementary school with very little special education services, we were heartbroken knowing the possibility that Denny may have to leave this school to attend a local public school.²²

Advocacy: Round 1

In 2007 representatives from the Parents Alliance for Catholic Education (PACE) and the Bureau of Jewish Education of Greater Boston (BJE) proposed amending state private school special education regulation *603 CMR 28:03* so private school students could receive, at their respective private schools, state and locally funded special education services. To avoid proposing a change that would run afoul of Massachusetts’s anti-aid amendment, PACE and BJE suggested to the Commonwealth that state and locally funded services be allowed onsite at their schools in a “neutral location.” In this proposal, PACE and BJE defined a neutral location as any room or space on the grounds of private schools that are devoid of any religious symbolism. PACE and BJE went so far as to define

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a neutral location as rooms that would be used *exclusively* for special education services.

State officials rejected this proposal.

In reference to 603 CMR 28:03, the associate commissioner of DESE wrote, “[t]he Department adopted [603 CMR 28:03] with explicit reference to private schools, public schools, and neutral sites to avoid any constitutional problems under the Anti-Aid Amendment of the Massachusetts Constitution.” The associate commissioner added that allowing “certain limited services” on site, as the private schools were requesting, would likely draw legal challenges under the anti-aid amendment. “Special education,” the associate commissioner wrote, “is a continuum of services providing access to the general education curriculum. Many types of special education services are more directly related to general instruction and would become impermissibly intertwined with the private school program in violation of the Anti-Aid Amendment.”¹⁶

How, we ask, could secular special education services provided in a room that is set aside exclusively for this purpose “become impermissibly intertwined with the private school program?”

For the next eight years, this rejection and the effects thereof continued to be hoisted upon the backs of the state’s private school students with disabilities and their families.

Advocacy: Round 2

In 2015, the private school coalition — inclusive now of PACE and two organizations representing Jewish private school children called *Combined Jewish Philanthropies* (CJP) and the *Jewish Community Relations Council* (JCRC) — decided on a shift in strategy and a change of course.

Prompting this shift and change in strategy was the vision and leadership of the *Ruderman Family Foundation* and the fact that, according to the IDEA law, private school students with special needs have a right to *their share* of IDEA-funded services.

To illustrate the implications of this by way of example, if an LEA has 100 students with disabilities, and 10 of them

attend private schools, then those students are entitled to 10 percent of the IDEA grant to provide services. Under IDEA, LEAs are encouraged to provide these services to private school students onsite at their private schools unless there is a compelling reason for the services to be offered elsewhere.¹⁷ Massachusetts law also allows for this support

to be provided onsite when federal funds are utilized.¹⁸

“Even if it’s a third of the need or a tenth, we could access 100 percent of that third or tenth,” says Stephen Perla, Superintendent of Schools for the Roman Catholic Diocese of Fall River.

“So that’s why we really started to go after the federal law and say to the state, ‘What are you doing to make sure our kids access their federal law entitlement?’”

“It turns out the state had completely ignored the federal law entitlement,” he adds. “They had the mistaken assumption that our kids already had access to 100 percent of services and therefore they really didn’t have to bother with this small federal entitlement.”¹⁹

DESE mistakenly guided LEAs to follow state law, maintaining that the LEAs’ federal law obligations under IDEA could be met by complying with Massachusetts’s special education law. Therefore, LEAs were careful to follow the state law and offer services to students who could access them at public schools. At the same time, they insisted that services — even those funded with federal dollars — could not be provided onsite at private schools. *De facto*, then, private school students for the most part could not access even their smaller group entitlement to proportionate share.

At the request of PACE, the *US Department of Education’s Office of Special Education Programs* (OSEP) — during its audit of DESE — reviewed DESE’s implementation of IDEA. After conducting its audit, OSEP determined that the Commonwealth did *not* have procedures in place to “ensure that (LEAs) spend the required amount of their (IDEA grants) on providing special education and related services to parentally-placed private school children with disabilities in accordance with the requirements . . .”²⁰

OSEP directed DESE to take various corrective actions.

In June of 2017 and as a result of the federal government’s mandate, DESE sent a memo to all LEAs in which the calculation requirements for proportionate share were outlined. The upshot of this memo was that for school-years 2016-17 and 2017-18, LEAs were asked to recalculate their respective “proportionate shares.” The memo clarified that each LEA must *also* include in its respective proportionate share determination private school children who reside outside of the LEA but who attend private schools within it.²⁶

“The state’s clarification last spring was shock and awe, to be honest with you,” said Elizabeth O’Connell, director of special

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education for Dedham Public Schools. “I didn’t write the IEP for the (out of town) student going to a private school in Dedham. I wasn’t sitting on the team. My staff didn’t complete the testing. But because that school happens to be in Dedham, I have some ownership for implementing that IEP,” she added. “I don’t have to ensure a free and appropriate public education, but I have to allocate some of our public funds to supporting that student.

That’s very much new information in Massachusetts.”²¹

Lisa Moy, Executive Director of Special Education for the Fall River Public Schools, has been working to improve in the Fall River LEA the accuracy of the count of private school special education students. She suspects that, in the past, the count was inaccurate and unmaintained because the LEAs had not been asked by DESE to monitor the “child-find” data. To ensure future accuracy, Ms. Moy has implemented a new data collection process.

Looking back upon her own experience to understand and then advance the implementation of IDEA within her LEA, Ms. Moy states that she regrets that DESE has caused — or not prevented — confusion among the ranks. “I think that’s where the misguidance has come from with the state.”²²

Hoping the state would realize the error of its ways and do right by the private school children who had been denied special education services for so long, a coalition of Catholic and Jewish schools requested and conducted a series of meetings with senior leaders of DESE. Through these meetings, the coalition hoped that DESE would institute policies and procedures that would ensure that IDEA would finally be promptly and properly implemented.

At the end of two years of meetings, nothing had changed. Despite assurances and promises and commitments, private school children with disabilities were still being denied the services to which they were entitled. No one agent or representative — or group of agents or representatives — of the Commonwealth were explicitly responsible for this failure. However, a combination of complacency, complicity, inattentiveness, and, in some cases, hostility toward the notion that private school children with special needs are as deserving of services as their public school counterparts coalesced into no change whatsoever.

Advocacy: Round 3

In response, in June of 2017 the private school coalition filed a total of 26 complaints, 25 of which were against LEAs throughout the Commonwealth. The 26th was filed against DESE.

The office of DESE through which these complaints were filed is called the “Problem Resolution

System (PRS),” which is part of a DESE unit called “Program Quality Assurance Services.” Both PRS and the Program Quality Assurance Services of which PRS is a part handle public complaints about students’ educational rights.

According to the complaints, DESE identified *only* 894 private school students who received, special education services from their home LEAs, which is less than 1 percent of all students in the state who are enrolled in private schools. From their own survey of approximately 10,000 of their students, however, private school leaders discovered that 16 percent of their students²³ required special education services.²⁴ This was a glaring discrepancy from which only one conclusion could be drawn: private school students with special needs were not being counted and were not receiving their “proportionate share” of IDEA services.

The complaint added, “Even if we use a lower number and assume, for example, that only five percent of the private school population in Massachusetts has special education needs, the proportionate share allocation would jump to \$8,646,373. The DESE, through its failure to have policies and procedures in effect to ensure that the LEAs correctly calculate and spend proportionate share and its failure to monitor LEAs expenditures, has committed major violations of IDEA, with the result that private school students have been deprived for years of equitable services that Congress intended them to receive.”²⁵

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Using the DESE’s 2014-15 published number of parentally placed private school students together with the published IDEA allocation for the same academic year (\$247,747,090), and assuming that 16 percent of the total school population (955,844 enrolled students) have special education needs, private school students would make up only 0.58 percent of the total population of students with special education needs and just \$1,435,599 would need to be spent to provide services for them. However, assuming the data we have gathered holds true for the rest of the private school population, 16 percent of the 110,599 private school students across the state have special education needs (17,695 students), meaning that private school students actually comprise 10.37 percent of the overall population of students with disabilities in Massachusetts. The proportionate share allocation would consequently rise to \$25,667,535, a difference of \$24,231,935 per year.²⁶

In March of 2017, DESE and private school officials met to review new data from DESE on eligible private school students from the 2015-2016 school year. According to the

private schools' complaint to PRS, at that time only 212 LEAs had been surveyed, but the number of private school students had jumped from an earlier number of 894 to 1,715. Private school officials said the large discrepancy for a short period of time provided further evidence that DESE was neither monitoring LEA record keeping nor ensuring that they were accurately counting private school students with disabilities.

Limiting its investigation to the one-year period preceding the coalition's filing of its complaint, PRS found, in response to the filed complaint:²⁷

- DESE did not fully implement certain regulatory requirements relating to consultations between private school representatives and LEAs; and
- DESE had only partially corrected its noncompliance with certain record-keeping requirements by issuing a memorandum to LEAs, which requires LEAs to submit the required data elements to the DESE; and
- DESE had only partially corrected its noncompliance with certain regulatory requirements relating to calculation and expenditure of proportionate share of IDEA funds by issuing a memorandum to LEAs and taking certain actions which had been previously ordered by OSEP.

DESE was neither monitoring LEA record keeping nor ensuring that [the LEAs] were accurately counting private school students with disabilities.

PRS next issued a letter directing DESE to take certain corrective actions. In addition, each LEA received a letter from PRS notifying the LEA of its respective non-compliance, but the PRS did not detail for each LEA the specifics of its noncompliance or the corrective actions it would need to take. Instead, PRS imposed for each LEA a boiler-plate remedy.

This had no real effect. As a result, there remain to this day LEAs that are non-compliant. In addition — *and* as a result of PRS limiting its investigation to the one-year period preceding the coalition's filing of its complaint — PRS failed to make amends for each of the 11 years preceding the investigation period during which private school students did not receive, *de facto*, the IDEA-funded services to which they had a *de jure* entitlement.

Advocacy: Round 4

In October of 2017 via appeal to the U.S. Secretary of Education, the coalition challenged PRS's findings, alleging that PRS improperly limited the scope of its investigations and that the corrective actions ordered were insufficient.

Reiterating that, despite the findings, some LEAs remained non-compliant, the coalition claimed that for approximately

a dozen years, between \$96 million to \$290 million of IDEA funds allocated to the Commonwealth's LEAs should have been used to serve parentally placed private school students. To redress this injustice, the coalition requested from the LEAs and DESE "compensatory services."²⁸

The path forward

The ultimate goal of the private school coalition is for private school children to have real and meaningful access to the special education services to which they are entitled under both state and federal (IDEA) law. If the Commonwealth would follow both the letter and the spirit of both sets of law, this goal could be achieved.

The reasoned application of state law to a real-world situation proves this point vis a vis state law.

Aaron is a student with dyslexia who attends a Jewish Day School. Unlike many children, Aaron just happens to be lucky enough to have a stay-at-home parent who, three days each week, is able to transport Aaron to his hometown's public school.

On each of those three days, Aaron leaves his private school right after lunch to go to his hometown's public school, where he is able to receive the services to which he is entitled under state law. By doing so, Aaron misses up to a period and a half of valuable class time and the opportunity to play and socialize with his peers at recess three days each week.

To his academic success and emotional well-being, the services which Aaron receives at the public school are essential.

At best, however, this is an imperfect solution; at worst, this arrangement could have lasting negative effects on his overall educational and social formation that, at present, are unknown.

For now, however, at least this arrangement enables Aaron's parents to keep him with his siblings in a school community that is important to Aaron's self-esteem and reinforces his family's values.

As noted previously, current Massachusetts special education laws allow for state funds to be used to provide special education for private school students on public school grounds. This is not deemed a violation of the Blaine Amendment. To the same degree as any public school enrolled child would be,

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Aaron is an intended beneficiary of these services.

This begs the following question: if children such as Aaron and Denny were to receive special education services at the physical locations of their private schools to remove the logistical barriers outlined above, would receiving these services violate state law?

Although never formally considered by the Massachusetts courts, the United States Supreme Court has held that special education services provided onsite at private schools would not violate the First Amendment of the United States Constitution.²⁹ The coalition believes the same analysis could be extended to Article XVIII of the Massachusetts Constitution. The coalition's thinking on this is informed by case law from the Commonwealth.

In 1978 the Supreme Judicial Court of Massachusetts ruled that a school committee's loaning of textbooks to pupils attending private schools violated the anti-aid amendment, which "forbids the use of public money or property 'for the purpose of founding, maintaining or aiding' such schools."³⁰

The court found that although the textbooks were provided

directly to the students, loaning the textbooks constituted "substantial aid" to the private school because the textbooks were directly related to the private schools' educational processes. The court distinguished between textbooks and "other sundry general benefits not entering into the educational process," such as health services, student nutrition programs, and transportation.

But four years later, the Essex County Superior Court saw

things differently. The town of Essex argued on the basis of the anti-aid amendment that it should not be required to provide transportation to residents attending a private school.³¹ The court found that transportation was a public safety measure similar to fire and police protections. Since transportation was provided directly to students and conferred only a remote benefit on the private school, the town's provision of said transportation did not violate the anti-aid amendment.

In determining that private school students were entitled to transportation provided by the town, the court made the following points:

- The purpose of the statute was to promote safety, not to aid the private schools;
- The aid provided by the statute — transportation to and from school — was remote and not

- "substantial," and the benefit was entirely consumed by the students and not the schools; and
- The court found that the statute was not financially wasteful.

In light of this ruling and the Massachusetts Supreme Judicial Court's recent affirmation of this three-part test,³² how — this paper's authors wonder — can DESE continue to hold that the location of services, provided directly to and consumed entirely by a student, determine whether these services are *required* or *forbidden* by state law? Could it really be that the same services provided to the same student by the same staff member in one location are permitted and deemed to solely benefit the student, but that in another location those same services are deemed "substantial aid" to the school itself?

Aaron's case, when analyzed against the above-presented three points, yields the following conclusions.

Aaron's receipt of state-funded special education services on-site at his private school would redound to his educational benefit and not to the financial benefit — or any other quantifiable benefit — of his private school; and

- Aaron's receipt of religiously neutral services on-site at his private school, by district staff members or contractors in a thoroughly non-sectarian space, would be for all intents and purposes "remote"; and
- Aaron's receipt of said services to which the law entitles him would have no direct financial impact on the LEA, which is already obligated by state law to provide services to resident students, like Aaron, regardless of whether they attend public or private school.

In light of all this and regarding both state and federal (IDEA) law, the private school coalition offers the following recommendations.

1. The *Massachusetts State Board of Elementary and Secondary Education* should amend the regulation that prevents the use of state and local funds to deliver special education services to private school students at the private school site.
2. A private school special education ombudsman should be appointed to help address systemic issues raised in the private school complaints that have brought to light over a decade's worth of noncompliance.³³ Furthermore, DESE should take a more active role to ensure that LEAs change the entrenched practice of overlooking private school students with disabilities. Such efforts might include (1) implementing joint training sessions for public and private

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school leaders to ensure that the message communicated to each group is clear and uniform, and (2) convening a private school working group to meet quarterly to learn of issues in the field.

3. DESE should also implement additional reporting requirements to increase transparency and accountability regarding the expenditure of IDEA funds earmarked for private school students. LEAs should be required to publish on a regular basis (1) the amount of funds designated for private school students with disabilities, (2) meeting dates with private school leaders, and (3) an accounting of how the funds were spent.
4. DESE should direct the LEAs to spend each private school's federal IDEA dollars on-site at the private school unless there is a compelling reason for services to be provided off-site. If such compelling reasons exist, the LEA must provide to the students receiving those services publicly funded transportation. Furthermore, if the LEA determines that such a reason(s) exists, it should be required to document the reason(s) in writing.
5. DESE should require each LEA to spend IDEA funds generated by students in a particular school on students within that school unless a group of schools within that

LEA agree to pool funds.

This is consistent with other federal programs that provide for equitable sharing (such as Title I) and would create more transparency around spending. Furthermore, this would enable private school officials to plan for services in the following year.

DESE should direct the LEAs to spend each private school's federal IDEA dollars on-site at the private school unless there is a compelling reason for services to be provided off-site.

About the Authors

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About Pioneer

Pioneer Institute is an independent, non-partisan, privately-funded research organization that seeks to change the intellectual climate in the Commonwealth by supporting scholarship that challenges the “conventional wisdom” on Massachusetts public policy issues.

Endnotes

1. Letter written by the mother of private school student which was sent to the authors of this paper in February of 2018.
2. United States Department of Education, Office of Special Education and Rehabilitative Services, *History: Twenty-Five Years of Progress in Educating Children With Disabilities Through IDEA*, last modified July 19, 2007 < <https://www2.ed.gov/policy/speced/leg/idea/history.html> > February 23, 2018.
3. U.S. Department of Education, *Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools* (March of 2011), 1.
4. US Department of Education, *The IDEA 40th Anniversary: 40 Years of the Individuals with Disabilities Education Act (IDEA)* < <https://www2.ed.gov/about/offices/list/osers/idea40/index.html> > March 13, 2018.
5. In education law, LEA's are equivalent to "school districts." For example, the Boston Public School District is the Boston LEA.
6. Massachusetts Department of Elementary and Secondary Education, *Grants and Other Financial Assistance Programs: FY2018: Individuals with Disabilities Education Act (IDEA) Federal Special Education Entitlement Grant*, last updated August 16, 2017 < <http://www.doe.mass.edu/grants/2018/240/> > February 23, 2018. All subsequent references to the Massachusetts Department of Elementary and Secondary Education will be termed "DESE."
7. USDOE, *Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools*, revised April of 2011, downloaded from < https://idea.ed.gov/uploads/Private_School_Q_A_April_2011_1.pdf > February 23, 2018.
8. The formula for determining "proportionate share" is based on the total number of eligible private school children with special needs aged 3 through 21 attending private schools located in the LEA in relation to the total number of eligible public and private school children with disabilities aged 3 through 21 within the LEA.
9. This amendment occurred to the Massachusetts state Constitution in 1855. Along with the State of New York, Massachusetts was the first state in the Union to adopt such an amendment. Cf. U.S. Commission on Civil Rights, *The Blaine Amendments & Anti-Catholicism*, 2007, 5, 35, 43, 53, downloaded from < <http://www.usccr.gov/pubs/BlaineReport.pdf> > February 23, 2018
10. Ibid.
11. Commonwealth of Massachusetts, *Constitution*, Article XVIII, section 2 < <https://malegislature.gov/Laws/Constitution> > February 24, 2018.
12. Dick Komer, *Answers to Frequently Asked Questions About Blaine Amendments* (Washington DC: Institute for Justice, 2018), downloaded from < <http://ij.org/issues/schoolchoice/blaine-amendments/answers-frequently-asked-questions-blaine-amendments/> > February 23, 2018.
13. Commonwealth of Massachusetts, *General Laws, Part I, Title XII, Chapter 71B, Section 3*, < <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71B/Section3> > February 23, 2018.
14. DESE, MA 603 CMR 28:03, e, 4 < <http://www.doe.mass.edu/lawsregs/603cmr28.html?section=03> > February 23, 2018.
15. DESE, *2017-18 Selected Populations Report*, < http://profiles.doe.mass.edu/state_report/selectedpopulations.aspx > February 23, 2018.
16. Carole Thomson, Letter to PACE & BJE, November 16, 2007, unpublished.
17. Ruth E. Ryder, Letter to Ellen Chambers, December 27, 2016, downloaded from < <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/letter-to-chambers-12-27-2016.pdf> > April 1, 2018.
18. DESE, MA 603 CMR 28:03 (1) (e) < <http://www.doe.mass.edu/lawsregs/603cmr28.html?section=03> > February 23, 2018.
19. Stephen Perla, Personal Interview, November 8, 2017, unpublished.
20. As of February 23, 2018, the URL that once provided the specific reference for this quote was not available. Upon trying to access said link (<https://www2.ed.gov/fund/data/report/idea/partbfymltrs/index.html%252523ma>), the authors discovered that the page could not be found due to a "404 – Page not found" error.
21. Elizabeth O'Connell, Personal Interview, December 12, 2017, unpublished.
22. Lisa Moy, Personal Interview, November 28, 2017, unpublished.
23. Not all students had IEPs, however. Some had undergone private testing while others, suspected of having a disability, had been informally identified by the private school staff.
24. Ariella Hellman, Nancy Kriegel, David Perda, Sr. Andrea Ciszewski, Stephen Perla, PRS Complaint, June 27, 2017, Appendix J., unpublished.
25. Ibid. Section III, pgs. 7-8.
26. Ibid. Section III, pg. 7.
27. Barry Barnett (Director, PRS), Memorandum to Jeff Wulfson (Acting Commissioner, DESE), November 20, 2017, unpublished.
28. Hellman et. alia, Section IV, pg. 7.
29. *Zobrest v. Catalina Foothills School District*, 509 U.S.1 (February 24, 1993-June 18, 1993) < <https://www.law.cornell.edu/supct/html/92-94.ZS.html> > March 12, 2018.
30. *Bloom vs. School Committee of Springfield*, 376 Mass. 35 (February 15, 1978 - July 20, 1978, Hampden County, MA) < <http://masscases.com/cases/sjc/376/376mass35.html> > February 23, 2018.
31. *Attorney General vs. School Committee of Essex*, 387 Mass. 26 (May 3, 1982 – August 31, 1982, Essex County, MA) < <http://masscases.com/cases/sjc/387/387mass326.html> > February 23, 2018.
32. This three-part test looks at whether (1) the purpose of the grant is to aid the private institution, (2) the grant "substantially" aids the private institution and (3) the grant "avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment." *George Caplan v. Town of Acton, SJC-12274*, slip. op. at 3 (September 7, 2017- March 9, 2018) < <https://www.mass.gov/files/documents/2018/03/09/12274.pdf> > March 26, 2018.
33. In the latest reauthorization of ESSA, a state ombudsman has been appointed to ensure that private school students receive equitable services. The authors of this paper propose that an additional ombudsman be appointed to oversee the equitable sharing provisions of IDEA. This appointee would also oversee the provision of state special education services to private school students.

