

## Chapter 13

# The Little-Known Case of America's Largest School Choice Program

**Daniel McGroarty**

Imagine an education program not dictated by a rigid, one-size-fits-all course of study, but individually tailored to each child's needs.

Imagine public education not constrained by cost factors, but based on the legally binding promise of a "free appropriate public education."

**What would the American education system look like if all students were considered "special," and therefore worthy of the broad array of choices now accessible only in the company of significant physical, emotional, or mental disability?**

Imagine a *public* system that provides *private* school placement when public schools can't meet students' needs.

Far from being a flight of pedagogical fantasy, such a system does in fact exist today—for the subgroup of students categorized as having disabilities.

The purpose of this chapter is to examine special education not as a *sui generis* program, but as a variation on the school choice theme. Given that most parents of special-needs children see their youngsters' life options constrained by their physical, mental, and emotional challenges, it is ironic that special education should constitute the one branch of American public education that gives parents more choices and control, more involvement and influence than any other. That irony is compounded by the public education establishment's ready acceptance of significant choice elements in the context of special education that are anathema when applied to education more generally.

What would the American education system look like if all students were considered "special," and therefore worthy of the broad array of choices now accessible only in the company of significant physical, emotional, or mental disability?

### Special Education as School Choice

Do parents of special-needs children really have a greater degree of latitude in choosing educational options?

The answer is a "qualified yes," says Sherry Kolbe, executive director of the National

Association of Private Schools for Exceptional Children (NAPSEC),<sup>1</sup> depending to a large degree on the parent and his or her pushiness. Parental involvement in developing a special-needs child's individualized education program (IEP) is required by law, giving parents significant input in shaping both their child's educational program and the setting in which that education will

### **Box 1. A Parent's Perspective (Mother, Washington, D.C.)**

What does the private placement process look like from a parent's perspective? One Washington, D.C., mother whose daughter has Down Syndrome offers this account:

"We found ourselves dependent on the public system, which my husband and I never intended to be. But then you learn by talking to other parents how to make the system work. You register your child—we did that for [our daughter] when she turned three." On the advice of other parents with special-needs children, the mother also "hired a lawyer the minute my daughter turned three."

"Then the public system assesses your child—it's a battery of physical therapists, social workers, psychologists, the whole panoply." The District then proposes a placement based on that assessment: in this child's case, a District public elementary school with a special education program comprising approximately three percent of the overall student body. The parents, leery of an inclusionary placement, decided to contest the District's proposal.

"The problem," recalls the mother, "is that with [the public school placements], so many kids with disparate needs have to be grouped together. I've talked to other parents. Inclusion sounds good, but then you find your child's just put over in the corner of the classroom." The family retained an educational consultant expert in the District's special-needs process and formally requested an administrative hearing to contest the placement proposal.

"We prepared a full IEP. We spent about \$15,000 [in legal and consulting fees] to get ready for the hearing," the mother relates. The day before the hearing was to be held, "we were on a conference call going over what would happen at the hearing, and [the public school representative] made a settlement offer." The child would be placed in a private day school in the suburban Washington area, with the costs paid by the District.

"It's hard to take a vulnerable child into a bureaucracy for assessment," observes the mother. "The whole thing is so regulated by law, it's adversarial to begin with—a really charged situation. But the irony is that the [District's] system is so bad, their placement options are so limited when you're trying to fit a child into a broken system, that you can put together pieces of the program best for your child, and they fund it."

take place. (For a District of Columbia parent's perspective, see Box 1.) Says Kolbe, whose organization assists special-needs families seeking private placements: "The process is quite specific. Parents are required to be there every step of the way. There are requirements that notice be given in the parents' native language, that the meetings be set at a time convenient for

them—and even that the parents have the right to request meetings to review their child's situation whenever they want, as often as they want," not just annually as the law mandates.

Nor are the options for special-needs students limited to traditional private and public schools. The growing charter school movement has spawned a significant effort to serve special-needs students; although the U.S. Department of Education's Office of Special Education Programs keeps no official statistics on the number of charter schools specializing in special education, one OSEP official acknowledged that a significant number of charter schools do so, perhaps as many as 20 percent, or approximately 350 schools nationwide.<sup>2</sup>

**Education writer Jonathan Fox reports that public school districts are paying private school tuition for approximately 2 percent of the nation's 5.6 million special-needs students, or about 126,000 children, "at an estimated cost of \$2 billion to taxpayers."**

How fully parents of special-needs students exercise their educational options is another matter. Kolbe recounts a recent call from a District of Columbia mother requesting help finding a school for her mentally disabled son. When Kolbe inquired as to whether the boy had been assessed by D.C. school authorities and what public placement they had recommended, the mother said her son had been ill and missed the first day of school. "She said they'd told her, 'you missed the assessments—come back next year, and we'll test him then,'" Kolbe says incredulously. "I said, 'Wait a minute. You've got to go back in and push to have your child evaluated now.'"

Other parents do push, securing special consideration—at times under threat of litigation. Nowhere is the range of possibilities more evident than in the practice of securing private school placement at public expense. Although extended to an extremely small percentage of the special-

needs population, the very possibility of private placement creates a precedent for other parents.

To see how much power this puts into parents' hands, consider the case of an engineer from India who researched the best schools for autistic children over the Internet and located one such private school in New Jersey. He proceeded to apply for and win a job at the New Jersey-based Bell Labs, obtained an H1-B skilled-laborer visa, moved his family more than 8,000 miles, and enrolled his son in that school.<sup>3</sup>

If in-state choices are inadequate or inappropriate, parents can press for out-of-state private residential placements, paid for by public funds. NAPSEC's Kolbe tells the story of one California child, deaf and with multiple disabilities, whose family moved 13 times in an effort to find the public school district that would optimize their educational options. "They'd move," recounts Kolbe, "enroll their child in the public schools, and when it became clear the [public] in-school programs weren't helping their child, they'd push for alternate arrangements. If the school wasn't willing to talk about a private placement, they'd move again and start the whole process over." In the end, the family found a California public school district that would approve a private school placement. "That's where they've lived ever since," concludes Kolbe.<sup>4</sup>

How widespread is private placement nationally? According to the U.S. Department of Education,<sup>5</sup> 1,387 private schools—or about 5 percent of the private school universe—specialize in serving special-needs students. Of course, not all special-needs students attend private schools, nor do all of those who attend private schools do so at public expense. Using both federal data and industry estimates, education writer Jonathan Fox reports that public school districts are paying private school tuition for approximately 2 percent of the nation's 5.6 million special-needs students, or about 126,000 children, "at an estimated cost of \$2 billion to taxpayers." Nearly half of those students receive private placement at full public expense, while the others receive partial public support. With private placement ranging from paying tuition at day schools to meeting all costs at residential facilities for more severely challenged students, costs routinely range from \$20,000 to \$60,000 per child per year.<sup>6</sup>

**NAPSEC executive director Sherry Kolbe notes, "We get calls every day from parents who say, 'We've taken out a second mortgage, we'll pay what it costs—we're just tired of fighting the [public] system.'"**

Not that private placements for special-needs students are in any way automatic, says NAPSEC's Kolbe. "I've had [public school] special education teachers tell me, 'We're not allowed to tell parents private placement is an option.' And even when public school administrators do [talk about private placement], they make it sound unattractive—like it's segregating special-needs students to take them out [of public schools]." Kolbe notes the hypocrisy in the public school position: "They like to say that 'only the public schools have to educate all kids.' But meanwhile, in the Chicago public schools, under a no-exceptions 'zero tolerance' policy, they've suspended and expelled 44,000 kids—in just one year."

Kolbe continues: "In terms of policy, public schools are the placement of preference for special-needs kids. We get calls every day from parents who say, 'We've taken out a second mortgage, we'll pay what it costs—we're just tired of fighting the [public] system.'"

Not all states take a hostile stance toward private placement. As an exception, Kolbe cites Maryland: "It's a great system there. They see the value of private placement—that [public and private systems] can work hand-in-hand to do what's best for each child." Kolbe does, however, see in other states rising evidence of resistance to the high cost of private placement: "Dollars aren't supposed to enter into it, but they do." As proof, she cites a recently revised New York State budget mechanism that, although purporting to be "placement neutral," puts in place dollar incentives to encourage school districts to place fewer special-needs students in private schools.<sup>7</sup> Says Kolbe: "The public schools are pressured not to pay for [private placements]. In Massachusetts, for instance, 600 special-needs students are served out of state. The public system doesn't like to lose that money, so they're looking for ways to bring those kids back into the public system. But even if all those kids were brought back [to public schools], they have no idea whether they could be educated—and what it would cost." Indeed, as Jonathan Fox observes, "The truth is that little research has been done on special education outcomes or the average state spending per disability in private schools."<sup>8</sup> Public education officials may decry the sums involved, but it is entirely possible that, for certain types of disabilities, private school

out-placement may be the most efficient option.

The possibility of private placement serves to highlight equity issues because the high cost of special education forces public systems to make hard choices in allocating education dollars. Witness an experimental early-intervention autism program in Fairfax County, Virginia, that offers intensive home treatment to preschool children at an annual cost of about \$30,000 per child versus \$8,203 for the average Fairfax student.<sup>9</sup> Observing that open-ended special-needs funding saps dollars from general education students does nothing to settle the question as to where limited dollars should be directed. Says one Virginia parent of a special-needs child: "It isn't a fair argument to say your child needs a computer in his classroom when my child is facing institutionalization."

**Special education costs run rampant: Although approximately 11 percent of D.C. students are categorized as special-needs, the program consumed nearly 30 percent of all school funds in 1999.**

As parents and educators grapple to set the boundaries of special-needs policy, they do so with the heavy involvement of a third party—the courts. As former Reason Foundation researcher Janet Beales notes, the Individuals with Disabilities Education Act (IDEA) "mandates that every child with a disability be provided with a free and appropriate public education—regardless of cost. Because the term 'free appropriate public education' (or FAPE) has never been well-defined, parents and educators often disagree over how a child is to be educated, which can lead to intense litigation." Indeed, the 13 IDEA disability categories may be established by law,<sup>10</sup> along with a general state responsibility for providing a continuum of services across the disability spectrum, but how states meet this requirement—in particular, whether and how often they provide private school placement—varies widely from state to state and even district to district. Add

to that the fact that services are being provided to students whose conditions range from mild learning disabilities and behavior problems, where differences in diagnoses are possible, to more severe and self-evident physical and mental conditions including severe emotional disturbance, blindness, deafness, and retardation, and it is easy to see how the lack of uniformity amounts to an invitation to litigation.

## A Tale of Two Systems

Because the degree of choice extended to special-needs students depends in large part on parents' pushiness, it should come as no surprise that, in many school districts, there is not one special education system, but two, separate and unequal. This dual system, depending on the degree of parents' savvy and persistence, unlawfully deprives some special-needs students of essential services promised by federal law while providing others with premium private education at public expense.

To see how these two systems coexist, witness the District of Columbia. With the start of each new school year, readers of the *Washington Post* encounter "exposés" about special-needs students stranded at home, missing school because their bus never arrives. Admittedly,

Washington, D.C., presents an extreme case: So chaotic is the District's special education office that school officials admit they don't even have a solid count of the number of special-needs students in the system<sup>11</sup>—to say nothing of the quality of education services they receive.

Indeed, in addition to the system's approximately 8,000 special-needs students, as recently as early 1999, 5,000 more languished on waiting lists at various stages in the assessment process, a violation of federal law. Costs run rampant: Although approximately 11 percent of D.C. students are categorized as special-needs, the program consumed nearly 30 percent of all school funds—\$170 million out of \$575 million—in 1999.<sup>12</sup>

Contrast the unfortunate experience of those 5,000 wait-listed children with the 1,500 disabled D.C. students enrolled in private schools, at an annual public cost in 1999 of \$44 million, or nearly \$30,000 per student. By 2000, then-D.C. School Superintendent Arlene Ackerman was asking for \$100 million for transportation and private school tuition payments for this special-needs cohort.<sup>13</sup> In a system where the superintendent acknowledged that special education was in such chaos that it could take five years to fix, the head of one District special education advocacy group asked: "And we wonder why so many parents fight to send their children to private schools."<sup>14</sup>

From a public policy perspective, the Washington, D.C., experience presents an unattractive picture: activist, often affluent parents aggressively "gaming" the system to obtain special options paid for by the public—in some instances with the public school system even reimbursing them for hiring private lawyers to sue the public schools—while poor, predominantly minority parents find their special-needs children treated like "non-persons" by the same school system.<sup>15</sup>

Such is the state of special education as a genre of school choice in America.

## From Rhetoric to Reality

Is it possible to remedy the inequities of the *de facto* "choice" system that exists in special education at present, not by eliminating the degree of parental choice that exists for some families, but by extending greater choice to all parents of special-needs students?

For opponents of private school choice, the idea that vouchers might benefit special-needs students is dismissed out of hand. Indeed, private schools' alleged refusal to educate special-needs students is often advanced as a potent argument against vouchers. Says Sandra Feldman, president of the American Federation of Teachers: "Private schools are not required to accept special education students." Or as a prominent Milwaukee anti-school choice activist asserts, "Kids with learning disabilities...kids who have behavioral problems, kids who have been involved in the juvenile criminal justice system: Those kids get left behind [by school vouchers]

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because...a lot of private schools...don't have to take them, so that leaves it for public education to deal with those children."<sup>16</sup>

Are such charges true? Do private schools shun special-needs students, as critics contend? Or could more widespread private school choice expand educational options for special-needs children?

With private school tuition averaging \$3,116 per year<sup>17</sup> and true per-pupil costs averaging perhaps a thousand dollars more,<sup>18</sup> serving special-needs students constitutes a formidable financial challenge. Educating special-needs students even on the mild end of the disability spectrum is costly. As Janet Beales noted in her study of the Los Angeles school system's special education expenditures, "Taking total costs into account, the average cost of educating a student with a disability in the Los Angeles Unified School District was approximately \$11,500 during 1991-92. For non-disabled students, spending averaged \$4,000 per pupil."<sup>19</sup> Advocates of public education aggressively argue the need for additional funds for educating their own special-needs students—even as they adamantly oppose providing private schools supplemental vouchers to do the very same thing.

The implications for school choice programs are obvious. As Polly Williams, the African-American legislator who was the driving force behind passage of Milwaukee's seminal Parental

### **Milwaukee Parental Choice Program**

*First Year in Operation:* 1990-91

*Eligibility:*

- 175% of federal poverty level
- Resident of Milwaukee
- Students selected by lottery, if more applicants than seats available

*Value of voucher:*

- \$5,300 in 2000-2001
- No adjustment for special-needs students

*Current participation:*

- 9,638 students at 105 schools in 2000-2001
- Program capped at 15 percent of Milwaukee's public school enrollment, or approximately 15,000 students

Choice Program in 1990, told this author years ago, "We can't expect...private schools to do with \$2,500 what the public schools do with \$15,000. I call it MPS [Milwaukee Public Schools] math: They want to give choice schools all of the regulations and one-sixth of the money."<sup>20</sup> Williams' logic was that the city's private schools were willing to educate special-needs students if the state would give them "cost-plus vouchers," adjusted to meet the higher cost of educating such youngsters—which, of course, enemies of the Milwaukee voucher program would never permit.

Because Wisconsin's Parental Choice law makes no distinctive provisions for special-needs students, no one knows precisely how many choice children would warrant special-needs classification, save for those enrolled at specialized facilities such as Milwaukee's Lutheran Special School.

Interviews with administrators at Milwaukee choice schools suggest, however, that the voucher program attracts disabled students at a rate similar to their percentage in the Milwaukee Public Schools, or approximately 12 to 15 percent. (See Box 2 for a parent's perspective on the Milwaukee Parental Choice Program.) With the Parental Choice Program serving over 9,600 students citywide, it is likely that the number of special-needs children receiving vouchers

### **Box 2. A Parent's Perspective (Single Mother, Milwaukee)**

This woman has three children, all of school age, the oldest of whom has attention deficit disorder (ADD) as well as a history of physical ailments that have necessitated periodic hospital or home stays, placing further strains on the boy's educational progress. She has enrolled her son in both public and private schools at various times. She now enrolls him in a private school via the Milwaukee voucher program. This mother views the evaluation process leading to an IEP in negative terms, and has resisted repeated public school recommendations to have her son formally evaluated.

"I didn't want the label on him. I don't want it following him through school, so every time there's any problem, they go to the file and say, 'Well, you see?' But they [administrators at the public school her son attended as a 5th grader] just kept pushing me, so finally I saw the school psychologist, and she asked to see my son. So I asked [my son], would he see her, and he said, 'Sure, Mom. What do they think is wrong with me?' It hurt me to hear that. So when the psychologist said her recommendation was to have him tested, we were right back where I started.

"Everyone kept saying, 'We can give him better service if he's tested,' but they could never spell out just what that would mean. I asked them, but after a while I just started to think what the labeling would do was get the school more money.

"It wasn't that I didn't want my son to see someone who could help. In fact, there was a point when I was married and I had health insurance covering psychological visits, and I had my son evaluated privately. He saw three different doctors at that time, and one of them wrote up a letter about the best ways to teach my son, by visual learning and not just lectures or reading textbooks—that kind of thing. It wasn't an IEP, but I showed it to each teacher at the beginning of the year because I thought it could be a help.

"At [his private school], he's not labeled, and he's making dramatic improvement. The way he talks about school, you can tell he thinks he can learn. And his behavior at school is so much better—the teachers are pleased, and he's happy that they're happy.

"I've had my son in public schools and private schools at different times, whichever I thought would be best. But where he is now is the first school that's really figured out how to teach [my son], not just how to label him."

exceeds 1,200.

One would not know this from the media, however, nor from the rhetoric of program opponents. Because choice schools do not typically have the resources to test and classify disabled youngsters—and since the state statute establishing the program is silent on the subject of special-needs students—opponents of Milwaukee's voucher program continue to claim that special-needs students are not served, even as a steady flow of IEP students moves out of the city's public schools and into private schools of choice.

What these observations suggest is that we know too little today about how special education works in the school choice setting—and what little we think we know may well be wrong. What



follows are snapshots from each of the three publicly financed school choice programs that have been enacted by state legislatures—the Milwaukee, Cleveland, and Florida programs.<sup>21</sup> Together, they help round out the picture of how school choice serves special-needs students in America today.

## Milwaukee

How do Milwaukee's choice schools cope with the challenge of special-needs students? At Marva Collins Prep, a K-6 school on Milwaukee's Near North Side now in its fifth year of operation, the school policy is not to "label" students. As Principal Robert Rauh explains, the non-labeling approach owes in equal parts to the school's philosophy and to the design of the admissions mechanism of the Milwaukee Parental Choice Program. "First of all, Marva Collins' philosophy is that 'all children can learn,'" says Rauh. "So there's a general attitude that, given our philosophy, there's no reason to label our students. But second, the way [the Milwaukee Parental Choice Program] is structured, it's a blind admissions policy," Rauh continues. "If we agree to put our school into the choice program, it's the parents who choose us. And since we don't pick our students, putting labels on them wouldn't get us any additional funds"—in contrast to the extra monies allotted for special-needs children in public schools. For

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When choice students arrive at Marva Collins, however, Rauh finds that as many as 12 to 15 percent of them would in fact warrant designation as special-need students, "whether it would be various learning disabilities or ADD."<sup>22</sup> Rauh hastens to add that categorizing students matters little compared with assessing their individual educational needs: "We work to where the student is, and bring them forward."

At present, Marva Collins enrolls four students with more severe special needs, three of whom attend the school via Milwaukee's voucher program. One child experienced brain trauma at birth, says Rauh. "He'd been in a special education program as a K-4 student in MPS [Milwaukee Public Schools]. He came to our school, and we had him repeat K-4 again. We ended up hiring a part-time teacher's assistant basically dedicated to him." The boy's family happens to be just above the income limit that would qualify them for a voucher [the limit is an income no higher than 175 percent of the cutoff for the federal free- or reduced-price lunch program], "so we're not getting anything through the Parental Choice Program for him," says Rauh. Indeed, the child's parents are paying approximately \$2,000 a year tuition for their son: "It's all they can afford—really more than what they can afford," says Rauh.

Another boy at Marva Collins, also a transfer student from MPS, had been in a prolonged coma several years earlier. Rauh reports that the boy's parents are considering transferring the child to the Lutheran Special School, established for the sole purpose of educating special-needs children. "We have another girl who's been with us from K-5, who is mentally retarded, and

another girl—again another MPS transfer—with serious emotional disabilities.” Regardless of the additional costs of educating these children, each child carries a voucher worth the same \$5,300 as every other student in Milwaukee’s Parental Choice Program.

I asked Rauh why parents of such children would choose Marva Collins over public schools that offer special-needs programs. “Our classrooms are smaller, they’re very structured,” he responds. “I guess parents come in and see the way we work, and decide we’re right for their child—whether or not we officially serve special-needs kids.”

When asked how the school affords even part-time special staff, Rauh answers readily: “We just take a hit on it. It’s costing us about \$10,000 for special assistance for just the four students I mentioned.” Rauh relates that there used to be a Head Start program housed in the same building as his school. “Their speech pathologist used to keep working with her [Head Start] kids, even after they came to [Marva Collins]. But that’s gone now. So far, [incurring the added expense] hasn’t been a huge problem because there hasn’t been huge demand.”

Aware of how tenuous such a position may be as policy, Rauh continues: “There was a time when we looked at converting to charter status,” a move that would have entitled the school to \$6,494 per pupil, rather than the \$5,300 provided by the Milwaukee Parental Choice Program, “but we dropped the idea. Special money always comes with strings attached,” concludes Rauh.

Three miles west of Marva Collins, Lutheran Special School serves 32 special-needs students in Grades 1 through 8, 13 of whom attend via the Milwaukee Parental Choice Program. Principal Judy Schultz describes her students as “on the mild end of the special-needs spectrum: cognitively disabled, ED [emotionally disabled] kids, LD [learning disabled], ADD [attention deficit disorder] and ADHD [attention deficit hyperactivity disorder], gray-area kids [a Milwaukee Public School designation]—plus several students with cerebral palsy. We’re not set up to serve students with severe physical disabilities.”<sup>23</sup> Supported by the Lutheran Church Missouri Synod, Lutheran Special School opened its doors in 1958. It has participated in the choice program for the past three years, since the Wisconsin Supreme Court upheld the constitutionality of the expansion of the program to religious schools.

“Our tuition is \$2,900 a year for members of the Lutheran Church Missouri Synod,” Schultz explains, “and \$3,500 otherwise. We have a handful of kids whose families actually pay full tuition.” Schultz adds that she regularly “writes off” about 20 percent of tuition due the school: “We call it tuition assistance, but it’s really just what the families can’t pay.” Lutheran Special School’s full cost of education is about \$8,400 per student, says Schultz, with the difference being supplied by charitable giving from individuals and institutions. The 13 choice students bring vouchers in the amount of \$5,300 apiece, which—though equal to just 60 percent of the

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true per-pupil cost of public education—has been a stabilizing factor in the school's finances.

Lutheran Special School first opened one-fifth of its full-enrollment slots to choice students in 1998; it now allots one-fourth. "We wanted to see how it worked," relates Schultz. "It's helped us financially. There really hasn't been a downside. We've enrolled more African-American students through the choice program," Schultz continues, noting the program's positive impact on the school's diversity. "Now our student population is about 50-50, half white kids and half African-American, plus two Asian-American students."

Schultz notes one irony, given critics' charge that choice schools cherry-pick the best students: "Under the random assignment rules of [the choice] program, we don't get the students' records to look at before they select us. So sometimes we get general education kids—kids who don't really need the kind of education we provide."

### **Cleveland Scholarship and Tutoring Program**

*First Year in Operation:* 1996-97

*Eligibility:*

- Priority given to students from families with income below 200 percent of the federal poverty level
- Grades K-7 eligible in 2000-2001; program expands one grade per year
- Resident of the Cleveland Municipal School system
- Students selected by lottery if more applicants than scholarships available

*Value of voucher:*

- Maximum of \$2,250 for 2000-2001 year
- Parents responsible for 10 percent of tuition
- Value of voucher for special-needs students is open-ended; must reflect the instruction, related services, and transportation costs of educating such students

*Current participation:*

- 3,688 students at 50 schools in 2000-01

In addition to the students who attend Lutheran Special School, Schultz deploys two school psychologists, one full- and one part-time, to 60 other Lutheran schools across southern Wisconsin, including four Lutheran grade schools in Milwaukee that participate in the Parental Choice Program. "The need [for special education services] is huge. The four Milwaukee schools have a total student population of about 400," says Schultz, "and of that, about one-third of those students see our consultants for special-needs services." With no supplemental assistance from the Parental Choice Program for this outreach program, Lutheran Special Schools absorbs its cost.

## **Cleveland**

As in Milwaukee, anecdotal evidence from Cleveland indicates that special-needs students on the milder end of the disability spectrum routinely utilize vouchers to obtain private school placement. Indeed, according to one source closely involved with the Cleveland Scholarship Program, although the public school system remains officially opposed to the program, vouchers have proven a welcome safety valve for public schools anxious to off-load difficult children: "I know in the case of one [public] school, when some of the students used vouchers to enroll at [a nearby private school], their old teachers threw a going-away party."<sup>24</sup>

Other participants suggest, however, that the voucher program works both ways: At one Cleveland choice school, an administrator's off-the-record observation is that some of the "learning disabled" students coming to his school via vouchers proved, upon additional testing, not to be special-needs students at all, raising the possibility that a certain amount of budget-driven over-classification may be occurring in the Cleveland Public Schools. "It's like there's a bounty on these kids; in the public system, special needs bring special funding," says the private school administrator.

"The sending [public] school wouldn't forward student files," says the administrator, "so we had kids coming in in September, and from the point of view of the teacher and the student, it was a fresh start. Then in April, when the school year was almost over, the file would arrive, and we'd see these kids labeled as special needs. We'd look at their test scores and the progress they'd made since they started with us, and say, 'No way.'

"We had one boy, 10 years old, come in labeled 'special needs.' His file was full of evaluations and reports, but when we sat him down with our counselors, we found despite all those reports that no one had ever really talked to the child. His mom worked two jobs, one in the morning and one at night, and here this 10-year-old-boy was going home from school, picking up his younger siblings, making them dinner, bathing them, and getting them to bed. Then he was up in the morning to get them fed and dressed so they could be picked up for preschool. By the time he came to school, he wasn't ready to learn, he was exhausted. He just wanted people to leave him alone. We got his mother some help, and he just blossomed. Thing was, in 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."<sup>25</sup>

Although Cleveland may have such experiences in common with Milwaukee, one sharp difference remains: By statute, Cleveland special-needs students who qualify for the choice program are entitled not to the ordinary \$2,250 voucher, but to a voucher that, in the open-ended wording of the law, "take[s] into account the instruction, related services, and transportation costs of educating such students."<sup>26</sup>

To date, only one Cleveland private school enrolls students under this provision: The Hanna Perkins School, an institution dating back to the early 1960s, whose mission is to educate "children with developmental difficulties, emotionally based," explains executive director Joan Horwitz.<sup>27</sup>

At Hanna Perkins, individually tailored education is the norm, and each student's family works with a therapist to strengthen the connection between school and home environments. Hanna

***By statute, Cleveland special-needs students who qualify for the choice program are entitled to a voucher that, in the open-ended wording of the law, "take[s] into account the instruction, related services, and transportation costs of educating such students."***

Perkins charges \$9,000 annual tuition, an amount Horwitz says does not reflect the true cost of educating each child, which runs over \$12,000 per student. "We're fortunate to have an endowment, as well as funding from the United Way," she notes.

Located near the campus of Case Western Reserve University and the renowned Cleveland Clinic, but also just blocks away from Cleveland's impoverished Hough Avenue neighborhood, Hanna Perkins' 40-student population is remarkably diverse: "We've got families from Bangladesh, Pakistan, and China," says Horwitz. "We've got white kids, Hispanic kids, and African-American kids, from all different income levels, too. Some pay full tuition [\$9,000 per year], while others are 'dollar-a-day' families,"<sup>28</sup> making the minimum "co-pay" required by the Cleveland Scholarship Program (\$250 per year).

Hanna Perkins runs three programs: One for toddlers, a half-day preschool, and a kindergarten program. Only the kindergartners, Horwitz explains, are eligible to participate in the Cleveland Scholarship program. Four of the school's 12 kindergartners attend via the voucher program, which pays Hanna Perkins \$9,000 per student, four times the value of an ordinary voucher.<sup>29</sup> "It's been a good experience," says Horwitz of Hanna Perkins' participation in the program.

"It's giving children a chance to come [to Hanna Perkins] that they would never have had before," she continues. "It's been a positive experience for both our students and our school."

### **Florida Opportunity Scholarships for Students with Disabilities**

*First Year in Operation:* 2000-2001

*Eligibility:*

- Student must demonstrate failure to improve in prior public school

*Value of voucher:*

- Equal to pupil's public school funding
- Range is from \$6,000 to more than \$20,000 per student, depending on severity of disability

*Current participation:*

- 1,100 students statewide in 2000-2001
- 105 private schools in 36 school districts

Horwitz can only speculate about what will happen when her kindergartners graduate to first grade and leave Hanna Perkins behind. Will they enroll in another private school under the Cleveland Scholarship Program's special-needs provision? Thus far, the only voucher student who has left Hanna Perkins enrolled in a Catholic special education school that does not participate in the Cleveland Scholarship Program. "The program's been good for us," says Horwitz. "We'll just have to wait and see if other schools come in."<sup>30</sup>

## **Florida**

Florida won national attention in 1999 for establishing the first statewide voucher program—albeit limited to students attending failing public schools. Less well-known but equally important is the step Florida took in the 2000 legislative session to extend school choice to the state's vast special-needs population.

The brainchild of then-state senator, now Senate president John McKay, Florida's special-needs voucher is an example of the way politics can make use of paradox, turning legal setback to legislative gain. McKay drove the expansion through a legal loophole left by state Circuit Court

Judge L. Ralph Smith, who, at the urging of the American Federation of Teachers, the National Education Association, the ACLU, and People for the American Way, struck down the voucher component of Governor Jeb Bush's Florida A+ plan on March 14, 2000. (In October 2000, a state appeals court reversed that ruling.)

A supporter of Bush's omnibus education plan and particularly its "Opportunity Scholarship" component, McKay had been following the court case closely. With a special-needs child of his own, McKay was well aware that Florida paid private schools to educate a small number of disabled students who could not be accommodated in public schools. When the state's attorneys argued that invalidating the voucher component of the A+ program would strike at public assistance to Florida's special-needs students in private school placements, McKay took note. When Judge Smith struck down the governor's voucher program but left standing the state's private outplacement of special-needs students—on grounds that special education students differ because they have needs that cannot be met by public schools—McKay took action.

As he describes it, Senator McKay interpreted Judge Smith's constitutional carve-out for special-needs students as an invitation. "I grew up in a small country town," deadpans the canny McKay, "so I won't say the light went on immediately, but in my layman's terms, I saw an opening."<sup>31</sup> With Florida's abbreviated legislative session fast approaching, McKay prepared a bill to "voucherize" funding for all special-needs students across the state who weren't succeeding in public school. His vehicle: a simple amendment to a little-noticed section of the Governor's A+ plan that had been spared by Judge Smith.

**Florida won national attention in 1999 for establishing the first statewide voucher program. Less well-known but equally important is that the Florida legislature extended school choice to the state's special-needs population in 2000.**

"When [Governor Bush] proposed his A+ Plan, I told him I'd be there, provided he put in a pilot program for special-needs children," explains McKay.<sup>32</sup> Bush did, establishing a one-city experiment that McKay designated for Sarasota. While national public attention in August 1999 focused on the 52 children using vouchers to leave two failed public schools in Pensacola, little notice attended the two Sarasota special-needs children who used McKay's Scholarships for Students with Disabilities to enroll at the private school of their choice. As a pilot project, the legislation identified the special-needs voucher as specific to Sarasota; McKay's amendment in the wake of Judge Smith's ruling simply deleted the Sarasota reference. The result: Special-needs scholarships would henceforth be available to any student across the state.

With Florida's legislative session racing to a close, McKay pursued a stealth strategy: "I didn't even call a press conference about [the amendment]," he says. Yet traditional voucher opponents saw huge implications in the small change. "We're adamantly opposed to it," said Wayne Blanton, executive director of the Florida School Boards Association. "We're opposed to vouchers, and that's a backdoor approach to vouchers."<sup>33</sup> When McKay offered his amendment on the Florida Senate floor, however, opposition was muted. "Nobody wanted to attack head-on," recalls McKay. "Every objection was put forward as a kind of question about the program.

So when the person was done, I just said, 'Thank you for your concern about Florida's special-needs children.' I did that a few times, and folks got the message as to how it would look if they opposed [McKay's plan]." Having deflated the opposition, McKay's plan passed without incident. Special-needs students would be eligible to request vouchers for the 2000-2001 school year.

**For the 2000-2001 school year, 105 private schools in 36 of Florida's 67 school districts indicated they would accept students enrolling with special-needs scholarships.**

McKay's program differs in significant respects from the "failed schools first" approach favored by Governor Jeb Bush. In contrast to the Opportunity Scholarship program—under which vouchers are available only to students attending public schools that receive two "F's" for student achievement in any four-year period<sup>34</sup>—special-needs students are eligible for vouchers if they demonstrate failure to improve at their public school, regardless of whether their school has received a poor grade from the state. Pat Heffernan, executive director of Floridians for School Choice, a Miami-based advocacy group supporting vouchers, lauds McKay's approach for focusing on individual student

performance rather than school-wide achievement: "The [special-needs] scholarships are available not based on how public schools are doing, but based on how students are doing, so that's closer to the original vision."

According to the statute, special-needs scholarships are available, so long as:

- the student has an active IEP or family support plan;
- the student's academic progress in at least two areas has not met expected performance levels for the previous year as determined by the student's IEP—or, absent specific performance levels identified in the IEP, the student performed below grade level on state or local assessments and the parent believes that the student is not progressing adequately towards his/her IEP goals; and
- the scholarship is requested prior to the time at which the number of valid requests exceeds the districts' cap for the year in which the scholarship will be awarded.<sup>35</sup>

For the 2000-2001 school year, 105 private schools in 36 of Florida's 67 school districts<sup>36</sup> indicated they would accept students enrolling with special-needs scholarships.<sup>37</sup>

"The way the program is designed, students are supposed to carry over [to the private school] the funds allotted to their education in public school," says Heffernan. "Not a penny more, not a penny less."<sup>38</sup> As a result, the value of Florida's special-needs vouchers dwarfs even the most ambitious proposals advanced in other states. Private schools will receive between \$6,000 and \$20,000 per child, depending on the severity of a child's disability, but they must accept all applicants if they sign up to participate in the program.

In August 2000, with the new school year just weeks away, Florida's new special-needs voucher program was essentially still a secret, hampered by a low-key effort to notify eligible parents. As one Florida news account put it: "The quiet start of the new 'Scholarship Program for Students

with Disabilities' has provided a curious contrast to Florida's first voucher program for students from failing schools."<sup>39</sup> Another newspaper observed, "In Miami-Dade County, where 39,000 children are eligible, just 51 parents had picked up applications for the state program. In Broward, where there are 28,000 such children, only 35 parents have made telephone inquiries."<sup>40</sup> Once a long-awaited letter from the state commissioner of education was sent to parents of disabled children statewide and the program's initial enrollment deadline was waived, the number of special-needs students receiving scholarships grew to 1,100 by mid-October.<sup>41</sup>

**School choice may well be a way to serve special-needs students in keeping with the expansive ideal that originally animated the IDEA.**

Florida's barely-known special-needs voucher program started its first year with twenty times as many students as the state's much-watched Opportunity Scholarship Program, an initial enrollment that makes it the third largest publicly funded voucher experiment in the nation. With 350,000 Florida children categorized as "special-needs" students, Senator McKay's deletion of a few statutory words has the potential to create the country's largest private school choice program. Indeed, McKay predicts that the next phase will see the creation of new special-needs schools and expansion of existing schools to accommodate more students. "It's a simple case of supply and demand. That's what I see the next few years out."

Yet what moves McKay is the need to level the playing field for parents of disabled children. "I'd filed bills [for special-needs vouchers] before," says the Senator, referring to efforts he'd made in the early 1990s. "I talked with the state education commissioner," recalls McKay. "I told him, 'Look at what happens when parents come in with a lawyer who can quote the case law. The state ends up paying for private placement.' We were doing a great job of empowering the powerful. My question was: What about the rest of parents?"

"This program is for them," says McKay.

## Conclusions and Recommendations

Clearly, choice can be a valuable tool in serving the educational needs of disabled children. Today, however, disabled students are caught up in a separate and unequal system, one that "empower(s) the powerful," as Senator McKay puts it, while treating other special-needs students as second-class citizens. As we've seen, choice in special education can be highly dependent on whether a special-needs child has parents with sufficient energy, interest, ability, and often income to press for the student's full range of rights.

As in all considerations of public policy, our assessment of special-needs programs should be guided by considerations of both *efficacy* and *equity*: What works—and for whom? For policymakers troubled by the separate and unequal aspects of special education today, existing school choice programs—Cleveland, with its special-needs provision, and particularly Florida, with its ambitious effort to "voucherize" special education—point to a possible remedy. School choice might well be a way to serve special-needs students in keeping with the expansive ideal that originally animated the IDEA.



Looking beyond special education to education reform in general, those who believe that individualized education and parental choice are positive values for special-needs students might well ask themselves: What would be wrong with extending more individualization and choice to all children?

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<sup>1</sup> Sherry Kolbe, executive director, National Association of Private School for Exceptional Children, telephone interview with author, 1 August 2000.

<sup>2</sup> Troy Justison, Office of Special Education Programs, U.S. Department of Education, telephone interview with author, 11 January 2001.

<sup>3</sup> See Iver Peterson, "High Rewards and High Costs as States Draw Autistic Pupils," *New York Times*, 6 May 2000, sec. A, p. 1.

<sup>4</sup> Kolbe, telephone interview with author, 8 September 2000.

<sup>5</sup> National Center for Education Statistics, data from "Private School Universe Survey, 1997-98," provided by Vance Grant, U.S. Department of Education, 10 January 2001.

<sup>6</sup> Jonathan Fox, "Sending Public School Students to Private Schools," *Policy Review* no. 93 (1999). Cost range confirmed by NAPSEC's Kolbe.

<sup>7</sup> Kolbe, telephone interview with author, 1 August 2000.

<sup>8</sup> Fox, "Sending Public School Students to Private Schools." On the difficulties in measuring inputs and their impact, Janet Beales cites special education finance scholar Thomas Parrish:

Of the 24 states responding to a recent survey administered by the national Center for Special Education Finance (CSEF), exactly one-half reported that they did not know the statewide cost of their special education programs. In addition, while national special education data were reported for the 1982-83 through 1987-88 school years, the federal government no longer requests these data from the states. While three different studies measuring the cost of special education to the nation have been conducted since the inception of the IDEA, the last of these was completed in 1988 and reported data from the 1985-86 school year. Thus, as there is no current information on the national expenditure for special education, the CSEF estimate of over \$32 billion, presented at the beginning of this paper, is based on 10-year-old estimates.

Janet Beales, "Meeting the Challenge: How the Private Sector Serves Difficult-to-Educate Students," Reason Public Policy Institute Policy Study No. 212, August 1996.

<sup>9</sup> See Victoria Benning, "Fairfax Autism Program Ignites Battle Over Access," *Washington Post*, 30 June 2000, sec. A, p. 1.

<sup>10</sup> According to Section 602(3) of the amended Individuals with Disabilities Education Act (1997), disabilities are defined as follows:

(3) CHILD WITH A DISABILITY—

(A) IN GENERAL—The term 'child with a disability' means a child—

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) CHILD AGED 3 THROUGH 9—The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive

development; and

(ii) who, by reason thereof, needs special education and related services.

<sup>11</sup> See Valerie Strauss, "Special-Ed Woes Persist in the District," *Washington Post*, 15 March 1999, sec. B, no. 1.

<sup>12</sup> See *ibid.*

<sup>13</sup> See Debbi Wilgoren, "School Money Plan Pleases No One," *Washington Post*, 20 January 2000, sec. B, no. 7.

<sup>14</sup> Strauss, "Special-Ed Woes Persist in the District."

<sup>15</sup> Two years ago, Congress attached to the D.C. appropriations legislation a provision that limits attorney fees for special education cases to \$50 an hour, capped at \$1,300 per student. Done to prevent the payment of open-ended legal costs to parents suing the public system for preferred placement, the measure has had the paradoxical impact of discouraging D.C. attorneys from taking special-needs cases brought to them by poorer parents, whose inability to pay made the prospect of public reimbursement the only payment option.

<sup>16</sup> Tammy Johnson of Wisconsin Citizen Action, as quoted with Sandra Feldman in Howard L. Fuller's "The Saturation Campaign of Lies and Distortions About Educational Vouchers," Marquette University/Institute for the Transformation of Learning, March 2000. Fuller's study is a devastating compendium of what he terms "a conscious effort to contaminate public debate" on the part of voucher opponents.

<sup>17</sup> This figure is for 1993-94, the last year for which U.S. Department of Education data are available. It should be noted that the range of private school spending is notoriously wide, with Lutheran day schools averaging as little as \$2,200 and boarding school tuition at the other end of the spectrum at \$19,200. Vance Grant, U.S. Department of Education, interview with author, 11 January 2001.

<sup>18</sup> Although the U.S. Department of Education does not track private school per-pupil costs, the Department's Vance Grant estimates private school per-pupil costs averaged \$4,085 in 1997-98. *Ibid.*

<sup>19</sup> See Beales, "Meeting the Challenge."

<sup>20</sup> Daniel McGroarty, *Break These Chains: The Battle for School Choice* (Rocklin, CA: Prima Publishing, 1996): 88.

<sup>21</sup> Milwaukee's Parental Choice Program dates to 1990-1991, while the Cleveland program began in 1996-1997 and Florida's statewide voucher program started with students from two schools in Pensacola in 1999-2000.

<sup>22</sup> Robert Rauh, principal, Marva Collins Prep, interview with the author, 10 August 2000.

<sup>23</sup> Judy Schultz, principal, Lutheran Special School, telephone interview with the author, 20 September 2000.

<sup>24</sup> Confidential telephone interview with author, 20 July 2000.

<sup>25</sup> Confidential interview with the author, 26 September 2000.

<sup>26</sup> Section (2) of the statute establishing the Cleveland Scholarship and Tuition Program states: "The state superintendent shall provide for an increase in the basic scholarship amount in the case of any student who is a mainstreamed handicapped student and shall further increase such amount in the case of any separately educated handicapped child. Such increases shall take into account the instruction, related services, and transportation costs of educating such students."

<sup>27</sup> Joan Horwitz, executive director, Hanna Perkins School, telephone interview with the author, 11 August 2000.

<sup>28</sup> Horwitz, telephone interview with the author, 14 September 2000.

<sup>29</sup> J.C. Benton of the Ohio Department of Education, whose division oversees the Cleveland Scholarship program, confirms that, at present, the four students at Hanna Perkins are the only students being served under the special-needs provision of the Cleveland voucher statute. Telephone interview with the author, 26 September 2000.

<sup>30</sup> Horwitz, telephone interview with the author, 17 January 2001.

<sup>31</sup> John McKay, president, Florida State Senate, telephone interview with the author, 18 September 2000.

<sup>32</sup> *Ibid.*

<sup>33</sup> Shelby Opper, "Vouchers Proposed for Disabled Students," *St. Petersburg Times*, 3 May 2000, sec. B, p. 5.

<sup>34</sup> In the 1999-2000 school year, two public schools in Pensacola received F's, making their students eligible for vouchers. Fifty-two students used those vouchers to attend the private school of their choice. In the summer of

2000, none of the state's 60-plus "1-F" schools received a second consecutive F, leaving the Pensacola students the only children eligible for Opportunity Scholarships.

<sup>35</sup> See the following Florida Department of Education site:

<<[www.opportunitieschools.org/osas/spswd/law.pdf](http://www.opportunitieschools.org/osas/spswd/law.pdf)>>.

<sup>36</sup> As of October 18, 2000. For a current tally of schools and districts participating, visit the following Florida Department of Education site: <<[www.opportunitieschools.org](http://www.opportunitieschools.org)>>.

<sup>37</sup> See Stephen Hegarty, "Disabled Step Up Use of Vouchers," *St. Petersburg Times*, 11 September 2000, sec. B, p. 1. Florida's transition to a full "special-needs voucher" program will be phased in as follows: For its first year, the program is limited to 5 percent of students with disabilities in each school district; with 350,000 students statewide classified as special-needs, this means a program cap of 17,500 vouchers. In the second year, the percentage rises to 10 percent, and then to 20 percent in the third year. After that, the limits come off, and the program opens to all of Florida's special-needs students.

<sup>38</sup> Heffernan underscores the provisional nature of the program in its first year and expects both guidelines from Florida's Department of Education and further legislative action in 2001 to clarify gray areas. For instance, although private special-needs schools cannot charge parents fees in excess of the voucher, it is uncertain as to whether they can accept benefits available to parents of special-needs students, such as medical insurance that may cover certain services. Telephone interview with the author, 12 September 2000.

<sup>39</sup> Hegarty, "Disabled step up use of vouchers."

<sup>40</sup> Analisa Nazareno, "Voucher plan has few takers," *Miami Herald*, 2 August 2000, sec. B, p. 1.

<sup>41</sup> Data provided by Diane McCain of the Florida Department of Education, 18 October 2000.