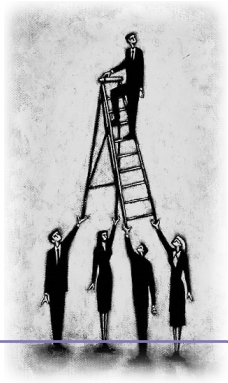
2004

Better Government Competition

STATE AND LOCAL FOCUS



Ideas INTO Action

Edited by **Kathryn Ciffolillo**

Shamie Center for Restructuring Government at

PIONEER INSTITUTE for Public Policy Research

Putting ideas into action for Massachusetts

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Ideas INTO Action

Better Government Competition - #13

2004 compendium of winning state and local government reform ideas

Edited by Kathryn Ciffolillo

Shamie Center for Restructuring Government at
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2004 Better Government Competition *at a Glance*

CO-WINNERS

RUNNERS-UP

SPECIAL RECOGNITION

JUDGES

Thomas J. Flatley	Chairman and CEO, The Flatley Company
Ellen Roy Herzfelder	Massachusetts Secretary for Environmental Affairs
Harvey C. Mansfield	William R. Kenan, Jr., Professor of Government, Harvard University
Diana Davis Spencer	Member, Pioneer Institute Board of Directors
Janet Wu	Senior Political Reporter, WCVB TV-5

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FOREWORD

This 2004 compendium marks the successful completion of Pioneer Institute's 13th Better Government Competition. Once again, Institute staff have searched the nation for excellence in government practice and fresh ideas for improving government. And once again, some 150 such ideas were submitted for consideration.

This year's **Co-winners** call on policymakers in Massachusetts to abandon the status quo and try something different. John O'Leary, former chairman of the Massachusetts Civil Service Commission, recounts the utter failure of the state's civil service system to fulfill its mission of ensuring that public sector employees are drawn from the best and the brightest. O'Leary recommends the state acknowledge that failure by limiting civil service to public safety and restoring merit in public safety hiring. Jay Szklut, planning director for the town of Hull, seeks a state/town/private partnership to improve maintenance and security at the state-owned Nantasket Beach Reservation, enhance the recreational experience of beachgoers, and encourage private sector investment in the beach area.

Two **Runners-up** demonstrate what can be done on a shoestring when you have both vision and sustained commitment to an ideal. The West Roxbury Court, a division of Boston Municipal Court, taps volunteers and partners with organizations to respond to community needs with educational and service programs. First Justice Kathleen Coffey and Associate Justice Robert Rufo lead a task force in serving the urban neighborhoods around the courthouse by recruiting community partners and pursuing financial and other resources for the Court's programs.

In 1999, Judge Charles Robertson brought Deming Management principles and some basic technology to his Georgia county's small claims court. The Digital Court Initiative transformed the public's interaction with the court and continues to save the county money. Judge Robertson describes Massachusetts' small claims courts as "the land that technology forgot" and offers the Commonwealth a clear path to a digital small claims court system of our own.

A third **Runner-up** highlights the unintended consequences of the Commonwealth's special education law. Concerned about ways in which the Massachusetts law conflicts with the federal No Child Left Behind Act and other efforts toward school improvement, Miriam Freedman, an attorney and expert in special education law, lays out her recommendations for using limited education dollars to educate well all the children in the Commonwealth.

This year's competition adds a new category for worthy entries, one that acknowledges the ongoing application of best practices in government. Four initiatives have been awarded **Special Recognition** for demonstrating significant improvements in the delivery of public services:

- Delaware's Department of Administrative Services' Partner$ in Procurement initiative completely replaced the state's contracting procedures, saving more than $1 million in the first year.
- The Supportive Senior Housing Program, developed by the Massachusetts Department of Housing and Community Development and Executive Office of Elderly Affairs, brings the benefits of assisted living services to more than 3,000 residents of state-funded elderly public housing developments across Massachusetts.
- The Massachusetts Executive Office of Public Safety Programs Division has brought best practices to its grants management, automating and standardizing processes to ensure the best use of grant funds.
- Finally, the MassHealth Standard and CommonHealth Premium Assistance (MSCPA) program saved the Commonwealth in excess of $12 million in fiscal year 2004 by identifying and maximizing third-party resources available to MassHealth recipients in need of medically complex, high-cost services.

This year's winning ideas take us from childhood to old age, from public lands to private initiative, from technology to teaching, all in pursuit of a single goal: better government. Pioneer Institute salutes them all!

—Kathryn Ciffolillo, Editor

ACKNOWLEDGMENTS

After each Better Government Competition compendium goes to press and the awards dinner is over, preparations for the next competition begin almost immediately. Announcements are made, brochures are mailed, and the solicitation of entries begins in earnest. Over the course of six months, I phone, cajole, and meet with a variety of people, from many different backgrounds, encouraging them to present their good government idea to the BGC. Many entries come from state government workers looking to improve the way an agency delivers a particular service, others come from the academic and business communities, still others from the general public. Despite publicizing the competition almost exclusively in Massachusetts, we continue to attract entries from across the country. Roughly one-third of all entries this year were from outside Massachusetts.

Once the finalists are chosen, I hand the baton to Kathryn Ciffolillo, the editor of this compendium. Kathryn's unparalleled editing skills, combined with a remarkable ability to grasp the content of each entry, enable her to bring out the best in each author. Once editing is completed, Ralph Buglass, Pioneer Institute's director of communications, works his magic to make the layout attract the attention of the reader. His work on this compendium brings the community of ideas together in a way that is fluid and readable.

Critical to the BGC's success is the participation of a number of Pioneer colleagues. In particular, Michael Kane has done a remarkable job of putting together this year's awards dinner. I also want to thank Sue Hoopes and Brian Kors for their help in coordinating the many sponsors and supporters of the dinner. Finally, I would be remiss not to mention the efforts of Pioneer staff members Pete Peters, Steve Adams, Joseph Downing, Kit Nichols, Ralph Buglass, Alla Yakovlev, Elena Llaudet, and Mike Kane who joined me in reading and assessing all 150 entries.

This year's judges, who made the final selections contained here, brought great wisdom and dedication to their roles. I appreciate the thoughtful and painstaking work of Thomas J. Flatley, Chairman & CEO, The Flatley Company; Ellen Roy Herzfelder, Cabinet Secretary, Executive Office for Environmental Affairs; Harvey C. Mansfield, Professor of Government, Harvard University; Diana D. Spencer, Member, Pioneer Institute Board of Directors; and Janet Wu, Senior Political Reporter, WCVB Channel 5. I wish everyone could have heard the spirited discussion as they selected the winning ideas. I thank each of them for a job well done.

—Shawni M. Littlehale, Program Manager, Better Government Competition

2004 Better Government Competition

Fixing Civil Service in Massachusetts

CO-WINNER

John P. O'Leary
Former Chairman, Massachusetts Civil Service Commission

THE PROBLEM

> "The only thing more destructive than a line item budget system is a personnel system built around civil service."
>
> —David Osborne and Ted Gaebler, *Reinventing Government*

The civil service system in Massachusetts is in crisis. Created in the 19th century to solve 19th-century problems, civil service laws were an attempt to end the corruption, patronage, and cronyism that dominated American government in the late 1800s. These laws worked admirably for quite some time, but today they are in desperate need of a major overhaul. As they currently stand, the civil service laws represent a significant barrier to efficient government operation in both state and local government.

Civil service laws were designed to serve two main functions. First, they establish a set of exams that test the merit of both new hires and promotional candidates. Second, they protect public employees from arbitrary dismissal, discipline, and provide layoff seniority for public employees.

The Massachusetts civil service laws currently represent a significant barrier to efficient government operation in both state and local government. They are in desperate need of a major overhaul.

There are two major problems with the civil service system today.

■ First, for *non-public safety employees*, the hiring and testing systems are totally defunct, yet the laws are still written as if tests are being given on a regular basis. The result is that 14,000 of some 30,000 state civil service positions are filled by "provisional" employees, that is, employees who have never taken an exam and are working in violation of the civil service laws. There is a similarly large provisional population at the local level. This enormous population of provisional employees, which exists in a bizarre legal vacuum, makes managing personnel extremely difficult, especially in times of reorganization or downsizing. Also, in the absence of tests, there are virtually no checks and balances in place to ensure that patronage-based hiring is not common practice.

■ Second, for *public safety employees*, where tests are regularly given, the concept of merit has been supplanted by a system of political preferences. The result is that for new hires, the test score has little or no bearing on where his or her name will appear on the hiring list. On a recent civil service exam for the Boston Police, 492 applicants scored 95 or above. Incredibly, only one of these 492 top scorers landed in the first 75 positions on the hiring list. (For promotional exams within public safety, civil service testing works tolerably well, for reasons discussed below.)

1) The Scope of the Provisional Problem

Nearly half of all employees in civil service positions did not take a test for their position, and many haven't taken an exam for any position.

No one knows precisely how many employees are covered by civil service law. In part, this is because there is no centralized database for municipal positions. No one outside of Chicopee, for instance, knows whether the cafeteria worker in the Chicopee schools holds a permanent civil service position, a provisional civil service appointment, or an exempt or seasonal position.

A 1996 legislative commission estimated that there were 70,000 "permanent" municipal civil service employees and an additional 30,000 "provisional" municipal employees. The 1996 Commission also estimated that there were 12,000 "permanent" state civil service employees and 16,500 "provisional" state civil service employees.[1] All told, that comes to an estimated 46,500 provisionals out of a total civil service population of 128,500 employees, or 36 percent provisionals.

In 2004, the state Human Resources Division (HRD), which oversees the administration of both state and local civil service testing and hiring, estimates that there are 30,000 civil service positions in the executive branch of state government, of which 16,000 are held by "permanent" employees and 14,000 by "provisional" hires. Thus, HRD currently estimates that among the state workforce, some 46 percent of employees in civil service positions did not take a test for their position, and many haven't taken an exam for any position. (The picture is muddied further in that an individual may test into a position as an Administrative Assistant I, and then be "provisionally" promoted to Administrative Assistant II. Such an employee is both a provisional and "owns" the lower civil service title.)

By law, a provisional appointee is only allowed to serve in that position for one year. This law is universally ignored, mostly out of necessity. The fact is, the state HRD has stopped testing for non-public safety positions entirely.

The testing system simply can't keep pace with the reality of the modern professional work environment.

In 2003, the state Human Resources Division gave exactly one non-public safety exam, an exam for municipal custodians. So anyone looking to hire or promote an accountant, an administrative assistant, a database programmer, a soil chemist, a barber, or any one of thousands of other job titles had to do so provisionally.

Why won't HRD give these exams? Two reasons. First, the budget and staffing of HRD in this area has been dramatically reduced. In 1996, there were approximately 38 full-time staff dedicated to testing and maintaining certification lists. In 2004, there are twelve. The second reason is not specific to Massachusetts. The testing system simply can't keep pace with the reality of the modern professional work environment. With hundreds of job titles and rapidly shifting job responsibilities, the very notion of testing is rather silly. Three states—Florida, Georgia, and Texas—have recently done away with civil service testing altogether for non-public safety positions, and more are looking into it.

The huge provisional population wreaks havoc in a system geared around a testing-based regime. The Civil Service Commission receives hundreds of appeals each year, which are based, ultimately, in the fact that absent these tests managers still need to promote, reorganize, layoff, and otherwise manage their workforce. Efforts are constantly made to "make permanent" those provisional employees who have been performing for years in a given position.

[1] The Report of the 1996 Legislative Task Force on Civil Service Reform.

2) Scope of the Merit Problem

"There is a long tradition of calling for the elimination of seniority and veterans' preference in civil service. And those efforts at civil service reform have a long tradition of complete failure."

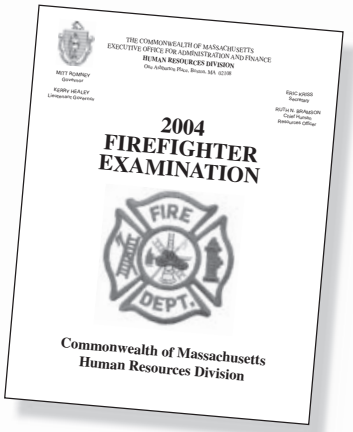
—Jonathan Walters, *Fixing Civil Service in Massachusetts*

The legislature has taken merit and replaced it with a system of absolute statutory preferences, which mean that if you manage a passing score on the civil service exam, you go to the very top of the hiring list.

Everyone agrees that merit, rather than political favoritism, should govern how individuals get government jobs. The idea behind civil service was to give an exam and then hire based on the exam results. Since tests were imperfect assessment devices, managers would be given some discretion according to the "2n + 1 rule." If a manager were hiring for 5 positions, he could choose among the top 11 candidates on the civil service hiring list, provided he gave a reasonable justification for any candidates that were bypassed.

Not a bad theory, not a bad approach. But something happened over the past 120 years of civil service: the legislature has taken merit and replaced it with a system of absolute statutory preferences. Today, in most communities, the likelihood of getting hired has almost nothing to do with the applicant's score on the civil service exam.

Here are some stunning examples of just how little impact an applicant's test result has on where he or she lands on the hiring list.


THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
HUMAN RESOURCES DIVISION
One Ashburton Place, Boston, MA 02108

2004
FIREFIGHTER
EXAMINATION

FIRE DEPT.

Commonwealth of Massachusetts
Human Resources Division

- On a recent Boston Firefighter exam, 29 candidates scored 100 percent (or better, with some bonus points for experience and education) on the test. None of these 29 top scorers were listed among the top 200 names on the hiring list.
- On a recent Springfield Police exam, 296 candidates passed the exam. The top three candidates on the hiring list had placed 172nd, 284th, and 241st on the exam. The top scorer? Number 146 on the hiring list.
- One-third of all hires to the Worcester Police force and the Boston Police force aren't hired off the civil service exam lists—they enter through Cadet Programs, though once past the probationary period they get civil service status.

As one can imagine, this is a huge problem when attempting to hire a capable public safety workforce. The main reason for the disconnection between merit (as demonstrated on the civil service exam) and placement on the hiring list is the legislatively mandated system of "absolute" preferences. An absolute preference means that if you manage a passing score, you go to the very top of the hiring list. Below is a typical listing of absolute preferences used in creating a civil service hiring list:

- minority applicants (in consent decree communities only)
- resident children of police officers or firefighters killed in the line of duty
- non-resident children of police officers or firefighters killed in the line of duty
- resident disabled veteran applicant
- resident children of police officers or firefighters injured in the line of duty
- non-resident children of police officers or firefighters injured in the line of duty

- resident veterans
- resident widow or widowed mother of veterans killed in the line of duty or died from a service-connected disability incurred in wartime service
- resident non-veterans
- non-resident disabled veterans
- non-resident veterans
- non-resident widow or widowed mother of veterans killed in the line of duty or died from a service-connected disability incurred in wartime service

After all this come the non-resident, non-veteran applicants who score the best on the test.

There needs to be a balance between giving a leg up to those who have served in the military and a need to recruit a high-quality public safety workforce.

Massachusetts is one of only a handful of states that grants such absolute preferences. Most states will give veterans a boost to their test scores of between 2 and 10 points. There needs to be a balance between giving a leg up to those who have served in the military and a need to recruit a high-quality public safety workforce. Massachusetts has lost that balance. Merit has been largely removed from a civil service system that was originally supposed to be all about merit. Communities are not allowed to hire the best possible public safety professionals.

Chapter 31 of the Massachusetts General Laws states that the Civil Service is based on the Basic Merit Principle, defined in the law as the "selecting and advancing of employees on the basis of their relative ability, knowledge and skills, including an open consideration of qualified applicants for initial appointing." This is a noble principle. Unfortunately, like many noble principles, it is largely being ignored.

THE SOLUTIONS

1) Limit Civil Service to Public Safety

Eliminate civil service testing for non-public safety employees and eliminate civil service protections for all non-public safety employees covered by a collective bargaining agreement.

This proposal simply acknowledges that testing is not being done in non-public safety positions. Non-public safety testing has been dwindling for years and is now virtually nonexistent. Acknowledging reality would enable the Personnel Administrator to develop alternative hiring and promotional approaches that encourage merit-based hiring and promotion.

With respect to employee protections, much of civil service protections duplicate protections that exist under collective bargaining agreements.

2) Restore Merit to Public Safety Hiring

Within public safety, maintain civil service testing and protections, but replace absolute preferences with a system of points added to test scores.

Merit testing for hiring and promotion within public safety does make sense. A point system would provide a leg up for those individuals, such as veterans or the offspring of public safety employees killed or injured in the line of duty, whose service or sacrifice deserve some consideration. But by limiting the benefits to a maximum of 10 points, a desire to provide an opportunity is balanced with the public's interest in fielding the best possible law enforcement and public safety employees.

Civil Service is based on the "Basic Merit Principle." This is a noble principle. Unfortunately, it is largely being ignored.

COSTS AND BENEFITS

It is difficult to assess the costs of current practice accurately. The civil service workforce comprises approximately 28,000 public safety workers and perhaps 75,000 other state and local workers. Having managers operate in a system in which employees have not only civil service but also collective bargaining protections makes managing difficult and expensive.

If the Chicopee school department disciplines a custodian for one day for sleeping in the broom closet one afternoon, supervisors better plan on taking a two-hour ride into Boston for a pre-hearing conference at the Civil Service Commission, followed by another trip in for a full hearing. They'll need to bring in witnesses, pay a lawyer to try the case and write briefs, and may have to deal with other legal appeals, such as those brought to the MCAD or appeals to Superior Court of the Civil Service Commission decision. Even if the Commission upholds the suspension, it will certainly cost the town many times over the custodian's day's pay. All this protection is for an employee who is already protected from unreasonable discipline by a union and an arbitration grievance process.

Gains in administrative and management flexibility would be significant were the system reformed. Significant reform to civil service laws could generate millions from enhanced efficiency. Abandoning the current "provisional" hiring approach in non-public safety and moving to an alternative, non-test-based merit system for hiring would enhance the protections against patronage and cronyism, another clear public benefit.

OBSTACLES

Significant reform to civil service laws could generate millions from enhanced efficiency.

Many if not all of the changes contemplated in this proposal would require legislative changes to MGL Chapter 31. There has been historical reluctance to alter this law regardless of how dysfunctional its application. This may be a unique opportunity to do so. The legislature has shown reluctance to fund the HRD and the Civil Service Commission at the level that would be needed to carry out what Chapter 31 demands. For about a decade, there has been a gradual defunding of the civil service system in Massachusetts, a defunding that may simply have been a more politically palatable way of achieving the aim of reform. The chaos and confusion that mark the current situation strongly argue that now is the time to change the system. Moreover, Governor Romney has shown in his House 1 proposals over the last two years that he wants serious reform in civil service.

Until the state legislature takes the hard steps to change our outdated system, we will be handcuffed in our ability to build a public safety workforce of the best and the brightest. The Commonwealth deserves no less.

REPLICATION

"The current system is indeed broken—it does not and cannot serve the modern workforce.... Now is the time to fix it."
—Kay Cole James, Director of the U.S. Office of Personnel Management

Florida, Georgia, and Texas have all eliminated civil service. The IBM Center for the Business of Government sponsored a report by Jonathan Walters called "Life After Civil Service Reform: The Texas, Georgia and Florida Experiences." This report chronicled the generally positive results of the significant reforms in these states, citing benefits such as quicker hires, improved satisfaction with personnel administration, and better-qualified applicants.

The reforms in these states were significant. In Georgia, every state employee hired since 1996 has been an "at-will" hire. In Florida, civil service seniority has been totally eliminated. Other states, including Washington, Colorado, and Hawaii are actively engaged in rethinking civil service.

The desire for civil service reform extends to the federal level. The recently established Department of Homeland Security will encompass roughly 170,000 federal employees into a personnel system as unencumbered by civil service regulations as possible. Kay Cole James, the Director of the Office of Personnel Management, captured the growing consensus regarding civil service reform when she said, "First, that the current system is indeed broken—it does not and cannot serve the modern workforce. Second, that now is the time to fix it…"

ABOUT THE AUTHOR

John O'Leary was appointed to the Civil Service Commission in July 2003 by Governor Mitt Romney and served as Chairman from September 2003 to May 2004. An expert in operational efficiency, Mr. O'Leary has been a Vice President at Scudder Kemper Investments and the Director of Business Process Reengineering at Lycos. As a consulting manager with KPMG Peat Marwick, he has advised governments on public sector reinvention. His writings on public policy have appeared in the *Wall Street Journal,* the *San Diego Union-Tribune*, and the *Washington Times*. In 1996, Mr. O'Leary testified before Congress on public sector efficiency. He is a 1984 graduate of MIT and holds a Master of Science degree from the University of Massachusetts at Amherst.

2004 Better Government Competition

Managing the Nantasket Beach Reservation

CO-WINNER

Improving Services and Cutting Costs through Local Control

Jay Szklut
Planning Director, Town of Hull, Massachusetts

Town of Hull DCR Property Re-Use Study Committee
Christopher Olivieri, Chairman

THE PROBLEM

The Nantasket Beach Reservation came into the state's possession through an act of the legislature in 1899. Nantasket had long been a popular tourist destination, but by the end of the nineteenth century, the area had been overwhelmed by private development and public neglect. The state legislature recognized that acquiring, restoring, and managing the beach would be too much of a burden for the small community of Hull to bear. The January 1893 Report of the Board of Metropolitan Parks Commissioners stated,

> To expect the local municipalities—sometimes towns neither rich nor populous—to carry the burden of such a public work as the proper improvement of…Nantasket Beach, is neither right nor practical. It must be borne by the (Metropolitan Parks) district for whose benefit and enjoyment it will exist.

By 1900, takings plans had been prepared for 21.27 acres of land for the Nantasket Beach Reservation. The site included one mile of beach north from Atlantic Hill, land on both sides of Nantasket Avenue–Hull Shore Drive, and the road from the beach to Nantasket Pier (Wharf Road). The land on the eastern side of Nantasket Avenue adjacent to the beach over time became a huge parking lot.

With the taking of the property, maintaining and updating the Reservation property became the sole responsibility of the state. In its early years as a state-owned property, monetary resources for the care of the Reservation were limited:

> The large use of the reservation makes it impossible to dispense with the roadway and old buildings or to make any material improvement to them, although both are deteriorating rapidly, and are decidedly inferior to the standard of public accommodation in other reservations.[1]

Not recognized in these early reports were the increasing cost of capital-intensive improvements and the constant challenge of day-to-day maintenance of the property.

Neither local control nor state ownership alone can provide sufficient resources for a first-class operation of the Nantasket Beach Reservation. Hence a partnership among the state, the town of Hull, and the private sector is proposed.

[1] Metropolitan District Commission application to National Register of Historic Places, quoting 1904 Annual Report of the Metropolitan Parks Commission.

Over time, the state has invested in the Reservation. Many original buildings, including hotels, have been torn down. A bulkhead and additional sanitary buildings were constructed, and the roadway was realigned and repaved. A bathhouse, a comfort station, and a bandstand were erected on this property. On the western side of Nantasket Avenue, in 1901, a new building was constructed to house the police, an emergency room, and a men's sanitary facility. Several garages were added at a later date. Recently, a children's playground and a beach volleyball court have been added. Today, however, the state is faced with such needed improvements as seawall repair and replacement, beach nourishment and replenishment, and the more traditional cost items of building repair and maintenance and roadway and parking lot maintenance.

Lacking any type of control over the beach, the local community is subject to the negative impacts associated with inadequate maintenance and non-local management.

Taking control of the Nantasket Beach Reservation was in part justified by the concern that the local community did not have the resources to improve and manage the beach alone. Unfortunately, state resources are also limited. Lacking any type of control over the resource, the local community is subject to the negative impacts associated with inadequate maintenance and non-local management.

Five general concerns with the current management of the Reservation comprise the negative impacts on the community: underutilization of the Reservation, underutilization of the buildings, poor maintenance, inadequate security, and poor traffic design.

1) Underutilization of the Reservation

State management of the beach assumes that the Reservation is a daytime attraction, and therefore state presence and oversight occur primarily from 9:00 AM to 4:00 PM. The Reservation is left unsupervised and unmonitored during the late afternoon and evening hours. However, the Reservation attracts many visitors during this period. Four years ago, the state completed the construction of the new bathhouse. Along with the bathhouse, a beach volleyball court and a basketball court were built, both of which were lit for evening use. The basketball court soon became a hangout and attracted "gang"-type groups. Two summers ago, a stabbing and murder occurred at the courts. Subsequently, the court was removed, leaving a concrete pad that remains today.

Until two years ago, when the state agreed to leave the sanitary facilities open beyond 4:00 PM, evening visitors were burdening the local business community to use the only other available facilities. As there is no maintenance of the facilities during the evening, supplies are often inadequate, and the facility itself is less than sanitary. The lack of maintenance and security during the late afternoon and evening hours creates a difficult environment for local businesses.

Active state management and oversight of the Reservation are also limited to the summer, Memorial Day to Labor Day. Here again, the Reservation attracts numerous individuals during both the spring and fall shoulder seasons. Providing security and maintenance during those seasons falls on the local community. Failure to do so would hurt existing business and discourage economic investment in the area.

Beginning recently, state funding for lifeguards at the beach ends the third week in August. Essentially, Labor Day weekend is swim at your own risk, and public safety is compromised.

2) Underutilization of Buildings

The Nantasket Beach Reservation contains a cluster of state-owned buildings that are partially occupied or vacant. The first floor of the former railroad depot is occupied by several seasonal shops (ice cream store, etc.). The second floor, the former summer residence of the Commissioner of the now-defunct Metropolitan District Commission, is now vacant.

Other buildings include the former police station and police barracks. These buildings are utilized for storage and some office space for existing staff. There are two garages for storage of maintenance vehicles. One garage has been divided, and the portion facing Nantasket Avenue is leased to an art gallery. Remaining buildings are used for storage of unused equipment and are vacant. The buildings sit on land that divides Nantasket Beach from the pier and bay on the western side of the town.

Along with their vacancy status, the buildings suffer from lack of maintenance with several of the interiors in unoccupiable condition. While the buildings present an opportunity for increased usage of the Reservation, they are currently an eyesore. The buildings create a poor image for the Reservation and discourage private investment in the remainder of the beachfront area.

3) Poor Maintenance

Maintenance at the Reservation has long been the primary complaint of local residents. The sanitary facilities do not receive regular cleanings during the day and are often left in filthy condition after 4:00 PM. Trash is spilling out onto the beach and parking lot from trash barrels that need to be emptied.

Rather than a preeminent regional recreation resource, Nantasket Beach is associated with an unattractive beach image, discouraging family outings. The negative image of the beach extends to the town, although the beach is owned by the state. Again, the condition of the resource discourages investment and economic interaction.

4) Inadequate Public Safety

Security at Nantasket Beach is now the responsibility of the state police. The state police also patrol all other state-owned properties in the region. Officers patrol the beach at random times during the day. There is no permanent police presence on the beach despite the fact that there may be several thousand visitors at any given time. The town supplements state police activity by providing one officer on foot patrol during the summer. This cost is borne solely by the town.

No other emergency services are provided by the state. Medical emergencies or water-related accidents are handled by local emergency services staff. Again, the costs of these services are borne by the town, and services are unavailable to residents elsewhere when in use at the beach.

5) Poor Traffic Design

The majority of beach parking (over 900 spaces) is directly adjacent to the beach. Occupying most of the land on the east side of Nantasket Avenue, this asphalt hard top presents an unappealing view to visitors. Additionally, during hot summer days and peak traffic hours, traffic on one of the main roads in and out of town is slowed to a crawl. With the exception of the bandstand and the bathhouse, the parking lot is unbroken and contains no green areas.

Despite this abundance of parking, it is of no benefit to the business community that abuts the Reservation. The state allows no temporary parking or parking for businesses on its property. Additionally, the size and location of the parking encourages automobile use and discourages use of trolleys or other public transportation. Pollution is increased, and traffic congestion becomes the norm, ultimately adversely affecting the aesthetics, economics, and perception of the local community.

PROPOSED SOLUTION

The Reservation should provide a high-quality recreation experience at a low cost and should be a major economic engine for the local community. The historical record firmly supports that neither local control nor state ownership alone can provide sufficient resources for a first-class operation of the Nantasket Beach Reservation. To maintain the beach properly, a partnership among the state, the town of Hull, and the private sector is proposed.

1) Local Role

The town of Hull should assume all maintenance and security responsibilities. The town will assume management responsibilities of underutilized buildings. The town will explore leasing these buildings to private developers who would assume all maintenance and upkeep costs associated with the buildings. Private investment in these properties would generate increased tourism and further investment in the area. Additionally, private businesses that locate in the area will have a greater stake in promoting improved maintenance of the beach area.

The town will also assume oversight of parking at the Reservation. Daily parking rates will be unchanged. The town may investigate an evening parking rate or reserving spots for customers of beachfront businesses.

2) Private Sector Role

The town will seek private investment to improve the condition of the existing buildings. This investment will be in exchange for long-term leases of the property in order to operate a business. The town will provide parking either on site at the current Department of Conservation and Recreation (DCR) complex or carved out of the existing beach parking. Lease revenues will subsidize the operation of a trolley or other public transportation to transport persons from outlying parking areas to the beach.

3) Commonwealth Role

The primary mission of the Commonwealth at Nantasket Beach, is to ensure that the mission of the DCR, to provide recreational opportunities to all Massachusetts residents, is met. The Commonwealth will provide operating financing at a reduced cost. The amount of financing will be based on the operating costs less the revenues the town receives from operating the Reservation. The Commonwealth will continue to provide financing for all major capital projects including seawall repair, beach nourishment, etc.

Jointly with the town, the Commonwealth will establish the following plans and policies:

- *To encourage family visitation:* promote an arts-based economic development plan incorporating reuse of the underutilized Reservation properties.
- *To encourage public transit service:* develop a trolley service that circulates through the Reservation area and to the future Greenbush station and the parking lot at Hewitt's Cove in Hingham. Explore the possibility of increased ferry/boat service from Boston to the Reservation.
- *To increase greenspace and reduce beachfront parking:* better utilize existing back lots, study possibility of parking structure on back lots. Convert portions of existing beachfront parking areas to green areas available for picnicking or strolling.
- *To improve traffic flow, alleviate traffic congestion issues, and promote local economic development:* work with town officials to study the possibility of reconfiguring the road and traffic network.

COSTS AND BENEFITS

Operating and maintenance expenses at the Reservation are sizable. Annual expenses for the day-to-day maintenance and operations of the state-owned Nantasket Beach Reservation fall in the range of $900,000 to $950,000 (see table 1).

Table 1: Approximate Maintenance and Operations Costs for Nantasket Beach Reservation

General Expenses	
Personnel (includes seasonal)	$298,635
Parkway Construction and Maintenance	$37,415
Parking & Grounds Maintenance	$32,090
Trash	$16,870
Utilities	$105,305
Supplies	$8,150
Lifeguard Related Expenses (including salaries)	$191,060
State Police Contract	$250,000
TOTAL	**$939,525**

Note: Dollar amounts, with the exception of the State Police contract, were provided by the Department of Conservation and Recreation based on the last full year of costs.

The proposed state/town/private partnership for the Nantasket Beach Reservation would provide a significant benefit to the users of the resource through a general improvement in the recreational experience.

- Users of the beach would see a heightened level of security with town police patrolling the beach.
- Users of the beach would see a cleaner beach and comfort station areas as maintenance responsibility of these areas is shifted to the town.
- Users will see a more varied and heightened level of activity as underutilized properties become occupied by private businesses that will also be responsible for maintenance of these properties.

The town currently supplements state police patrols of the beach by providing, at the town's expense, one officer on foot patrol throughout the day. Shifting total responsibility of security to the town will allow increased foot and automobile patrols at a reduced cost (see table 2).

Table 2: Town of Hull Estimated Police Costs for Nantasket Beach Patrols

Personnel	Cost	Comment
Motorized Patrol (2 officers, May 1 - Sept. 30)	$106,792	1 officer for each shift
Motorized Patrol (1 officer, weekends Oct. 1 - Apr. 30)	$20,880	1 officer on weekend nights
Foot Patrol (Seasonal) Monday - Thursday	$27,264	May 15 - Sept. 15, 2 shifts
Foot Patrol (Seasonal) Friday - Sunday	$25,440	May 15 - Sept. 15, 2 shifts
TOTAL	**$180,376**	

Seasonal and winter maintenance of the parking lots and parkways would become the responsibility of the town. The town's highway garage is located south of the beach, and vehicles from the garage must drive past the beach to reach other areas of the town. Because these vehicles pass the beach several times a day, trash collection could be more frequently scheduled, eliminating a problem that plagues the Reservation daily. Annual maintenance, by the town's DPW, of the entire Nantasket Beach Reservation including snow removal is estimated to cost $379,000 (see table 3). It is likely that these costs are somewhat higher than those currently incurred by the state. This difference would be covered by the lease or tax payments received by the town from users of the currently underutilized state-owned properties at the Reservation.

Table 3: Estimated Costs for Town Maintenance of Beach Parking Areas and Parkway

Personnel		$209,000
3 Full-time employees	$115,983	
10 seasonal employees @ 8.50/hour (7 day schedule)	$68,000	
Overtime	$25,000	
Building Expense		$50,000
Vehicle Expense		$25,000
Snow/Ice		$30,000
Public Works Expense		$35,000
Public Works Supplies		$30,000
ESTIMATED ANNUAL BUDGET		**$379,000**

Currently, the state budgets a minimal amount toward maintenance of the state-owned buildings on the Reservation. Making these buildings available for commercial uses by private interests transfers the maintenance burden to the private investors. The town currently assesses and taxes businesses operating from state-owned facilities. The dollars received by the town from "new" businesses would go toward offsetting the maintenance costs of the Reservation. This improved maintenance will attract additional users to the Reservation, to the new businesses, and to existing businesses. The five currently underutilized buildings would generate an estimated $70,000 in property tax. This assumes the buildings are not expanded to allow residential or business use on the second floor.

The new management responsibilities and associated costs are summarized in table 4. It is assumed that general supervisor for the Reservation will remain a state position. The five underutilized state-owned buildings are provided with utilities. Once these properties are leased to private concerns, utility costs will be absorbed by those concerns. Maintenance of the properties will also be the responsibility of the private sector and enforced through the lease agreement with the town. Because the town's highway garage will need to remain open on weekends and evenings, there will be an additional maintenance and utility cost. Increases in utility and building maintenance costs are reflected in table 4.

Table 4: Nantasket Beach Reservation Projected Management and Costs under a State/Town/Private Partnership

CURRENT ARRANGEMENT		PARTNERSHIP PROPOSAL						
(State control)		*Responsible entity*			*Source of funds*			Total
Expense	**Costs**	**State**	**Town**	**Private**	**State**	**Town**	**Private**	**Costs**
General Expenses								
Staffing	$298,635							$293,983
Supervisor		X			$85,000			
Maintenance			X		$140,983			
Seasonal			X		$68,000			
Road Maintenance	$37,415		X		$45,000			$45,000
Parking & Grounds Maintenance	$32,090				$35,000	$20,000		$55,000
Trash	$16,870		X		$15,000	$10,000		$25,000
Utilities	$105,305	X	X	X	$55,000		$70,000	$125,000
Supplies	$8,150	X			$8,150			$8,150
Lifeguard Expenses	$191,060	X			$191,060			$191,060
Policing Costs	$250,000		X		$185,000			$185,000
Building Maintenance			X	X	$25,000		$32,545	$57,545
GRAND TOTAL	**$939,525**				**$853,193**	**$30,000**	**$102,545**	**$985,738**

Table 4 indicates an increase in annual spending on the operations and maintenance of the Reservation. However, there is a net decrease of approximately $86,000 in the annual state spending for the Nantasket Beach Reservation. These changes are due to lower costs for local policing and private sector investment in the area.

OBSTACLES

The changes proposed in the operation of the Nantasket Beach Reservation, while conceptually simple, must overcome several obstacles. Some obstacles are regulatory, while two major obstacles are financial and political in nature.

Users of the beach will see a more varied and heightened level of activity as under-utilized properties become occupied by private businesses that will also be responsible for maintenance of these properties.

1) Regulatory

One of the obvious reuses for the properties on the Reservation would be to allow a restaurant to utilize the space. This restaurant would be similar to others currently operating along the beach. However, DCR regulations do not allow alcohol on the Reservation. The ability to serve alcoholic beverages may be a prime concern for any future restaurant endeavor.

Another potential use would be as galleries for locally produced art works. Often such galleries also provide lofts and/or living spaces for the artists whose works are on display. While local zoning allows residential uses, there is a concern in town about increasing population density. It is also unknown what the DCR position would be on residential use of its properties.

2) Financial

A major obstacle to the potential reuse of the Reservation properties is the renovation cost. This proposal assumes that capital costs associated with the Reservation remain the responsibility of the state. Currently, the state is involved in two major capital projects and is winding down a third. The renovation to the Bernie King Pavilion, to be completed this summer, cost $1,026,677. The state is committed to repair of the Nantasket Beach Seawall at a cost of $2,061,247. Also on the horizon is a beach nourishment project. The major capital investments by the state in the Nantasket Beach Reservation over the past few years may preclude additional investments for building renovation.

There is a net decrease of approximately $86,000 in annual state spending for the Reservation, due to lower costs for local policing and private sector investment in the area.

3) Political

Bureaucratic inertia is also a potential obstacle to implementation of the proposed program. The current state of affairs has existed for over a century. Despite local complaints about the appearance and maintenance of the Reservation, there has been little change in the operations of the Reservation. Another example of non-responsiveness is evident in this proposal. While DCR provided gross operating figures for the Reservation, repeated requests to the agency to provide clarifications or details of the line items went unanswered. The resulting budget is therefore based on a general characterization of the expenditures and information gathered from other sources on costs associated with the operation of the Reservation.

REPLICABILITY

While the specifics of the Nantasket Beach Reservation may not apply to all state recreation areas, all are located in a local community. Those communities experience all the negative impacts and receive few of the benefits. The general model of a public/public/private partnership as discussed should be applicable in all these situations.

ABOUT THE AUTHOR

Jay Szklut has been employed by the Town of Hull for eight years, first as Director of Community Development and currently as Planning Director, which combines his previous job with that of Town Planner. As such, he oversees the town's Office of Community Development, which seeks to improve the quality of life for Hull residents through a range of planning functions.

Previously, Mr. Szklut was the Executive Director of the Brockton Community Corporation, a non-profit Community Development Corporation operating in the city of Brockton. He holds a Ph.D. in anthropology from Indiana University and a master's in urban and regional planning from the University of North Carolina at Chapel Hill. His master's thesis was on the social and economic impacts of tourism.

This proposal was developed in conjunction with the Town of Hull DCR Property Re-Use Study Committee chaired by Christopher Olivieri.

2004 Better Government Competition

RUNNER-UP

Balancing the Needs of Regular and Special Education Students

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THE CHALLENGE

Special education is at a crossroads. Policymakers must decide whether to continue under special education laws to provide extensive legal entitlements for due process and services to a select group of students or to expend funds and efforts for services that will benefit all students, including students with disabilities. The need for such legal protections and entitlements once existed. In the 1950s and 1960s, many children with handicaps were excluded from school programming. Now all children, including children with disabilities, have access to our schools. We need to undertake two discrete approaches to meet current challenges: The first is to address some excesses and flaws in Massachusetts practices. The second is to draw on the principles of outcome-based reform to rethink the entire enterprise of "special education" toward providing effective education for all the children in the Commonwealth.

When more money is needed for special education, it comes out of other pockets—namely, regular education.

Special education in Massachusetts is governed by two sets of laws—the federal Individuals with Disabilities Education Act (IDEA) and the state law, Massachusetts General Laws Chapter 71B (Chapter 71B). Both statutes were initially enacted in the 1970s. The federal law sets the floor; states can provide more rights to children with disabilities and their parents—but not fewer. While Congress may amend the IDEA in its upcoming reauthorization efforts, this discussion focuses on changes Massachusetts can make to realign its system and rebalance funding for regular and special education within the current federal framework.

The goal of special education is to provide eligible children with a "free appropriate public education" (FAPE). Such an education is reasonably calculated (by the Individualized Education Program [IEP] Team) to provide measurable benefit to the student. The successes of special education in Massachusetts have been impressive. It is important to acknowledge and honor them. No longer are children with disabilities denied an education. Instead, some 15-plus percent of Massachusetts students are served through extensive (and expensive) special education programming, and their parents have powerful substantive and procedural protections.[1]

Special education is the only mandated individualized entitlement for children with educational, social, medical, emotional, behavioral, and other needs in Massachusetts. Other Massachusetts agencies—DSS, DMH, DMR, DPH, DYS—rely on appropriations

[1] The national average in 2000 was variously estimated at 10 to 12 percent. The percentage of students eligible for special education in the Commonwealth has fallen from 17.4 percent in 1992 to 15.15 percent of total enrollments in 2002-03. Though enrollment in special education may be declining somewhat, the severity of many students' needs is increasing. See the Superintendents' study cited later in this discussion.

and offer no individual entitlement.[2] When the money's gone, it's gone. These agencies regularly direct parents to their local schools for services. With special education, when more money is needed, it comes out of other pockets—namely, regular education. Although the federal government and the state contribute to special education costs, the burden of paying for costly special education programs falls largely on local taxpayers. The entitlement to special education procedures and services regardless of cost has spawned unintended and damaging consequences.

Special educators spend 81 percent of their workdays on administrative duties and only 19 percent of their time actually teaching. We must choose: Do we want teachers to teach or to push paper?

What are we actually buying with all the funds going to special education? Special educators spend far more time on paperwork and at meetings than in class. One recent unpublished report found that special educators spend 81 percent of their workdays on administrative duties and only 19 percent of their time actually teaching.[3] After initial evaluations, re-evaluations, Team meetings, writing IEPs and progress reports, follow-up case management, and using minimum contractual prep time, less than one-fifth of the week was left for teaching. We must choose: Do we want teachers to teach children or to push paper? We cannot afford both in a six-hour day and given our current finances.

The enormous expenditure of resources (in time, money, and effort) for special education compromises school improvement efforts.[4] The federal mandate under No Child Left Behind (NCLB) is designed to assure "adequate yearly progress" (AYP) for all students, including those with disabilities. The stated goal is, through the use of research-based instruction, to have *all* students proficient in specified skills, especially reading/language arts, math, and science, by the year 2014.[5] The thrust of NCLB, as well as the federal IDEA, is to educate most children with disabilities in the "general curriculum." This would seem to call for ending the dual instructional system, providing consistent curricula for all students, and teaching each child appropriately. Yet, while NCLB focuses on ALL students, the individualized mandate of special education continues unabated, often leading to inconsistent policies and goals.

THE SOLUTION

What follows are eleven practical proposals for balancing special education and regular education. While it would be best if all the proposals were accepted, each one stands on its own. In the short term, Massachusetts should scale back its special education mandates to align with federal law. For the long term, both the federal government and the states should revisit special education laws and acknowledge their fundamental incongruity with a public education system newly focused on academic standards and accountability for results for *all* students.

Practical Short-Term Proposals

1. *Focus resources on early teaching, especially of reading, for all students instead of special education for some. Research shows the promise of early intervention and prevention, and it is now mandated by NCLB.*

Of all students with IEPs nationwide, half have been labeled SLD—that is, as having specific learning disabilities. Of these, 80 percent are so labeled because they have not learned to read.[6] In 2000-01, the average percentage of children across states, aged 6

[2] Department of Social Services, Departments of Mental Health and Mental Retardation, Department of Public Health, Department of Youth Services.

[3] Unpublished report by Linda Chase, former special education director of the Winchester Public Schools. More comprehensive data on the use of special education staff time are not available.

[4] See Sheldon Berman, Perry Davis, Ann Koufman-Frederick, and David Urion, "The Rising Costs of Special Education in Massachusetts: Causes and Effects" in Chester E. Finn, Jr., Andrew Rotherham, and Charles R. Hokanson, Jr. (eds.), *Rethinking Special Education for a New Century,* Thomas B. Fordham Foundation and the Progressive Policy Institute, May 2001.

[5] The IDEA and NCLB provide for the reality that a small number of students with disabilities cannot be expected to reach this goal as a result of their unique disabilities.

[6] *A New Era: Revitalizing Special Education for Children and their Families,* The President's Commission on Special Education, July 2002.

to 17 with SLD, was 5.52 percent; the Massachusetts percentage was 8.52 percent.[7] Only Rhode Island, at 8.73 percent, was higher.[8] It is simply not credible that almost 9 percent of our students have SLD. Anyone in the field will tell you that the criteria are arbitrary. Decisions often have more to do with parents' zip codes and advocacy than with students' attributes. We should focus less on identifying students, especially young students, for learning disabilities. We should instead invest resources in early teaching, in-class supports, and other preventive measures for all students. To the extent that such practices are being implemented, they should be supported.

In 2000-01, the average percentage of children across states, aged 6 to 17 with specific learning disabilities (SLD), was 5.52 percent; the Massachusetts percentage was 8.52 percent. It is simply not credible that almost 9 percent of our students have SLD.

2. *Tighten eligibility through consistent disability definitions and criteria, both in regulations and practice.*

To the extent that the Massachusetts definition of "special education" exceeds the IDEA's, it should be scaled back. Such definitions *do* affect practice. For example, Vermont tightly defines entitlement to special education in terms of eight basic academic skills. That narrow definition helped a district demonstrate that it provided an appropriate alternative to an expensive private school placement.[9]

In the last few years, Massachusetts finally adopted disability categories. Prior to that, we were "non-categorical." Educators, parents, and hearing officers are still on the learning curve. What is medical? What is educational? What is a serious emotional impairment (covered) as opposed to social maladjustment (not covered)? What is a specific learning disability (SLD)? And what is simply a different learning style? Categories that are ambiguous (as many are) lead to inconsistencies within and across districts and in Bureau of Special Education Appeals (BSEA) decisions.

Adding to the confusion, some Massachusetts definitions differ from the federal definitions. Massachusetts should adopt IDEA definitions, as inconsistency and confusion waste precious time and money. Eligibility determinations need to tighten in practice as well as in regulations. The good news is that when districts do make "no eligibility" findings, the BSEA generally upholds their determinations.[10]

3. *The Executive Office for Administration and Finance and the Division of Health Care Finance and Policy should set reasonable uniform rates for services and out-of-district private programs.*

Costs for private schools and services continue to escalate. Recently, one suburban district spent almost $4 million for approximately 90 special education students in private placement (more than $35,000 per student on average), while it spent about $3.5 million on the 600 in-district special education students (about $5,800 per student on average). In both cases, these dollar amounts are over and above the district's per-pupil expenditure for regular education students. This is wrong.

The Division of Health Care Finance and Policy, which sets rates for evaluations and specific services, should add some new ones to its price lists, specifying costs according to the providers' degree of training. Currently, we have too many disputes with providers for such services as applied behavior analysis (ABA) and sensory integration (SI). Lack of clarity about approved rates for service providers leads to many disputes and, undoubtedly, higher costs.

[7] Statistics from U.S. Department of Education's *Twenty-fourth Annual Report to Congress on Implementation of the IDEA* (2002). Available online at http://www.ed.gov/offices/about/reports/annual/OSEP/2002.

[8] These numbers are based on state reports, which undoubtedly reflect different practices. Nonetheless, Massachusetts continues to focus tremendous efforts on these children and, given the many private programs in the Commonwealth, this disability category continues to generate many disputes at IEP Team meetings and at Bureau of Special Education Appeals (BSEA).

[9] J.D. v. Pawlet School District, 224 F. 3d 60; 33 IDELR 34 (2nd Cir. 2000).

[10] See, for example, Weston Public Schools, BSEA # 01-0682; 7 MSER 10; 34 IDELR 75 (2001).

4. State agencies should serve school-aged children with significant non-educational needs.

One benefit of tightened eligibility may be that finally other agencies will have to come forward to provide services. Massachusetts, like the rest of the country, has seen a growth in the numbers of youngsters with serious emotional, physical, and social disabilities who are difficult to place. Many youngsters have multiple needs—only one of which is education. These include students with extensive medical needs, clinical depression, substance abuse issues, SED (serious emotional disturbance), ODD (oppositional defiant disorder), PTSD (post traumatic stress disorder), and explosive disorder, as well as sex offenders. For too long, special education has been the only game in town. Massachusetts should revise its statutes and clarify which agencies (DSS, DMH, DMR, DPH, DYS) should serve school-aged children whose main or even parallel need is *not* educational—but rather social, emotional, or medical.

Insurance companies too have often been let off the hook. If services are available through insurance *and* education, parents are steered to get them at school. For example, ABA, the oft-requested and costly 40-hour per week program of in-home Discrete Trial Training for children with autism, started off as "therapy" paid by medical insurance and later became "education."[11] Continuing to place all responsibility on school districts dilutes and diverts the district's energy and resources and, ultimately, will end any hope of achieving quality learning for all students.

Massachusetts must clarify which entity—school, social service agency, insurance, and/or parents—should fund hospitalizations, treatment centers, etc. Allowing battles about these issues to continue on a case-by-case basis at the BSEA is costly and does not provide districts, parents, or agencies with much needed guidance for their decision-making.

The BSEA has recently provided assistance in this effort by taking jurisdiction over state agencies (in addition to the DOE) for services to children with disabilities.[12] This is a good start, and we should build on it.

5. The BSEA should improve its due process hearing procedures.

The BSEA is charged with providing parents and school districts—both of which have due process rights—with a venue to resolve disputes about a child's education. Unfortunately, over the past 25-plus years, the BSEA hearing process has become overly burdensome for parties. In response, they take steps to avoid the system. Of 647 hearing requests in the 2002-03 school year, only 27 (about 4 percent) resulted in decisions.[13] The rest were withdrawn or resolved privately (often, to "save" money).

While some may applaud the fact that most disputes are "settled," parties often settle cases for the wrong reason: It is simply too costly and burdensome to go to a hearing.[14] Hearings often take many days stretched out over months, require multiple written motions and procedures, and involve "gotcha games" of procedural compliance. Faced with similar issues, California recently amended its statute, allowing hearing officers to limit the length of hearings and take other measures to rein in due process hearings.[15]

[11] For an interesting example of this evolution, see Catherine Maurice, *Let Me Hear Your Voice: A Family's Triumph over Autism,* New York: Fawcett Columbine, 1993. The parents had two children with autism. They won an appeal against the insurance company for payment of the ABA Discrete Trial Training for both children. The book states that the other recourse is to "convince the local school district that the child needs this therapy, and that the district should provide it under the [statute]." It appears that most parents now seek such services through the school districts.

[12] See, e.g., Medford Public Schools, BSEA # 01-3941; 7 MSER 75 (2001).

[13] MEMO, BSEA, "Special Education Appeals—Fiscal Year, 2003 Data Summary," October 7, 2003.

[14] See also, Anna B. Duff, "How Special Education Policy Affects Districts," in Chester E. Finn, Jr., Andrew Rotherham, and Charles R. Hokanson, Jr. (eds.), *Rethinking Special Education for a New Century*.

[15] California Education Code Section 56505.1.

BSEA decisions, when finally rendered, read like legal tomes. Thirty- to 50-page single-spaced decisions are typical. They are too complex and often leave parties exposed to more litigation and uncertainty. The irony, of course, is that the burden created by the BSEA's current practice serves to deny both parties their due process rights to speedy resolution of a dispute about a child. The process is extremely stressful for school personnel and parents. Far too often, it permanently damages the relationship between home and school.

Many youngsters have multiple needs—only one of which is education. These include extensive medical needs, clinical depression, substance abuse issues, and serious emotional disturbance. Massachusetts should clarify which agencies (DSS, DMH, DMR, DPH, DYS) should serve school-aged children whose main or even parallel need is* not *educational—but rather social, emotional, or medical.

6. Eliminate burdensome paperwork and excessive requirements.

It is well known that paperwork and procedural burdens are driving special educators from the field. Teacher recruitment and retention are major national challenges. Excessive paperwork and procedures often have negative unintended consequences, such as added tension among staff and parents, and lack of trust.

Specifically, the DOE should loosen state timelines and requirements that exceed the IDEA's. Some states have simply adopted the federal standards. Our state regulations are still some 40 pages long—in addition to the IDEA's 100 pages of regulations.

Massachusetts DOE audits and complaint resolution systems continue to be driven by paper compliance—endlessly documenting process instead of progress, input instead of outcome. Most school professionals do good work, care about education and children, and want to do the right thing. The state should find a way to support them and stop playing procedural "gotcha games." IEP Teams should be encouraged to make reasoned outcome- and data-driven decisions, instead of trying to bulletproof themselves against the threat of litigation and DOE monitoring. The DOE should actively set out to rebuild a sense of cooperation with schools, becoming more of a partner and less of a watchdog.

Massachusetts should amend several specific requirements, including the following, and adopt the federal model, where it exists:

- Provide districts with more flexibility for completing evaluations, determining SLD eligibility, and implementing IEPs.

Federal requirements have no timelines. Massachusetts regulations require school evaluations to be completed within 30 school days of the parents' consent, while parents' independent educational evaluators are given more flexibility: "whenever possible within 30 days."[16]

Massachusetts requires that the Team *shall* determine eligibility, while the federal regulations state the softer *may* determine, based on certain information.[17] Since SLD is by far the largest eligibility category, and since we have more SLD students than the national average, loosening this requirement may assist school-based Teams. It costs nothing to implement and may save dollars.

The IDEA states that IEPs shall be implemented "as soon as possible" after they are developed. In Massachusetts, districts must write and implement IEPs "immediately" and "without delay."[18] Failure to implement IEPs "immediately" can lead to orders for compensatory services—a troubling and costly new growth area in special education litigation nationwide and at the BSEA.

[16] Compare 603 CMR 28.04(2) with 28.04(5)(e).

[17] Compare 603 CMR 28.05(2)(a)(1) with 300 CFR 541(a).

[18] Compare 603 CMR 28.05(3)(b) and 28.05(7)(b) with 300 CFR 300.342(b)(1)(ii).

■ Simplify the IEP form and Team meeting requirements.

There is no mandated federal IEP form. The Massachusetts mandated IEP form has gotten longer and more complex, instead of shorter and easier to develop. It is not user-friendly. Do parents actually understand it? It is not unheard of to have an IEP Team meeting about one child continue on for multiple sessions, each several hours long—just to complete the IEP and fill out the form. Who is teaching students while this endless process unfolds? Who finds and funds substitute teachers and aides? Such processes are costly, nerve-racking, and drain the cooperation contemplated in special education.

7. End the Massachusetts statutory right to a "related services only" IEP.

Under the IDEA, specific related services (occupational therapy, physical therapy, counseling, speech/language, music therapy, transportation, etc.) must be "related to" special education. But Massachusetts' sweep is broader. Here, "related services" need not be related to anything.[19] That is wrong. We already have the Section 504 option for children who are eligible solely for related services.[20] IEPs solely for related services are costly, time-consuming to develop, and confusing to districts and parents.

8. End the FAPE requirement for home-schooled children.

State law regulates home schooling. There is no federal IDEA requirement. Massachusetts should treat home-schooled children as privately placed children who are withdrawn from the district by their parents. Instead, Massachusetts requires school districts to assure home-schooled children the entitlement to FAPE. Trying to monitor their programs has turned out to be difficult and costly.[21] Massachusetts should end the school districts' obligation to ensure that home-schooled children are receiving a FAPE.

9. End the individual entitlement for services for children who are privately placed in private school—when FAPE is not at issue.

Massachusetts currently provides students who are privately placed in private schools by their parents with an individual entitlement to obtain special education and related services from the district at a time and place that provides them a "genuine opportunity."[22] This is so even when there is no dispute that the district had offered the child a FAPE that the parents chose not to access. This entitlement should end. Again, federal law has no such requirement. Instead, under the IDEA, these children have no individual entitlement to services or even to request a due process hearing. They do have the right to file a complaint with the DOE and to receive services as a proportionate share of the district's federal moneys, provided at district discretion in consultation with private/parochial schools.

In February 2004, the First Circuit Court of Appeals upheld these IDEA provisions in a New Hampshire case.[23] Massachusetts school districts, though in the First Circuit, may not be able to benefit from this ruling due to the state's enhanced Chapter 71B provisions.[24] The legislature should revise them.

It is important to highlight the reality that other laws protect these children as well. Private schools may be obligated to provide services for students under Section 504 and the Americans with Disabilities Act (ADA).[25]

[19] 603 CMR 28.02(9); 05(2)(a).

[20] Section 504 of the Rehabilitation Act of 1973 (Section 504) is the federal anti-discrimination statute for people with disabilities. Under Section 504, schools determine eligibility for protection and provide accommodations for eligible children. As with special education, parents have rights to dispute the district's determination and seek due process. In Massachusetts, they can do so at the district level, state (BSEA) level, and federal (Office for Civil Rights) level.

[21] See, e.g., Acton-Boxborough Regional School District; BSEA # 03-2542 8 MSER 402; 38 IDELR 82 (BSEA 2002).

[22] 603 CMR 28.03(1)(e)(1).

[23] Greenland School District v. Amy N. 358 F. 3d 150; 185 Ed. Law Rep. 73; 40 IDELR 203 (1st Cir. 2004).

[24] See, e.g., Medford Public Schools, where the BSEA expansively interpreted the IDEA for a parochial school student. BSEA # 02-1855; 8 MSER 367; 38 IDELR 24 (BSEA 2002).

[25] See Axelrod v. Phillips Academy, 30 IDELR 516 (D.C. MA 1999), and Bercovitch v. Baldwin School, Inc., 133 F. 3d 141; 123 Ed. Law Rep. 1067; 27 IDELR 357 (1st Cir. 1998), private school cases, for extensive descriptions of programming and accommodations private schools make for students with disabilities, under the ADA and Section 504.

10. Disseminate information more effectively about regular education opportunities offered by public schools for all children.

Some parents believe they need an IEP or "504 plan" to get services for their child. Often the services sought are simply good teaching practices that are routinely provided in general education, extra help, MCAS tutoring, preferential seating, counseling, monitoring by teachers or therapists, parent communication, etc. As Massachusetts regular education reforms and NCLB requirements unfold, schools must get the word out about the extensive services they offer for all students through regular education programming.

Perhaps the DOE or a consortium of schools should seek a spokesperson like Bill Cosby, a sports hero, or young businessperson to spread the word about what schools are doing for all students. Such information (in plain language) can alleviate parental fears about the "cracks" through which their children might fall. Special education is not the only service or sealer of "cracks." A good public relations effort may prove to be cost-effective.

11. Amend MCAS policy and practice.

First, the MCAS alternate assessments continue to be overly labor-intensive, time-consuming for teachers, costly, and of uncertain validity. Simplification and further targeting are in order.

Second, the DOE should amend its MCAS accommodation requirements for students with disabilities. The DOE now allows for testing that results in invalid scores for some students. The DOE allows IEP teams to provide "non-standard" accommodations for students—and to count those "non-standard" scores along with those taken under "standard" testing conditions.[26] Thus, in Massachusetts, some children have the reading test "read" to them or use a spell checker or scribe in the "composition" tests or have a calculator for the non-calculator portion of the math test, etc.[27] And all their scores count are reported along with those taken under standard conditions.

This policy is wrong for many reasons. For starters, it invalidates the test, in contrast to long-standing psychometric principles, and NCLB, IDEA, and Section 504 requirements. It appears to focus on getting students to "pass," instead of to learn the skills tested. It contradicts more than 20 years of legal precedent and federal directives, which instruct IEP Teams to provide needed accommodations, limiting them to those that preserve *validity* standards (what the test purports to measure).[28]

The DOE's requirements expose the state to lawsuits for compensatory services by high school graduates.[29] We can expect other unintended consequences from this well-meaning—but wrong—approach.[30]

- *"You passed me through. You certified that I had the basic MCAS skills of reading, writing, and math, when you knew I did not."*
- *"I can't hold a job because my boss says I have to be able to read. It's your fault."*
- *"You held me to different (lower) standards."*

[26] "Standard" accommodations do not fundamentally alter what is being tested and maintain test validity, while "non-standard" accommodations do fundamentally alter what is being measured. In other words, they invalidate the test, for purposes of reporting results. In many states, "standard" accommodations are called "accommodations," while "non-standard" accommodations are called "modifications."

[27] *Requirements for the Participation of Students with Disabilities in MCAS: Including Test Accommodations and Alternate Assessment,* A Guide for Educators and Parents (Spring 2004 Update).

[28] For example, Indiana recently defended its graduation test against a class action lawsuit by students with disabilities. The court held that the IDEA was not violated when the state refused to allow certain accommodations on the test, if those accommodations would affect the validity of test results. Rene v. Reed, 751 NE. 2d 736 (In. C.t App. 2001); transfer denied, 774 NE 2d 506 (Ind. 2002). Memorandum, Letter to Chief State School Officers, 34 IDELR 293 (OSERS/OESE 2001); Letter to Gloeckler, 103 LRP 49608 (OSERS 2003).

[29] Recently, a 32-year-old in New York was permitted to sue the district for compensatory services. Also see Brett v. Goshen Community Sch. Corp, 161 F. Supp. 2d 930; 35 IDELR 152 (N.D. Ind. 2001), where a graduate tried unsuccessfully to prove that he was passed through the system inappropriately.

[30] By report, a school already fielded a parent's request to stop teaching reading to the child, since the child can "pass" MCAS without having to read.

Compensatory education is a growing and costly concern—far better and more cost-effective to have a valid and reliable MCAS now. If, to do so, the state has to amend education policy or redefine "diploma," so be it. We can have more than one diploma or create other honorable high school exit documents. The appropriate response is not to pass children through invalid accommodations and other questionable testing practices.

SOLUTION FOR THE LONG TERM: CREATING A 21ST-CENTURY MODEL

Special education has always been and still is—in essence—a civil rights law. It is not about teaching and learning, pedagogy, outcomes, research-based education, or what works best for children. It is about rights and access and disputes. It is about the individualized entitlement to due process. As long as the legalistic, procedural entitlement of the IDEA and Chapter 71B remains, we cannot truly balance services for all children and rein in costs. We will continue to rearrange the deck chairs on the Titanic until the entire public education effort sinks.

It is time to end the individual entitlement to special education. Special education should become about what works for children in classrooms.

The need for that entitlement disappeared years ago. It is time for the law to catch up with the progress of the past 30 years. Let us declare victory and move on! Just as the March of Dimes changed its mission after the polio vaccine succeeded, so should we.

The 1970s civil rights model of disputes and court action does not fit the outcome-driven, research-based model for education that we are attempting to implement in the early 21st century.[31] The 20th-century procedure- and input-driven IDEA needs to make way for 21st-century outcome-based reforms, including those in the NCLB. It is time to end the individual entitlement to special education.

Special education should become about what works for children with disabilities in classrooms. Special education should consider student strengths, as well as weaknesses; raise expectations, not lower them based on disability status; focus on results, not process. Special education should be about providing services that are outcome- and research-based and specialized, as appropriate. Lawyers, doctors, and state officials should step aside and let special educators teach more than a small fraction of their day. Twenty-first century education should focus on assisting all students to learn—never mind the label.

Special education should not continue to be paid off the top of school budgets because of its status as the only individualized entitlement for students. The Superintendents' report, *The Impact of Special Education on School Reform*, found that most of the 1993 Education Reform Act moneys went to fund special education costs and never reached the intended target. "These developments place education reform at risk."[32] Paying for costly special education at the expense of improving our schools is bad public policy. We will pay now or later for a poorly educated citizenry and good intentions gone terribly awry. Let's do the difficult right now by adopting the eleven practical changes summarized above. As for the "impossible," let us begin to create a 21st-century model to educate all students without the need for labels and end the entitlement for due process-driven special education as it has been practiced.

[31] See more extensive discussion in Miriam Kurtzig Freedman, "Special Education at century's end: Why it's off course and how to realign it," in *Agenda for Leadership 1998*, Pioneer Institute for Public Policy Research.

[32] *The Impact of Special Education on School Reform,* Final Report of the Task Force on Special Education of the Massachusetts Association of School Superintendents, February 1997, p. 8.

COSTS AND BENEFITS

According to the Massachusetts Department of Education, 150,551 students (15.15 percent of the total) were reported to have disabilities under the IDEA and Chapter 71B in the 2002-03 school year; more than half of these were categorized as having Specific Learning Disabilities. Direct and indirect expenditures on special education in Massachusetts—not including the regular education share of education received by students with IEPs—was estimated in fiscal year 2002 at 21 percent of total education spending.[33] The Office of School Finance reports that in FY2002, per-pupil expenditures for special education students were approximately twice as high as for regular education students ($13,178 vs. $6560).[34] The Commonwealth's spending on special education programs tops $1.25 billion annually.[35] Implementing the above proposals should help Massachusetts use its limited education dollars more effectively and bring education services for all students in line with federal mandates for improvement and accountability for results.

Implementing these proposals should help Massachusetts use its limited education dollars more effectively and bring education services for all students in line with federal mandates.

OBSTACLES

Obstacles to these proposals are powerful. Change is hard. Some have deemed threatening the entitlement to special education as "the third rail." Politicians touch it at their own peril. As the Massachusetts Superintendents' report has shown, however, unless we tackle this issue—like the elephant in the room—the chance of true reform for all is diminished.

We should not falter. These proposals are right for students, right for schools, right for Massachusetts, and right for our nation. We need to move beyond tinkering with the IDEA through amendments and refocus our energies on education for all students. The NCLB requires research-based instruction and outcome-driven results. Because students with disabilities are highlighted among the groups for special focus and attention, their education will need to be appropriate, and in some cases, specialized and individualized. This school-wide improvement model should be given a fair chance without the ever-present fear of litigation from one select group.

Yes, there are vested interests that will stand in the way. Powerful interests with powerful allies—at the local, state, and federal levels. But let us honestly ask: At this time when children with disabilities have full access to public education, what can be the continuing justification to allow only *their* parents the right to seek and demand special programming, different methodologies and discipline procedures, or extra services for their children?

Some advocates will argue that we should *not* take any rights away but, rather, expand the due process entitlement to *all* students. That response may "feel good," but it is impractical, counterproductive, and ultimately meaningless. Creating more of a legal battleground in schools is not the answer. That response would further whittle away the limited time left for actual teaching and continue to erode accepted ideals of fairness, the common good, and meaningful education reform for all. Instead, we must declare victory in the due process and educational access journey for children with disabilities and move on—into the 21st century.

[33] *Massachusetts Students with Disabilities Annual Report: 2002-03,* p. 2.

[34] See http://finance1.doe.mass.edu/statistics/pp02.xls. Different reports use different data provided for different purposes. This article does not compare them. It provides statistics for the purpose of conveying the magnitude of special education spending in the Commonwealth.

[35] See FY01 figures at http://finance1.doe.mass.edu/seducation/spedexp01.html.

REPLICATION

The current status of special education cannot hold: it does not serve children well, it burdens schools procedurally, and it creates unfairness and perverse incentives.

Some of the issues cited above pertain only to the Commonwealth. Others are of concern in many states, in particular, the commitment of social services agencies to children with special needs; the simplification of due process hearings; the reduction in burdensome paperwork requirements; and the need for our public schools to improve their outreach to parents about progress and effective programs in regular education. Solutions implemented elsewhere, such as California's efforts to shorten hearings and Vermont's precise definition for education, should be considered here in the Commonwealth.

Discussions at conferences and papers published in national journals document the growing realization that the current status of special education cannot hold: it does not serve children well, it burdens schools procedurally, it creates unfairness and perverse incentives, and it is out of step with outcome-driven approaches to school improvement. We must, as a nation, fix special education if we are to meet the education reform challenge of serving all students well.

ABOUT THE AUTHOR

Miriam Kurtzig Freedman is an attorney at Stoneman, Chandler & Miller LLP, a law firm in Boston, Massachusetts. A specialist in education law, she represents school districts on issues of testing, standards, and students with disabilities, and writes, speaks, and consults nationally on these issues. She wrote this paper while a Visiting Fellow at the Hoover Institution, Stanford University in early 2004.

Before entering the practice of law, Ms. Freedman served for eight years as Hearing Officer with the Bureau of Special Education Appeals of the Massachusetts Department of Education. She received her law degree from New York University, following a ten-year career as a teacher in New York, New Jersey, California, and Massachusetts. She also has a master's degree in history from the State University of New York at Stony Brook and a bachelor's degree from Barnard College, Columbia University.

Ms. Freedman has written three books, *Testing Students… and the Law, Sourcebook for Substitutes and Other Teachers*, and *Legalese: The Words Lawyers Use and What They Mean*. She has written two special reports for LRP Publications about testing issues and residential schools. Her articles have appeared in *Teacher, The Journal of Secondary School Administrators, Massachusetts Association of School Committees Journal, Education Week*, and *Education Next*. Since 1995, she has been a commentator for the *Massachusetts Special Education Reporter*, a quarterly publication highlighting Massachusetts special education decisions.

2004 Better Government Competition

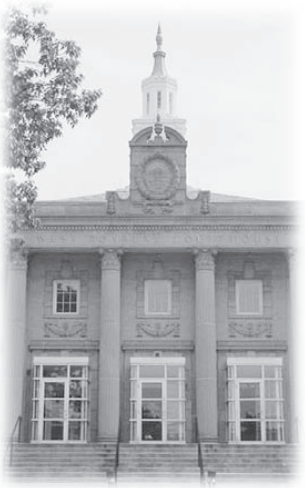
RUNNER-UP

Re-Inventing Justice Project: A Court-Community Partnership

West Roxbury Division, Massachusetts Trial Court

Kathleen E. Coffey
First Justice

Robert C. Rufo
Associate Justice



THE PROBLEM

The Massachusetts Trial Court Department must address three growing challenges if it is to ensure the public trust and confidence of its participants and properly meet its constitutional and statutory obligations through the fair and orderly administration of justice:

- The Trial Court system is commonly perceived as an insulated and reactionary institution that is unresponsive to the community it represents and unaccountable for the decisions it makes.
- No accepted measurement tool is in use to evaluate an individual court's performance in meeting the needs of the community and fulfilling its legal responsibilities.
- The court system fails to utilize resources available outside the Trial Court system to assist in the expansion of its services and increase its presence and participation in the lives of the people it serves in an efficient and cost-effective manner.

The Re-Inventing Justice Project identifies problems and challenges to the administration of justice and seeks solutions through available community resources.

THE SOLUTION

The Re-Inventing Justice Project seeks to make the West Roxbury Division of the Boston Municipal Court more accountable, accessible, and responsive to the needs of the people it serves. It seeks to increase public trust and confidence in the court system.

The Re-Inventing Justice Project was initiated in 1997 and continues under the leadership of First Justice Kathleen E. Coffey. The core of the project is a community task force managed by First Justice Coffey and Associate Justice Robert C. Rufo. It is comprised of more than 25 members who reflect the ethnically diverse and culturally rich urban neighborhoods served by the West Roxbury Court within the City of Boston: Hyde Park, Jamaica Plain, Roslindale, West Roxbury, Mission Hill, and sections of

Mattapan, Roxbury, and Dorchester. The members of the community task force identify problems and challenges to the administration of justice and find solutions through available community resources. Members include community leaders, elected officials, private defense attorneys, Boston police officers, students, and clergy from community churches, assistant district attorneys, public and parochial school teachers, probation officers, clerks and court security personnel. Task force meetings are conducted during non-court hours and are regularly scheduled on the first Wednesday of each month from 7 PM to 9 PM. All task force members are volunteers.

Community members working through the partnership improve the consistent delivery of Court services and increase public awareness of the services provided by the West Roxbury Court. The Court is able to recognize the needs and concerns of the community, is able to respond immediately to those concerns, and is ultimately able to find workable solutions by utilizing the talent and community resources within its own jurisdiction. Task force members serve as "listening posts" and by participating on various subcommittees of the project assist the Court in public awareness "campaigns" and consistent delivery of services. By utilizing the talent of its task force members and tapping local community resources, the Court is able to respond quickly to community concerns and find workable solutions. The constant interaction with task force members allows the Court to assess and measure its performance in meeting the needs of the community and fulfilling its legal responsibilities.

The Court is able to recognize the needs and concerns of the community, is able to respond immediately to those concerns, and is ultimately able to find workable solutions by utilizing the talent and community resources within its jurisdiction.

The Re-inventing Justice Project ensures that the West Roxbury Court identifies and utilizes, if appropriate, resources and solutions to problems available through government agencies, business organizations, medical services, community groups, and private individuals independent of the Trial Court system. This approach liberates the West Roxbury Court from dependence on the traditionally limited and coveted resources of the Trial Court Department. Particularly during this period of fiscal and economic restraint, this approach is essential to the management and administration of justice within the Trial Court system.

Court Access

The West Roxbury Division of the Boston Municipal Court is located at 445 Arborway in Jamaica Plain, near the Forest Hills MBTA station and proximate to the Forest Hills Cemetery, Franklin Park, and the Shattuck Hospital. Members of the task force determined that visitors had difficulty locating the West Roxbury Courthouse, which is in Jamaica Plain, and once inside the Court building, visitors had further difficulty finding their specific destination. This was not surprising since jury trials require the presence of witnesses, jurors, and personnel who reside within and outside Suffolk County, many of whom are unfamiliar with the Forest Hills neighborhood. In addition, the West Roxbury Courthouse encompasses five trial sessions, including a juvenile session, the Clerk's Office, the Probation Department, a lock-up security facility, the Office of the District Attorney, the Office for Public Counsel, a Court Clinic and administrative offices. The busy and fast-paced environment presented a logistical nightmare for visitors, many of whom are non-English speaking or first-time visitors. The task force reported that visitors experienced a range of problems, including tardiness for Court, undue stress, and the inevitable frustrations accompanying a first-time court appearance.

In response, the task force conceived and implemented two initiatives. First, it coordinated with the MBTA to place bilingual signage strategically at the Forest Hills MBTA station and along major access roads exhibiting directions to the courthouse. Second, it established an informational booth/kiosk in the main lobby of the West Roxbury Courthouse. Volunteers from the community staff and operate the kiosk through a program known as V.I.P. (Volunteer Information Program). They are available early every morning to answer questions from visitors and provide directions to the various court departments and trial sessions. Volunteers are retirees and senior citizens from a variety of backgrounds and come with a wealth of experience. They benefit from and thoroughly enjoy the interaction with daily court activities and the opportunity to serve the public, thereby providing a service to the Court and the community at no cost. Each volunteer is a graduate of a training program specifically designed by the task force to familiarize them with court protocol, procedure, practice, and court notices and forms. The initiative has achieved dramatic success. Because of the volunteers' efforts, the processing and inter-department flow of daily courthouse activity has been streamlined.

Particularly during this period of fiscal and economic restraint, this approach is essential to the management and administration of justice within the Trial Court system.

Community Awareness

Many community residents were unaware of the role and responsibilities of the West Roxbury Court and were conspicuously ignorant about the panoply of services offered by the Court. Perceptions and opinions were based primarily on television and media accounts (i.e., Judge Judy, Judge Joe Brown), rather than on accurate information or firsthand experience.

- ***Informational Brochure: Role and Responsibilities of West Roxbury Court***

  The task force produced and published an informational brochure and map in English and Spanish, which outlines the role of the Court and describes available programs. The task force provides the brochure to each prospective juror and visitor to the West Roxbury Court and distributes copies in libraries, police stations, community centers, and public buildings in the neighborhoods.

- ***Open House Series***

  To increase awareness of the Court's role in the community, the task force held a series of Open Houses during which a variety of court proceedings were enacted for the public, including a mock restraining order hearing and other criminal proceedings. Each of the court departments offered instructional presentations, including how to file a small claims action, how to seek relief from a tenant or landlord, and what to do when served with a motor vehicle citation. The West Roxbury Probation Department presented information about the services it provides to the community, including substance abuse treatment, mental health counseling, and domestic abuse treatment. The task force held a question-and-answer session, which in addition to responding to participants' specific inquiries, provided an opportunity to hear concerns and requests regarding the role of the Court in the communities.

Judge Kathleen E. Coffey welcomes an audience of about 150 people at the annual Law Day celebration of the West Roxbury Court. Seated at right is Judge Robert C. Rufo.

■ ***Educational Brochure: Children Exposed to Domestic Violence***

The task force also recognized that the children of domestic abuse victims had special needs because of exposure to serious violence in the home. The task force determined that medical insurance coverage often was not available and that parents looked to the Court for help in identifying and securing medical and psychiatric treatment and counseling for their children. The task force collaborated with nursing students from Massachusetts General Hospital and the Boston Police. The nursing students identified and reviewed all the existing neighborhood programs, shelters, and treatment centers in the jurisdiction and compiled a list of medical providers offering free treatment and counseling. The Boston Police assisted the Court in publishing an informational brochure that lists these resources. The brochure is distributed to all victims of domestic abuse in the West Roxbury Court trial sessions and at all restraining order hearings. It is also available to the public at police stations, libraries, and community health centers.

Partners

- Massachusetts General Hospital
- Boston Police

The Court's response to community needs is a constant challenge that requires vigilance and consistency. Accordingly, the West Roxbury Court Judges, joined by members of the task force, regularly attend evening community meetings conducted by neighborhood crime watch groups, business associations, and a variety of civic organizations. Participation in these community initiatives enhances community accessibility to the Court, increases public trust and confidence, and educates the Court about the needs and concerns of neighborhood residents.

Youth Programs

The City of Boston has witnessed an increase in the number of young people arrested for a range of crimes from graffiti and drug involvement to crimes resulting in bodily harm and violence. The locations of these crimes include schools, homes, bus and train stations, and other public areas. Much of the behavior is traced to peer pressure, poor self-control, and inappropriate responses to law enforcement officials, including local school police. In an effort to curb the rising numbers of young people entering the criminal justice system, the task force created two educational programs for students in the neighborhoods served by the Court. Both of the programs are staffed by members of the task force who volunteer their expertise and experience toward educating young people at an early age in an effort to deter criminal conduct.

In an effort to curb the rising numbers of young people entering the criminal justice system, two educational programs for students in the neighborhoods served by the Court have been created.

■ ***Straight Ahead with West Roxbury Court***

The Straight Ahead Program is a values-based interactive program for fifth and sixth graders. To date, over 20 Boston public and parochial schools have participated. Through a series of skits, videos, and discussions held at the Courthouse, the children learn about peer pressure, controlling anger, the dangers of drugs and alcohol, and the consequences of poor choices. The children also observe a trial, tour the courthouse including the lock-up, and have a chance, over pizza and soda, to ask the judges questions concerning the criminal justice system and safety issues they face living within their city neighborhoods. Graduation day for the students from the Straight Ahead Program is part of the annual West Roxbury Court Law Day celebration, which takes place on the first Friday in May. On this occasion, winners of the essay and poster contests from the local public and parochial schools are announced and guest speakers such as singer/entertainer Joey McIntyre and Boston

College basketball player Troy Bell discuss the dangers of peer pressure, uncontrolled anger, and the consequences of abuse of drugs and alcohol. A box lunch is traditionally provided to all the students with funds obtained through a Boston Police Youth Crime Prevention Grant.

Partner

- Boston Police

Parents and teachers consistently report a marked improvement in the behavior of the students, an increased understanding of the justice system by the students, and an expressed desire to emulate the positive role models they observed working in the court system including the judges, probation officers, clerks, court officers, attorneys, and police officers.

- ***Rights and Responsibilities***

High school students present different challenges and issues than their middle school counterparts. In the Rights and Responsibilities Program, the task force seeks to dispel the myth and mystique created by the popular culture concerning police and citizen street encounters and to reinforce positive behavior and attitudes toward police officers and school officers. The students observe a skit of a typical street encounter enacted by task force members. A discussion follows the skit in which the rights of citizens are compared with the responsibilities of citizens in an attempt to portray what conduct is an appropriate response during a stop and frisk or street stop by the police. The students observe through the skit the consequences of inappropriate behavior, i.e., arrest, as opposed to appropriate behavior in responding to police questioning.

The exchange and dialogue between the students and the task force members help identify specific issues confronting high school students and their peers in various neighborhoods. At the same time, the exchange allows the task force members who include police, defense counsel, probation officers, and judges to address the genuine needs, fears, and concerns of the students regarding their perception of the police and the West Roxbury Court and its impact on their lives.

Enhancement of Probation Services

Working with the task force, the West Roxbury Probation Department has been able to expand the services it offers to probationers and provide more resources to West Roxbury Court from agencies and organizations independent of the Trial Court system.

- ***The Mothers' Program***

Established in 1998, this first in the Commonwealth program for mothers on probation is an innovative vehicle dedicated to strengthening the parenting skills of mothers. It focuses on the incidents and circumstances that caused the women to enter the criminal justice system. The goals of the program are to reduce recidivism and to educate mothers about providing safe and stable homes for their children. Through a partnership with the Dimmock Community Health and Behavioral Center, the West Roxbury Court was able to establish an after-care program for the mothers in which a clinician meets individually with each mother and addresses the specific needs of that woman (domestic abuse, employment, substance abuse) that are interfering with her ability to develop into a strong, independent and self-supporting member of our community. This community resource has enhanced the effectiveness of the services offered by the West Roxbury Probation Department without any additional financial cost or burden to the Trial Court system.

Partner

- Dimmock Community Health and Behavioral Center

■ ***The Fatherhood Program***

The Fatherhood Program recognizes the unique and powerful role a father plays in the developmental and emotional growth of his children. This program is offered to young men on probation who are fathers and have been convicted of domestic abuse, drug offenses, and other crimes. The primary goals of the program are to encourage fathers to recognize their responsibility to their children and to reduce recidivism through educational discussions and role model presentations. The program consists of three 12-week sessions at Bethel A.M.E. Church located in Jamaica Plain under the supervision and leadership of Reverend Roland Robinson and a member of the West Roxbury Probation Department. The classes are designed to provide a spiritual, values-based approach intended to change destructive behavior and re-establish the parental relationship. The instructors and guest speakers stress the principles of affection toward the individual child, demonstration of respect toward the mother, and the requirement that the father exhibit exemplary behavior, free from the taint of alcohol and drug abuse. This Probation/Church partnership enables fathers on probation to participate in a values-based forum outside the adversarial courthouse setting.

Partner

■ Bethel A.M.E. Church

■ ***The Forensic Access to Community Services Program***

Probationers who suffer from mental illness and an addiction to drugs and alcohol often fail to complete the terms of their probation. Their poor communication skills, anxiety, lack of organization, and addictions impede their ability to report regularly and avoid illegal substances.

Partner

■ Boston Medical Center

The Re-Inventing Justice Task Force collaborated with the Boston Medical Center and the West Roxbury Probation Department to develop a program that provides individual psychiatric care with essential support services. Through the FACS Program (Forensic Access to Community Services), each probationer is assigned a clinician/therapist, a psychiatrist, a mental health street worker, and a specialized probation officer whose caseload consists exclusively of probationers suffering from mental illness and addiction to drugs and alcohol. This individualized and inclusive approach has afforded these probationers the structure and assistance they need to comply with the conditions of probation. These additional resources supplement the efforts of the West Roxbury Probation Department to increase effectiveness in supervising this challenged population.

Educational Programs for Adults and Senior Citizens

Partners

■ Massachusetts Attorney General
■ U.S. Postal Service
■ Registry of Motor Vehicles
■ Boston Police

Through discussions with neighborhood elderly groups, local business associations, and neighborhood crime-watch associations, the task force identified a need for informational classes regarding citizen's rights and resources for combating crimes against the elderly. The task force addressed the senior community's interest in obtaining pertinent legal information by establishing a Community Legal Access Series for Seniors (CLASS). The task force advertised in local newspapers and posted neighborhood fliers; notices were distributed to the community regarding this series of informational sessions to take place at the West Roxbury Courthouse. Volunteer representatives from the Attorney General's Consumer Fraud Bureau, the Postal Inspection Service, the Registry of Motor Vehicles, and the Boston Police Department in conjunction with task force

members gave presentations to the public on issues that affect the quality of life for the resident seniors. The volunteers addressed a variety of concerns expressed by the adult and senior residents, including identity fraud, small claims procedure, consumer fraud and warranty, estate planning, and elderly abuse issues. The exchange between the participants was informative, educational, and served to identify additional community concerns and interests, which will be addressed at future CLASS sessions.

COSTS AND BENEFITS

Initiated with a grant from the Supreme Judicial Court in September 1997, the Re-Inventing Justice Project is an ongoing volunteer urban partnership that augments the scarce resources of the West Roxbury Court with independent and neighborhood support in an effort to address community concerns and improve the quality of life for the citizens of Hyde Park, Jamaica Plain, Roslindale, West Roxbury, Mission Hill, Mattapan, Roxbury and Dorchester. This continuing partnership has allowed the West Roxbury Court to identify specific neighborhood problems and attempt to address those concerns by initiating innovative programs such as V.I.P, Straight Ahead, Rights and Responsibilities, Mothers Program, Fatherhood Program, CLASS, and FACS.

Courts cannot afford to wait until extra resources become available before they start planning how to provide services to the communities they serve.

The West Roxbury Court has determined that external communication is a core court activity. Courts cannot afford to wait until extra resources become available before they start planning how to provide services to the communities they serve. Expensive new technology and paid consultants are not necessary to begin bringing community residents into the court's culture. The West Roxbury Re-Inventing Justice Project illustrates how courts can begin with low-cost planning activities and explore opportunities for additional resources as the planning process unfolds. As courts reach out to other community and government entities to create an effective plan, they may learn of expertise that resides in the community and funding sources they do not normally access.

The West Roxbury Court has included stakeholders and members of the public in all of its court and community initiatives. This not only insures that the public's voice is included but also creates community advocates for the court. The court's future request for funding to implement or continue an important function or program is likely to be more effective coming from a member of the public. Members of the public arguing for funding to safeguard courthouse functions and programs reinforces the idea that the funds are needed for the protection of the public as well as for judges and court staff. Whether additional funding is forthcoming or not, the West Roxbury Court remains committed to continued community participation in its Re-Inventing Justice Project.

OBSTACLES

In organizing and implementing the Re-Inventing Justice Project, we encountered three major obstacles.

- **Time commitment.** All of the committee members are volunteers who participate without any compensation and who donate their talents and time enthusiastically and liberally. Many of our endeavors, especially in the early planning stages of a program or event, require a substantial investment of time, energy, and effort. It is often challenging

for the judges, staff, and community volunteers to meet their daily work responsibilities and also address the planning requirements and demands of the Re-Inventing Justice Project.

The Re-Inventing Justice Program presents a new vision of how a court and community should forge working partnerships.

■ **Finances.** Some costs and expenses generated by the Re-Inventing Justice Program are not as readily assumed by our partners as others. For example, postage, refreshments, and printing are necessary expenditures for many events and projects that can quickly mushroom into a sizable expenditure. Small grants and stipends would alleviate the necessity of constantly seeking ways to cover basic operating costs.

■ **Attitudes.** The Re-Inventing Justice Program presents a new vision of how a court and community should forge working partnerships. As with all changes, there can be an initial hesitation or reluctance that if not addressed will hinder a spirit of cooperation and collaboration.

REPLICATION

The V.I.P. program and informational kiosk serve as a best practice model for other courts in the Commonwealth. The West Roxbury V.I.P Program has been most recently adopted and instituted at the new Brooke Courthouse in downtown Boston. The Massachusetts Trial Court has a Public Trust & Confidence Committee, which has expressed an interest in replicating some of the programs and initiatives developed by the West Roxbury Court's Re-Inventing Justice Project.

ABOUT THE AUTHORS

Honorable **Kathleen E. Coffey,** First Justice, West Roxbury Division, Boston Municipal Court Department, was appointed to the bench in 1993. She is the chair of the Mental Health Committee for the Boston Municipal Court. Before joining the bench, she was in private practice from 1988 to 1993 at Parkway Law Offices in West Roxbury and with Brogna & Butters from 1985 to 1988. From 1979 to 1983, she was an Assistant District Attorney for Suffolk County. Judge Coffey currently teaches at Lasell College and has served on the faculty at Suffolk Law School as a full-time associate professor and as a member of the adjunct faculty.

Honorable **Robert C. Rufo**, Associate Justice, West Roxbury Division of the Boston Municipal Court Department, was appointed to this position in 1997. From 1996 to 1997, he was a Circuit Justice for the District Court. Before joining the bench, he was elected to and served as Sheriff of Suffolk County. From 1975 to 1977, he was a full-time instructor at Suffolk Law School and continues to serve as a member of the adjunct faculty at Suffolk University Law School and New England School of Law.

2004 Better Government Competition

RUNNER-UP

Digital Court Initiative for the Massachusetts Small Claims Courts

Charles T. Robertson II
Former Chief Judge, Cherokee Magistrate Court

THE PROBLEM

Massachusetts enjoys a process for adjudicating disputes for amounts of money less than $6,000 called Small Claims Court. This process involves some 100,000 claims and responses annually throughout the state, occupies enormous individual and personal resources, and has not effectively changed since before the discovery of transistors. Not only is there no process for electronic filing of claims, many courts do not even accept facsimile transmissions. The small claims processes in Massachusetts are effectively the land that technology forgot.[1]

THE SOLUTION

Against a similarly blank technology canvas, a small court in Cherokee County, Georgia, began the Digital Court Initiative. The goals were to reinvent the ways in which individuals interacted with the entry-level judicial branch of government, reduce the load on staff, lower the total cost per file of services, and do so nearly for free. Our plan was to build an informational web interface that functioned as an electronic filing desk. The task was spearheaded by Chief Judge Charles Robertson, a newly elected judge in his mid-40s with a strong technology background. At that time, there were no models to follow, no off-the-shelf technology designed for entry-level courts, and no money to pay for either even if they had existed.

The direct target population served by the Digital Court Initiative is limited to those individuals capable of accessing the Internet. Handling many cases more efficiently provides more individual time to serve constituents who, by choice or fortune, do not have technological resources available.

Judge Charles Robertson was a fan of Deming Management while an undergraduate economics student, and quantitative analysis was applied to each step of the program. Initially, a baseline was developed to capture the operating budgets of the office from calendar years 1999 through 2003. Due to different accounting procedures and budget categorization through various administrations, the budgets showed substantial variations. To establish a clear baseline, the budgets for each year were "normed" to reflect the budget categories and amounts in 1999. Next, files were divided into three primary categories: civil, criminal, and municipal. It was determined that the normal practice

[1] Although all 210,000 records were not individually confirmed, a Google search revealed literally dozens of courts in Massachusetts where actions can be filed, and an online handbook, but none of the courts in our research appeared to have online filing on their radar or to provide PDF forms for manual composition. Instead, each court provided instructions for physical visits. A national survey by HALT, An Organization of Americans for Legal Reform, rates the Massachusetts small claims courts at or near the worst in the nation (**http://www.halt.org/reform_projects/small_claims2004_small_claims_rc/pdf/04SC-ReportCard National-C.pdf**).

during each year was to assign file numbers to each submission, even though beginning in 2001 criminal cases began to be consolidated, with multiple counts reflected in a single warrant. Direct file numbers for each year were used for comparison purposes even though a more favorable assessment may have been gained using individual criminal charges.

The small claims processes in Massachusetts are effectively the land that technology forgot.

The court underwent an exhaustive three-month analysis of every single inquiry, whether by phone or in person. At the conclusion of the inquiry, the issues that represented the most common sources of questions were coordinated and integrated into the court web property.

The design had three initial phases. The first phase established the web property and provided "basics" such as directions, operating hours, outlines of the various court process, and contact information. Phase two expanded into true online filing with e-commerce integration. Phase three provided true real-time case tracking.

The program is now into a "maintenance and perfection" phase, in which each integrated component is subject to regular review and improvement. Each step along the way has required that an equivalent "pencil and paper" alternative be available for the technologically disenfranchised and that appropriate security and privacy concerns are balanced with the performance of a public trust.

COSTS AND BENEFITS

Since 2000, total costs per file have dropped more than $1 and are down nearly to the cost level incurred five years ago. Gross court revenue has increased by some $360,000, and net revenue is up $175,000 (both nearly doubled), while costs of processing increased by only about $80,000.

The Digital Court Initiative is beginning its third year; telephone calls and physical visits have been reduced by more than one-third, and the cost of processing individual files has been reduced by more than one dollar per file.

For individual citizens doing business in small claims court, the most important achievement of the Digital Court Initiative is that the court is open every day of the year and every hour of the day, through the comfort and security of their own homes or offices. A uniformly unpleasant experience dealing with institutionalized bureaucrats in a foreign environment involving potentially thousands of dollars has been humanized. Over 1,700 Cherokee County residents have used the court's online filing system, more than 50,000 have visited the court without starting a car or taking a moment from work, saving on travel time and expense, and over 200,000 total pages of information have been provided to citizens in every state in the Union, soldiers at war, and querists from six of the seven continents.

The staff have a different view. With inbound call volume reduced by 50 calls per business day, they have saved nearly 3,500 hours of phone time, representing a full year and a half of full-time employment. Despite a doubling of file claims in the same period, desks are clear, files are processed immediately upon delivery, and judicial orders are executed in minutes rather than months. Weekend desk sessions are long forgotten, a child's phone call can be taken without remorse, and injected into staff members' daily operating environment is the certainty that they exceed the performance of any comparable agency of government and, in fact, compete with private industry.

As an elected official, the judge has a markedly different vantage point: Every single visit to the Internet property shows his smiling face and provides a pleasant experience, which by extension reflects positively on him. And, last but not least, the county manager has yet a different vision. As the focus of incredible pressure to improve services in

an environment of spiraling costs and dwindling revenues, he believes that the most important aspect of the Digital Court Initiative is that twice the volume of cases can now be efficiently handled with no increase in clerical staff or any substantial investment of shrinking tax revenues.

In court, every file carries certain associated costs. Each filing fee represents some money that is available to the court itself, and other funds collected for other departments. This produces both net and gross revenue streams. As figure 2 shows, there has been a distinct increase in the dollar volume handled by the court, as well as in the total volume of filings. Comparing the two provides an objective analysis of the financial performance of the court after implementation of the Digital Court Initiative. Total costs per file have dropped more than $1 since 2000 and are down nearly to the level of cost incurred five years ago. Also compared to 2000 data, gross court revenue has increased by some $360,000, and net revenue is up $175,000 (both nearly doubled), while costs of processing increased by only about $80,000.

Figure 1. Annual civil filing growth

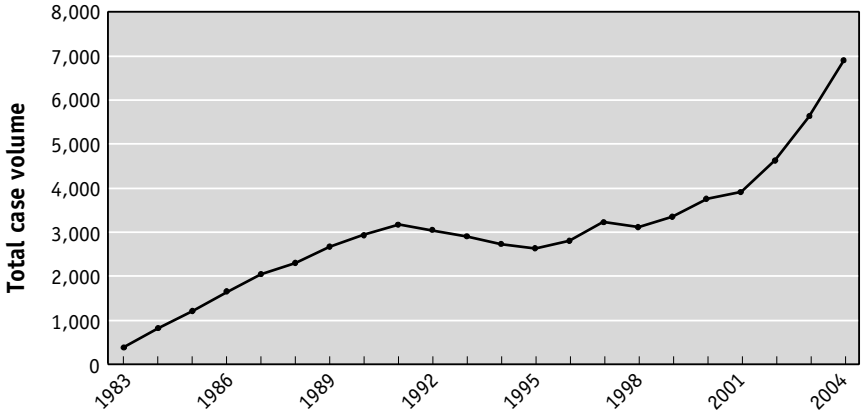
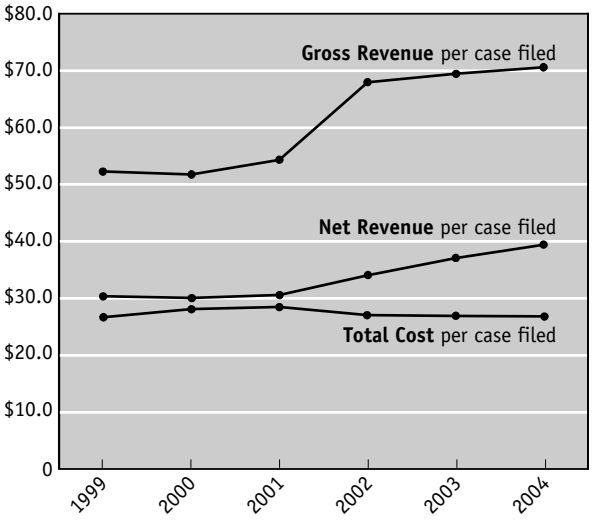


Figure 2. Revenue vs. cost per filing in Georgia applictions



Equally important are areas that are more difficult to submit to quantitative analysis. For example, in 1999 it was normal to reach a voice mailbox when calling the court; one's call may or may not ever be returned. Now there are no voicemail messages. Staff are able to respond to phone calls immediately. Finally, the constituents are generally content, despite the pressures inherent in dealing with an unpleasant and little understood bureaucracy.

OBSTACLES

The established inertia of entrenched bureaucracies is an impediment to any innovation. The first, and most substantial, challenges were in the integration of technology solutions to a government workforce with incipient institutional inertia. Without the staff buying in, it never would have happened. Second, the physical planning and implementation of e-commerce were not easy, and a number of blind alleys were explored. Figuring out the export process for other counties and states was exhausting, and streamlining the process to handle transactions such as traffic tickets more quickly has been difficult. Finally, the combined challenges of indigent and multilingual access have presented some serious moral and philosophical hurdles as we try and broaden accessibility. A conceptual solution involves providing free access codes for nonprofit groups, but that programming is still in the planning stage.

An unbiased eye probably would have a number of criticisms, chief among them that the bandwidth requirements make the more sophisticated services most effective on high-speed Internet connections. It is true that the e-commerce platform has a higher "failure to finish" (FTF) rate with dialup connections than it does with DSL or T1. Every challenge has been addressed, although the entire enterprise was developed on a shoestring and the maxim "adequate today is preferable to excellent at an indefinite date" has become the operational philosophy. Each solution set could be improved. We know there are better training programs for staff, better technologies for faster access, and smarter programmers, but improvement is a function of research and development investment.

The Digital Court Initiative could be ported to Massachusetts without a dollar of taxpayer investment. One small claims court in the state with the ability to accept e-mail messages could implement the process and a 30-day testing cycle, then launch it to all interested courts with no cost to taxpayers.

REPLICATION

The initiative is currently extended to 29 other Georgia small claims courts and seven traffic courts, serving populations of roughly 1.8 million. It has also been approved for launch in Ohio and Florida counties to serve populations totalling in excess of 3.5 million people. These numbers do not include the anticipated inclusion of the municipal interlocutory processes planned for New York City.

The Digital Court Initiative in its present form could be ported to Massachusetts without a dollar of taxpayer investment. Implementation would require one small claims court in the state with the ability to accept e-mail messages to take the initiative to implement the process, a 30-day testing cycle, and then launch to all interested courts with no cost to taxpayers. Obviously all progress has a cost of some type, and this system is fully user paid. The patent-pending system for other jurisdictions has been designed to provide substantial content with all of the costs covered by a convenience charge assessed only on the parties who voluntarily choose to use the court's online filing capabilities, with all other services (including forms) provided at no cost to the court or taxpayers.

ABOUT THE AUTHOR

Charles T. Robertson II was senior partner at Robertson & Walker LLC, a business, property, and family law firm, before being elected Chief Magistrate of the Cherokee Magistrate Court. His term ended earlier this year. He has published two books, *How to File for Divorce in Georgia* and *How to Start and Run a Georgia Business*. He holds two trademarks and two federally registered copyrights, and owns over 40 nationally recognized Internet domains. In 2003, he received recognition as one of the nation's premier forward-thinkers in government by the JFK School of Government at Harvard University in its Innovation in American Government Awards Program.

Judge Robertson studied at Georgia State University and the University of Maryland prior to completing his undergraduate studies at Kennesaw State University, where he earned a Bachelor of Business Administration degree in economics and finance. He received his J.D. from John Marshall Law School and is currently pursuing additional postgraduate studies in taxation at Washington Law School.

Delaware's Partner$ in Procurement

Gloria Wernicki Homer
Secretary of Administrative Services, State of Delaware

Jack Markell
Delaware State Treasurer

Delaware's Partner$ in Procurement, called "P2," began as an effort to achieve best-in-class pricing and service quality in state purchasing contracts. Because they were not leveraging their "bulk purchasing power," state agencies were spending too much for the items they needed and buying too many things they did not need (such as high-end video packages for each new computer). Like most states, Delaware often awarded contracts for purchases after just the first round of bidding, instead of encouraging suppliers to compete to beat the lowest first-round price. Lacking deep industry expertise, the state's purchasing agents also were not always able to negotiate best prices for contracts. Too often state employees would buy from non-contract vendors, incurring unnecessary costs. While the state's decentralized buying system offered flexibility, its accounting system was unable to capture the needs of all agencies and therefore could not communicate total needs to the vendors and take advantage of volume discounts.

In January 2002, the state, with the help of Silver Oak Solutions, kicked off the initiative by conducting an opportunity assessment of Delaware's expenditure data, purchasing practices, and the resulting statewide contracts. Silver Oak segmented and identified over $1.1 billion in addressable purchased goods and services across 175 categories for savings creation. The analysis included expense data from 22 agencies, 3 universities, and 19 K-12 school districts, with over 4.5 million transactions.

A few months later, the state selected 14 different categories of spending for the pilot project of the sourcing initiative. The collective annual spending across these areas was $44 million. The project team identified more than $4 million in annual savings and $15 million in total contract length savings, a 9 percent reduction. The savings achieved through the competitive bidding process represent unit price reductions on the same set of products and services purchased by Delaware prior to the project.

In late September 2002, the state targeted an additional 10 spending areas for renegotiations. This phase of work launched several new approaches for savings for

the project such as "direct leveraged negotiations" with incumbent suppliers (offering current suppliers additional business in exchange for greatly reduced per-unit costs) and "right specification." P2 created $1 million in annual savings during this phase.

Partner$ in Procurement was designed to produce $2.5 million to $10 million in savings. Among additional project goals were to redirect the purpose of the users and other buyers to concentrate on value; improve competition in the bidding process; enable agencies to capture savings in part for their own purposes; expand the vendor base without detrimental effect on in-state, minority- and women-owned businesses; and facilitate the use of state contracts by improving their value and benefits.

Partner$ in Procurement accomplished these goals and more. Delaware is now able to capture and track the savings created, reduce unauthorized (non-state contract) purchases, and monitor vendors to ensure they are pricing and billing correctly. This methodology completely replaced Delaware's old contracting practices and saved the state more than $1.2 million in just seven months. The state expects to continue to reap savings as P2 best practices affect future contracts. Nine states have followed Delaware's lead in optimizing state procurement practices.

ABOUT THE AUTHORS

Gloria Wernicki Homer became Secretary of the Delaware Department of Administrative Services in 2001, after serving two years as the department's Director of Administrative Services. In addition to leading and co-authoring the state's purchasing and contracting law, her accomplishments include establishing an automated statewide fleet system and the "Delaware Helpline." She also has served as Director of Capital Budget and Special Projects for the state and as president of the Campus Community School Board of Directors, a school she co-founded in 1996. She did master's degree work in city and regional planning at Ohio State University and received a B.A. with honors in sociology from the University of North Carolina at Chapel Hill.

Re-elected State Treasurer in 2002, **Jack Markell** has worked to make Delaware state government more responsive and efficient. He entered public service after a successful private sector career in senior management positions at Nextel and Comcast as well as posts as a consultant at McKinsey and Company, Inc., and as a banker at First Chicago Corporation. He brought to state government a fresh perspective on government spending and worked with Secretary Homer and the Department of Administrative Services to implement the "business-best" procurement strategy described here. Mr. Markell earned his bachelor's degree from Brown University and an MBA from the University of Chicago.

Supportive Senior Housing

Marc A. Slotnick *and* ***Paul McPartland***
Massachusetts Department of Housing and Community Development

The Supportive Senior Housing program is a recent initiative designed to bring some of the essential benefits of assisted living developments to more than 3,000 residents of 22 selected state-funded elderly public housing developments across Massachusetts.

Jointly developed by the Commonwealth's Executive Office of Elder Affairs and the Department of Housing and Community Development (DHCD), the Supportive Senior Housing program helps seniors maintain their independence and "age in place." The program provides all residents with supportive services such as service coordination, 24-hour on-site personal care staff, a daily meals program, and structured social activities. Additional services, such as personal care assistance, transportation, medication management, housekeeping, shopping and laundry service, are provided to qualified seniors based on income and need, and are available for purchase by all other residents on a sliding fee scale.

A small annual subsidy to each site that averages under $60 per apartment per month from Elder Affairs funds the program, which seeks to both improve the quality of life of all residents as well as save state funds by reducing the number of frail residents who need to transfer into subsidized care in nursing homes.

Assuming an average state subsidy cost of $1,981 per month for a nursing home and $821 for an assisted living placement,[1] the annual savings for each individual able to live independently in Supportive Senior Housing, rather than in a subsidized assisted living or nursing home unit, is enormous. If the program is effective at keeping even six individuals in a hypothetical 150-unit elderly housing development out of a nursing home, the $101,160 savings more than justifies the $90,000 subsidy required to bring the program to the development.[2] Just as importantly, it brings an enhanced level of services to the other 144 seniors living in the hypothetical development at no additional cost.

[1] Subsidy cost estimates based on analysis performed by NCD Development Corp., 2003.

[2] In addition to the state savings noted, the program also results in monthly per unit federal subsidy savings of $560 per assisted living unit and $1,918 per nursing home placement.

ABOUT THE AUTHORS

Marc A. Slotnick is Associate Director of Public Housing and Rental Assistance at the Massachusetts Department of Housing and Community Development (DHCD). **Paul McPartland**, Asset Management Coordinator, Division of Public Housing and Rental Assistance, DHCD. This paper was submitted jointly by DHCD and the state Executive Office of Elder Affairs, co-developers of the Senior Supportive Housing program. Officials of both agencies are pictured below.

Supportive Senior Housing program staff members include (top row, left to right) Martin Robb, Housing Management Specialist (DHCD); Carole Collins, Director, Bureau of Housing Management (DHCD); Marc A. Slotnick, DHCD Associate Director for Public Housing and Rental Assistance; Maggie Dionne, Director of Housing and Supportive Services (Elder Affairs); Meryl Price, Assistant Secretary for Policy and Program Development (Elder Affairs); Paul McPartland, Asset Management Coordinator (DHCD); (bottom row, left to right) Jane Wallis Gumble, DHCD Director; Jennifer Davis Carey, Secretary of Elder Affairs.

Grant Management

Massachusetts Executive Office of Public Safety

Edward A. Flynn
Secretary of Public Safety

Jane Wiseman
Assistant Secretary of Public Safety

The Executive Office of Public Safety (EOPS) Programs Division manages $100 million per year in federal grant funds for law enforcement and criminal justice programs. Prior to the arrival of Public Safety Secretary Edward Flynn, grant-making at the Executive Office of Public Safety was characterized by a lack of oversight and management. Grant-making was based on outdated strategies and technologies, and it was conducted without any standard procedures, providing easy access for abuse of the system. The agency, responsible for less than a tenth of a percent of the state's budget dollars, was named in one out of nine of the audit findings in the state-wide audit.

Upon arrival, Secretary Flynn undertook a review of the grant programs and charged one of his senior staffers with fixing the broken agency. Several improvements were put in place by Secretary Flynn and Assistant Secretary Jane Wiseman:

■ **Automation of the process.** By automating the application posting, proposal submission and award noticing processes, the office has become more user-friendly and has saved significant time and money. The office has also created new database tracking systems for grantee reports to help understand demand for each grant program and assure compliance with federal regulations.

■ **Linking to strategy—competition for grant funds.** Grant funds can best be put to strategic use when the process involves some competition. The office has implemented a formal competitive and standardized process for rating, ranking, and scoring grant applications that provides clarity to applicants and to program administrators.

■ **Improved internal controls.** The chief fiscal officer worked with the state Comptroller to leverage best practice examples from other organizations to strengthen and document internal controls.

■ **Grantee monitoring, including fiscal and programmatic site visits.** Grants are selected for site visits based on a risk-based triage method. First-time grantees, grantees with large dollar amount awards, and grantees with a past history of problems receive high priority for site visits.

■ **Documented grant-making policies and procedures.** The Programs Division has recently published a manual on how to conduct a grant process, including standards and re-usable templates.

ABOUT THE AUTHORS

Edward A. Flynn, Secretary of Public Safety since 2003, is responsible for the management of a variety of public safety agencies, boards, and commissions, including the Massachusetts State Police, the Department of Correction, the National Guard, and the Massachusetts Emergency Management Agency. He also serves as the chief adviser to Governor Romney on homeland security.

Mr. Flynn has more than 30 years of law enforcement experience. Most recently, he was Chief of Police in Arlington County, Virginia, where he was instrumental in the recovery effort at the Pentagon after the September 11 terrorist attack and participated in the 2002 Washington, D.C., area sniper shootings investigation. He also has been Chief of Police in Braintree, where he was credited with modernizing the department, and in Chelsea, where he helped lead the city out of state-imposed receivership to designation as an "All American City." His early career was spent in the Jersey City, New Jersey, Police Department, where he served for 15 years, rising to the rank of Inspector.

He holds a B.A. in history from LaSalle University in Philadelphia and a master's degree in criminal justice from John Jay College of Criminal Justice in New York, and he has completed all coursework in the Ph.D. program in criminal justice from the City University of New York. A graduate of the FBI National Academy, he was a National Institute of Justice Pickett Fellow at Harvard's Kennedy School of Government.

Jane Wiseman, Assistant Secretary in the Massachusetts Executive Office of Public Safety since 2003, is responsible for $100 million in federal and state grant funds for public safety and homeland security in the Commonwealth. She oversees grant-making for programs funded by the state legislature as well as the Massachusetts Office of Justice Programs, Office of Domestic Preparedness, and Department of Education, and the National Highway Safety Administration. She has initiated electronic grant-making and has automated several components of the back-end processing of grants.

Before joining state government, Ms. Wiseman was in management consulting with Accenture. She previously worked in Washington, D.C., at the U.S. Department of Justice, National Institute of Justice, during which time she spent one budget season on detail from the Justice Department to the U.S. House of Representatives Appropriations Committee, Subcommittee on Commerce, Justice, State and Related Agencies. In addition, she has served in the U.S. Office of Management and Budget. Ms. Wiseman holds a bachelor's in government from Smith College and a Master's of Public Policy from the John F. Kennedy School of Government at Harvard University.

Maximizing the Use of Private Insurance by Medicaid Recipients

Jo Anne Bayliss
Child Service Coordinator,
Massachusetts Department of Mental Retardation

Nancy Kealey
Assistant Director,
Premium Assistance Programs, Massachusetts Office of Medicaid

The Massachusetts Medicaid program, known as MassHealth, provides direct health care coverage to eligible, uninsured children and adults as well as assistance with premium payments for recipients who are enrolled in or have access to private health insurance plans. The University of Massachusetts Medical School, through an Inter-agency Service Agreement with the Massachusetts Executive Office of Health and Human Services, administers the Revenue Operations Program, which strives to reduce the net state cost for certain Health and Human Service programs. The MassHealth Standard and CommonHealth Premium Assistance (MSCPA) program and the Enhanced Coordination of Benefits (ECOB) program together seek to ensure MassHealth's status as payor of last resort.

The MSCPA program works in partnership with the ECOB program to identify and maximize the use of third party resources available to ECOB's target group of MassHealth recipients in need of medically complex, high-cost services. Working in collaboration with MSCPA program staff, ECOB staff can offer the benefit of premium assistance to many MassHealth recipients who have access to commercial coverage. ECOB staff work one-on-one with recipients and their families, commercial insurers, and current or former employers to identify, purchase, and utilize private sector health insurance. ECOB staff also work on-site at hospitals and trauma centers throughout the state to coordinate commercial health insurance benefits and services with MassHealth benefits and services.

The availability of private sector insurance enables MassHealth recipients to receive comprehensive health care packages with service options, and enables hospitals to bill higher paying, commercial insurers for inpatient and follow-up services, with the expenses effectively shared by the public and private sectors.

During FY04, the MSCPA program implemented an automated referral system to target for investigation all MassHealth recipients who have potential access to employer-sponsored insurance coverage, including COBRA plans. Verified insurance data are posted to the state's claim data bank to avoid or share future state health care costs with private sector health insurers and to take recovery actions on paid claims for which the state is not liable. For FY04, the program saved the Commonwealth more than $12 million.

MSCPA and ECOB staff members include (front left) Anna Giunta, (first row, left to right) Jeannette Lynch, Farouk Martins, Anthony Zanette, Colman Folan, Elizabeth Donovan, (middle row, left to right) Parto Khorshidi, Awilda Morales, Elsa Rodriguez, Mary Hajjar, Alexandra Bacchetti, (top row, left to right) Lisa Flavin, Pat Fields, Martha Fitzgerald, and Ryan Shannon.

Approximately one-quarter of ECOB cost savings can be attributed to the availability of premium assistance. Since its inception in 1999, the ECOB program has saved the Commonwealth in excess of $32 million.

Systematically expanding what is being done through the MSCPA and ECOB programs to all groups of Mass-Health recipients who have access to private health insurance would save government money, provide financial reimbursement to families who would benefit from it, and expand access to private health insurance to low-income and disabled citizens. For example, the health care costs of many adults with disabilities can be shifted to private health insurance, while providing financial reimbursement to their families and expanding health insurance coverage for these consumers. An added benefit is that reimbursement from MSCPA may enable parents of children and adults with disabilities who do not have any health insurance to gain access to it.

ABOUT THE AUTHORS

Jo Anne Bayliss has been a child service coordinator in Maine and Massachusetts for 19 years. Her professional interests include research-based practices as well as benefits and entitlements for children with developmental disabilities. She completed a study on critical core competencies for child service coordinators in 1997.

Nancy Kealey is the Assistant Director of Premium Assistance Programs in the Office of Medicaid, a division of the Massachusetts Executive Office of Health and Human Services.