

Bad IDEA: How States Block Federal Special Education Funding to Private and Religious School Students

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Table of Contents

Executive Summary	4
Introduction	4
Pillar 1: Child-find	5
Pillar 2: Consultation	5
Pillar 3: Proportionate Share	6
The crumbling of IDEA's 3 "Pillars" in Massachusetts and (most) everywhere else	6
The actual percentage(s) of private school students with disabilities	8
A Mixed-up Data Grab from Across the Nation	9
Florida	10
Missouri	11
Denver	12
Los Angeles	13
Portland	14
Analysis	15
Recommendations	15



Executive Summary:

The Individuals with Disabilities Education Act (IDEA) provides services to students who have disabilities. These IDEA-funded services are afforded to students between the ages of 3 and 21 who attend not only public schools (including charter schools), but also private schools.

IDEA contains comprehensive guidelines on 3 processes which, by design, are meant to ensure that IDEA-funded services are granted without prejudice to any private school student who may by law be eligible to receive them. These processes IDEA refers to as “child find,” “consultation,” and “proportionate share.” For a variety of reasons, the execution of these processes has been decidedly flawed. As a result, tens of thousands of private school students with disabilities have been denied the services to which IDEA, as a federal law, entitles them.

Relying on raw data from certain public-school districts and state departments of education regarding their respective execution of the “child-find” process, the authors assess the extent to which, nationwide, private school students’ (and their teachers’) fair and full access to IDEA-funded services has been systemically denied. Based on this assessment, the authors offer recommendations on how, in the short-term, the current IDEA statute and regulations might be better enforced and IDEA’s regulations might be improved. In view of IDEA’s anticipated re-authorization, the authors also offer recommendations on how Congressionally approved statutory changes to the current law would ensure that, in the future, private school students will finally be able to freely and fully participate in IDEA.

IDEA requires LEAs to ensure that private school students with disabilities can equitably participate in IDEA.

Introduction:

In the not-too-distant past it was a struggle for children with disabilities¹ to receive the same educational opportunities as other children. This was a struggle that both public school and private school children bore. As late as 1970, American schools educated only 1 in 5 children with disabilities and many states even had laws excluding from public schools certain students who were “deaf, blind, emotionally disturbed, or mentally retarded.”² In 1975, Congress passed the Education for All Handicapped Children Act. At that time, nearly 1.8 million children with disabilities had been excluded from receiving an education that addressed their special needs. In 1990, the name of this Act changed to the Individuals with Disabilities Education Act (IDEA).

The law, which Congress reauthorized in 2004, requires each state to ensure that all public-school children (ages 3 through 21) with disabilities receive a free and appropriate public education (FAPE).³ At the same time, IDEA provides equitable services for non-public school students with

disabilities.⁴ Under this provision, non-public school students with disabilities who are enrolled in private schools may receive certain IDEA-funded services in accordance with IDEA and its implementing regulations in 34 CFR §300.130 through §300.144. However, because parentally-placed private school students do not have a right to FAPE, the services are not guaranteed to those children.⁵

Currently, more than 6.9 million public and private school children with disabilities receive IDEA-funded special education and related services.⁶ More than 64 percent are enrolled in general education classrooms during 80 percent or more of their school day,⁷ and more than 773,000 infants and toddlers with disabilities receive IDEA-funded early intervention services.⁸

Each year, the federal government allocates billions in IDEA dollars to the states, which in turn apportion their respective allocations to their respective public school districts, which are called “local education agencies” (LEAs).⁹ In 2019, Congress allocated \$13.45 billion to IDEA, with \$12.8 billion of that allocation going toward that part of the IDEA statute (Part B) which “covers special education for children and youth with disabilities between the ages of 3 and 21.”¹⁰

IDEA requires LEAs to ensure that private school students with disabilities can equitably participate in IDEA. The proper understanding and execution of this equitable participation on the part of state departments of education (SEAs) and LEAs are to the proper execution and functioning of IDEA essential. Arguably, the three most crucial requirements are “child find,”¹¹ “consultation,”¹² and “proportionate share.”¹³ In fact, so centrally important to IDEA’s applicability to and implementation among private school students are these three requirements that we refer to them as “pillars.”

Collectively, these three “pillars” of the IDEA law — child-find, consultation, and proportionate share — contain and/or elicit comprehensive guidelines on (1) how allocations and services for private school students should be determined, (2) which private school students (and teachers) are to be served, (3) how and where these particular students (and teachers) are to be served, and (4) how LEAs are to collaborate with private schools in making and finalizing these determinations. “Child-find,” “consultation,” and “proportionate share” are the chief means by which all of these questions are supposed to be asked and then answered.

Like architectural pillars of a building, “child-find,” “consultation,” and “proportionate share” each stands on its own. At the same time, however, each of these “pillars” derives its respective correct functioning from the proper functioning of the other two pillars.

To continue for a moment with this architecture analogy, if

the correct functioning of any one of these pillars is thwarted or undermined, then the correct functioning of the other two pillars is also thwarted or undermined. In that case, the whole structure is weak and cannot fulfill its purpose. Regarding IDEA and parentally-placed private school students, that “structure” is private school students’ (and teachers’) equitable participation in IDEA; the “purpose,” of course, is the provision of IDEA-funded services, in the manners that Congress intends, to the private school students (and teachers) whom Congress intends to receive those services.

Pillar 1: Child-find:

The overarching goal of the child-find process is to “locate, identify, and evaluate” students who are suspected of having disabilities.¹⁴

Each LEA is obligated to identify and test any private school student who might have a disability. In carrying out this obligation, the LEA must carry out activities that are similar to those undertaken to identify public school students with disabilities.¹⁵ The LEA in which that private school is located has this obligation regardless of where a student suspected of having a learning difference resides.¹⁶ This obligation extends even to students who reside in another state.¹⁷

Parents initiate a child-find request,¹⁸ which the LEA must fulfill in accord with the same timeline and manner as that which the LEA utilizes for public school students.¹⁹ Evaluations must be conducted within 60 days of obtaining parental consent or within the timeframe established by the state.²⁰ The LEA pays for the evaluation and this expenditure cannot count towards the LEA’s proportionate share obligation.²¹ If parents elect to pay for private evaluations, then the LEA must consider the recommendations, but the LEA is not obligated to accept the results of the testing or the recommendations.

IDEA permits “Response to Intervention” (RTI)²² as a criterion for determining the presence of a specific learning disability (SLD),²³ but an LEA cannot mandate a private school to have implemented RTI as a precondition for conducting an evaluation.²⁴ If a student is determined to have a disability and requires special education then that determination stands for three years unless the parent or the LEA requests a reevaluation at an earlier date. After those three years, the student must be reevaluated.²⁵ If a determination is made that a private school student is not eligible for services and the parent disagrees with that determination, then the parent may request a re-evaluation by an outside party. This re-evaluation, which is called an “Independent Educational Evaluation” (IEE),²⁶ is conducted by a non-LEA professional(s) and may be paid for by the LEA.²⁷

Pillar 2: Consultation:

Throughout each school year LEAs must engage in “consultation” with the private schools which are located within them. This process involves “timely and meaningful” meetings between private school officials, representatives of parents of private school students, and LEA officials.²⁸

All private schools located in the LEA that educate students with disabilities should be invited by the LEA to participate in consultation. Private schools may designate a representative on behalf of the private school group.²⁹ One or any number of the private schools located within the same LEA may participate in these meetings. After each consultation meeting, LEAs must obtain “written affirmation” from private school officials indicating both that the meeting has occurred and that it has been conducted in a manner that, in accord with the law, has been both “timely and meaningful.”³⁰

Topics to be discussed during consultation meetings include (1) how the LEA will conduct child-find, (2) how consultation will continue throughout the school year to ensure that parentally-placed private school students can equitably participate in the LEA’s special education program (3) how the LEA has calculated (or will calculate) private school students’ “proportionate share” of the IDEA funds allocated to it by the SEA, and (4) the provision of special education and related services.³¹

Private school representatives should actively partner with the LEA to determine the most impactful use of proportionate share funding.³² Specifically, private school representatives should wield decisive influence over determinations made by LEAs regarding (1) which private school students and disabilities will be served, (2) by whom these students will be served, and (3) where these services will be provided. IDEA permits services to be provided on-site at private schools, including at religiously affiliated private schools.³³

Even though on all of these determinations LEAs are the final decision-makers,³⁴ LEAs must provide to private school representatives a “genuine opportunity” to express their views and to have those views considered by the LEAs during consultation, which we have called the second “pillar.”³⁵ This, after all, is the reason that these mandated meetings between LEAs and private school representatives are called “consultation.” In cases in which LEAs and private school representatives disagree, LEAs must provide a written explanation of their reasoning regarding any decisions over which there is disagreement.³⁶ If private school officials remain dissatisfied with their respective LEA’s decision, and if the LEA and the private school(s) are unable to resolve the problem, then private school officials can submit a complaint to the SEA and, if necessary, the US Department of Education (hereafter, USED).³⁷

Private school representatives should actively partner with the LEA to determine the most impactful use of proportionate share funding.

Pillar 3: Proportionate Share:

“Proportionate share” refers to the total amount of IDEA funds that are to be expended on providing to the private school students who attend school(s) that are located within each LEA special education services.³⁸ Unlike their public-school counterparts who each have an individual entitlement to special education services under IDEA, private school students are granted to these services a group entitlement. As mentioned above, this means that not all private school students with disabilities will necessarily receive IDEA-funded services and may receive a different amount of services than their public-school peers.³⁹ As also previously mentioned, the essential questions of where, how, by whom, and to whom special education and related services will be provided are supposed to be answered during consultation.

In each LEA, the calculation of proportionate share is based on (A) the total amount of the LEA’s IDEA allocation, (B) the total number of parentally-placed private school students attending private school(s) in the LEA who have been found to have disabilities, and (C) the total number of all students (public, charter, home-schooled, and private) attending school within the LEA who have been found to have disabilities. The proportionate share is calculated by dividing A (the LEA’s total allocation) by C (the total number of eligible students). This results in the average allocation per eligible student, which is then multiplied by B. The product is the proportionate share.⁴⁰ The LEA may not deduct (or “set-aside”) either administrative costs or costs related to conducting child-find from the private school students’ proportionate share.⁴¹ All proportionate share funds are controlled by the LEA.⁴² Private schools, private school students, or private school families may never directly receive the funds or exercise over said funds any administrative control.

Between October 1 and December 1 of each year, the LEA must determine the total number of parentally-placed private school students with disabilities attending private school(s) in the LEA.⁴³ This the law refers to as the “count.” This count is used to determine the proportionate share for the subsequent fiscal year.⁴⁴ Furthermore, if the funds allocated toward “proportionate share” for any given year are not fully spent during that year, then the remaining funds may be carried over to the next school year for the exclusive purpose of providing to parentally-placed private school students services.⁴⁵

The crumbling of IDEA’s 3 “Pillars” in Massachusetts and (most) everywhere else:

Throughout the nation, the functioning of the above-described three “pillars” for private school students and teachers has been terribly flawed. Thus, IDEA’s application to private

school students and teachers has also been terribly flawed. In some cases, this has been due to the lack of fluency and in-depth knowledge on the part of both public and private school officials about how “child-find,” “consultation,” and “proportionate share” are supposed to work in the first place. In other cases, this has been due to state departments of education, referred to as SEAs, mistakenly conflating state laws with federal laws and/or providing to their respective LEAs either confused or incomplete guidance. In other cases, SEAs and LEAs simply have not been paying attention because the equitable sharing provisions in IDEA have not been well-enforced. In many LEAs and SEAs throughout the country, more than one of these reasons have been simultaneously operative. The experience of the Massachusetts private schools with accessing IDEA services or — *not* accessing them until recently — is illustratively representative.

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IDEA permits states to offer additional special education services to private school students with disabilities using state or local funds that are in addition to the services required under IDEA.⁴⁶ Massachusetts is among the states in which state statutes and regulations grant to private school students publicly-funded special education services beyond the mandates of IDEA. However, in states in which such statutes and regulations do not exist, special education services are provided to private school students within the confines of IDEA only.

LEAs are obligated to offer FAPE to all students with disabilities including resident private school students.⁴⁷ However, this offer of FAPE is only — *and is no more than* — an offer. Conditioned upon parents disenrolling their children from private schools and enrolling them in public schools, this offer of FAPE is neither guaranteed nor granted in most cases to parents who choose to keep their children enrolled in private schools after the offer of FAPE is made.

As noted above, Massachusetts is among the states in which state statutes and regulations provide to all school-aged children with disabilities — including private school students — state and locally-funded special education services.⁴⁸ At least in theory, the special education services provided to students under the state law entitlement in Massachusetts are more generous than those that would be offered under the federal, that is, IDEA-funded entitlement. Due to the state’s Blaine Amendment,⁴⁹ however, state and locally funded services cannot be provided on-site at non-public schools;⁵⁰ these services may only be offered at the public school the student is zoned to attend. This has severely impaired private school students’ ability to access necessary services. In addition, the very fact that Massachusetts provides state and locally funded special education services to private school students has historically created confusion and impaired access to services for

many students. For years, many public-school officials mistakenly conflated federal and state special education laws *vis a vis* private school students and believed that the mere offer of services at the public school site was enough to satisfy both federal and state law obligations.

As explained in [No IDEA: How Massachusetts Blocks Federal Special Education Funding for Private and Religious School Students](#), the interplay between, on the one hand, said conflation by public education officials in the commonwealth and, on the other hand, the fact that the commonwealth's Blaine Amendment prevents private school students from receiving publicly-funded special education services on site at their respective private schools has caused these same private school students to be denied, as a matter of both law and fact, the IDEA-funded services for which they are eligible. Endeavoring to find a workaround to this problem, in 2007, private school representatives asked the Massachusetts State Department of Elementary and Secondary Education (DESE) to provide state-funded (non-IDEA funded) special education services to private school students onsite at private schools in rooms/spaces which, as the private schools had committed in their request, would be used exclusively for that purpose. In their request, these private school representatives cited a state regulation which permits private school students to receive state-funded special education services in "neutral" locations. In November of 2007, however, DESE rejected this request.

Catholic and Jewish Day School leaders eventually came together to form a coalition. Established in 2015 and called "Project Access," this coalition's mission is to "advocate for public resources to support non-public school students, such as school health and special education services" and "ensure that non-public students in Massachusetts access the state and federal programs to which [federal and state law entitle them.]"⁵¹ Concerned that in violation of IDEA DESE was conflating (and was continuing to conflate) state laws regarding private school students' access to state-funded special education services with IDEA-funded services, "Project Access" prompted USED's Office of Special Education Programs (OSEP) to conduct an audit of DESE's administration of IDEA in Massachusetts. The following year, OSEP concluded that DESE was out of compliance with respect to their policies and procedures for proportionate share.⁵²

In response, DESE revised its guidance documents. This revision, which OSEP would approve in August of 2017, followed a complaint that had been initiated by the coalition in June of 2017 about the aforementioned non-compliance. This complaint centered around the fact that 27 LEAs were not engaging in "timely and meaningful" consultation.

In September of 2017, DESE found through its Problem Resolution System Office (PRS) that 25 LEAs were out of compliance.⁵³ DESE provided technical assistance to the LEAs to help them become compliant. Citing its own

provision of this technical assistance and, also, the aforementioned revision in August 8, 2017 by OSEP, DESE concluded that its "partial non-compliance" was corrected.

The LEAs remained out of compliance, however.

This, coupled with the fact that the remedy proffered by DESE offered no redress for any previous noncompliance, prompted the coalition to finally appeal the matter to OSEP on October 27, 2017. A year and a half lapsed.

Finally, on August 15, 2019, OSEP ordered the LEAs to recalculate the private school proportionate share for fiscal years 2014-2018 and to remedy any funding shortfalls during that period. More specifically, the OSEP letter directed the LEAs to:

1. **Establish a count of parentally-placed private school children with disabilities:** Using the best data available and in consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities, each LEA in the State must determine the number of children with disabilities enrolled by their parents in private elementary and secondary schools that are physically located in the LEA.
2. **Recalculate the proportionate share:** Using the revised child count established above, each LEA in the State must properly calculate the proportionate share of IDEA Part B funds...for FFYs 2014, 2015, 2016, 2017, and 2018.
3. **Determine the amount of State, local, and IDEA Part B funds actually expended:** Each LEA in the State must determine the amount of State, local, and IDEA Part B funds that the LEA expended in FFYs 2014, 2015, 2016, 2017, and 2018 to provide special education and related services to parentally-placed private school children with disabilities.
4. Determine the amount of the shortfall in funds (if any) spent to provide services to parentally-placed private school children with disabilities.
5. **Remedy any shortfall by using available State and local funds, and IDEA Part B funds (where available) to make up the difference...**DESE has the discretion to use a portion of its IDEA Part B funds reserved for State level activities to support LEAs in remedying any shortfall.
6. Engage in timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities... to provide an opportunity for all parties to express their views about how the amount of funds equal to the shortfall should be used.

– Johnny W. Collett, "Letter to Stephen Perla, David Perda, Sister Andrea M. Ciszewski, Nancy Kriegel and Ariella Hellman," August 15, 2019, US Department of Education, Office of Special Education & Rehabilitative Services, 18–19.⁵⁴

Since this time, DESE has instituted a more transparent

process regarding the calculation of proportionate share, revised its guidance to the commonwealth's LEAs regarding the participation in IDEA of private school students and teachers, and committed to creating an IDEA ombudsman position within the department. As a result, many more students with disabilities in Massachusetts's nonpublic schools were able to receive special education and related services.

On January 11, 2021, after much negotiation between OSEP and DESE, OSEP published an additional letter accepting a DESE proposed resolution and approving a \$3.8M settlement to be used for special education services for parentally-enrolled private school students over a 3-year period. Essentially, OSEP allowed DESE to stand in the LEAs' shoes and provide a statewide remedy on their behalf. Despite the emphasis placed on consultation in the August 2019 letter, the private school coalition was not consulted at any time during this process.

In determining the settlement amount, DESE based its calculations on statewide data from FFY 2017 to 2019 to establish an average child count of parentally-placed private school students with disabilities across the state. DESE then

Between 7 and 14 percent of the nation's private school students require special education and/or related services.

subtracted from this count any private school students who received services at the public school during this time period. DESE reported that the average private school count across these 3 years was 1,963.67 students. This represents less than 1.5% of private school students across the state and stands in sharp contrast to the 19% of students who have been identified as students with disabilities in public schools. Moreover, DESE applied this

methodology to FFY 2014 and 2015 *only*, claiming that the issue had been corrected after this time and that, therefore, no recalculation was required for FFY 2016–2018.

While the coalition was disappointed with the settlement amount and the inaccurate calculations, OSEP's ruling was and is a major victory for private school students with disabilities in Massachusetts in that there has been a true paradigm shift in the way special education services are currently provided to private school students in the commonwealth. In addition, this ruling may very well have positive ramifications for private school students with disabilities in other states.

Throughout the rest of the nation, the non-compliance of LEAs with the requirements of IDEA *vis a vis* private school students has not even begun to be addressed, much less remedied.⁵⁵ For private schools and their students, as well as the families of students with learning difference who wish to provide to their children a private school education, such efforts remain to be accomplished.

The actual percentage(s) of private school students with disabilities:

The 2017–18 school year is the most recent year for which national private school enrollment data is available. According to the National Center for Education Statistics (NCES), there were a total of 4,898,154 students attending the nation's private schools.⁵⁶

USED and NCES do not provide publicly available data on the total number of private school students who have been identified as requiring special education and/or related services.

However, with 6,352 primary and secondary schools in the United States enrolling a total of 1,835,376 students, Catholic schools constitute the largest private school system in the United States.⁵⁷ Being that this is so, Catholic school students with disabilities have been and remain preeminently representative of all private school students with disabilities.

Thus, through extrapolation based on the percentage of Catholic school students with disabilities, the authors estimate the aggregate number of all private school students with disabilities in the United States to be — as of school year 2017–2018 — 342,870.⁵⁸ This estimate is affirmed by a recently conducted study by the Education Committee of the United States Conference of Catholic Bishops⁵⁹ in which it has been found that the majority of the nation's Catholic school superintendents and principals indicate that between 5 to 10-percent of their respective students require special education and/or related services. Thus, 7.5-percent is the mean and median percentage within this range. In 2002, the USCCB affirmed this same figure.⁶⁰ It appears that since at least 2002 roughly 7 percent of Catholic school students have learning differences.

Based on this 7-percent figure, the authors conjecture that the total number of non-Catholic private school students who have been identified as requiring special education and/or related services is 214,394. Coupled with the 128,476 Catholic school students whom, it is suspected, require special education and/or related services, the total number of students who require special education and/or related services is 342,870. This 7-percent figure is purposefully conservative; the respective *real* percentage of private school students with disabilities in any given LEA or SEA, and thus the aggregate, national percentage of private school students with disabilities, are likely higher by perhaps as much as *an additional* 7 percentage points.

Thus, **the authors hypothesize that between 7 and 14 percent of the nation's private school students require special education and/or related services.** Within this range is the true number of private school students in any given jurisdiction who should be "counted" in any given LEA's calculation of the private school proportionate share. However, in practically every LEA/SEA across the country, the actual private

school count is *significantly* smaller, and to the degree that this is the case, the private school proportionate share is proportionally — and negatively — erroneous. Erroneous, also, are the numbers of private school students with disabilities in each LEA who actually receive each year IDEA-funded services. By multiple factors-of-ten and as illustrated in the next section, those numbers are wrong. Collectively, this constitutes a systemic, nationwide breakdown in the implementation of the equitable sharing provisions in IDEA.

A Mixed-up Data Grab from Across the Nation:

To attain a general understanding of the national landscape regarding IDEA’s implementation among parentally-placed private school students and, more specifically, the count that LEAs have utilized in their respective calculations of the private school proportionate share, the authors have attempted to analyze the IDEA-related data from eight LEAs and nine SEAs which, collectively, are geographically representative of the United States.

Those LEAs and SEAs are as follows:

SEAs to which FOIA requests were submitted:	LEAs to which FOIA requests were submitted:
· Pennsylvania	· Philadelphia
· North Carolina	· Tampa (Hillsborough County)
· Florida	· Cincinnati
· Illinois	· Chicago
· Missouri	· Denver
· Kansas	· Albuquerque
· Texas	· Los Angeles
· Arizona	· Portland
· Washington	

Because none of the above-listed eight LEAs and nine SEAs provide(d) complete data that was or is easily accessible from their respective websites and/or other public-facing media resources, to all these agencies the authors submitted Freedom of Information Act (FOIA) requests.

The results of these FOIA requests — and the scope and quality of the data that the authors have received — are a mixed bag.

In some cases, the agencies indicated that they did not possess or had not collected the requested data, which means the data was unattainable. In other cases, the agencies assessed in accord with the relevant FOIA laws fees which, the authors believe, were excessive. This data, too, thus became unattainable. In some cases, the agencies were cooperative and more-or-less furnished to the authors the requested/available data. In other cases, however, the agencies declared that the scope of the authors’ data-request was unreasonable and would therefore, in accord with the operative FOIA law(s), be denied. In certain other cases, wherein the FOIA fees were either excessive and/or the data-requests were declared by the respective agencies to be unreasonable, the authors initiated FOIA appeals to the attorney generals’ offices of the respective states. These appeals were variously successful and thus, collectively, produced a subset of data that was also a “mixed bag” in terms of its overall scope and quality.⁶¹ In these cases, too, the data was unattainable. The lack of available data was curious to the authors as it is specifically required under IDEA.

Florida, Missouri, Denver, Los Angeles, and Portland (Oregon) demonstrated — in comparison to the other recipients of FOIA requests — partial capacity (and willingness) to more-or-less furnish to the authors the requested data.

Utilizing the data provided by these LEAs and SEAs, the authors created and populated for each jurisdiction the data charts that follow. Data within each chart that was not provided by the LEAs/SEAs is identified within and by the footnotes; this data the authors attained from either extraneous sources or calculated through extrapolation. Where applicable and in reflection of the requirements of the IDEA law, the proportionate share data was extrapolated via the formula presented in Appendix B to Part 300 of the IDEA regulations.⁶²

That example is as follows:

Number of eligible children with disabilities in public schools in the LEA	300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA	20
Total number of eligible children	320
Total allocation to LEA	\$152,000
Divided by total number of eligible children	320
Average allocation per eligible child	\$476.56
Multiplied by the number of parentally-placed children with disabilities	20
Amount to be expended for parentally-placed children with disabilities	\$9,531.25

Florida

Enrollments	2015–16		2016–17		2017–18		2018–19		2019–20	
TOTAL Enrollment	3,430,595		3,491,799		3,579,877		3,604,824		–	
Public (PE)	3,084,799		3,123,478		3,209,711		3,224,529		–	
Private (NPE)	345,796 ⁶³		368,321 ⁶⁴		370,166 ⁶⁵		380,295 ⁶⁶		–	
Public Schools	#	% PE	#	% PE	#	% PE	#	% PE	#	% PE
Referred:	292,908	9.4	298,601	9.6	324,766	10.0	343,466	10.7	–	–
Tested:	279,859	9.1	284,072	9.1	309,448	9.6	327,736	10.2	–	–
Identified:	276,852	9.0	281,506	9.0	305,910	9.5	323,932	10.0	–	–
Total IDEA Allocation:	\$651,995,071		\$672,057,012		\$676,571,573		\$693,106,560		\$697,874,094	
Served:	276,557	9.0	281,311	9.0	305,675	9.5	323,682	10.0	–	–
Private schools	#	% NPE	#	% NPE	#	% NPE	#	% NPE	#	% NPE
Referred:	523	0.2 ⁶⁷	405	0.1	323	0.08	1,420	0.4	–	–
Tested:	516	0.1	402	0.1	321	0.08	1,374	0.4	–	–
Identified:	516	0.1	402	0.1	321	0.08	1,374	0.4	–	–
Proportionate Share:	\$1,212,935 ⁶⁸		\$958,351		\$709,201		\$2,927,484		–	
Served:	516	0.1	402	0.1	321	0.08	1,374	0.4	–	–

Assuming that the real percentage of private school students attending school in any given LEA in Florida is between 7 and 14 percent, then the number of Florida’s private school students who should have been identified as requiring special education and/or related services and the corresponding private school proportionate share between 2015–2020 are as follows:

	2015–2016	2016–2017	2017–2018	2018–2019
# private school students identified (range)	24,206– 48,411	25,782– 51,565	25,912– 51,823	26,621– 53,241
Proportionate Share (range)	\$52,422,432– \$97,040,651	\$56,386,757– \$104,045,743	\$52,833,514– \$98,011,557	\$52,634,522– \$97,837,560

As follows is a per-year comparison between the State of Florida’s actual and rightful numbers of private school students identified and their actual and rightful proportionate share:

	2015–2016		2016–2017	
	Actual	Rightful	Actual	Rightful
# private school students identified	516 (served & identified)	24,206– 48,411	402 (served & identified)	25,782– 51,565
Proportionate Share (range)	\$1,212,935	\$52,422,432– \$97,040,651	\$958,351	\$56,386,757–\$104,045,743
	2017–2018		2018–2019	
	Actual	Rightful	Actual	Rightful
# private school students identified	321 (served & identified)	25,912– 51,823	1,374 (served & identified)	26,621– 53,241
Proportionate Share (range)	\$709,201	\$52,833,514–\$98,011,557	\$2,927,484	\$52,634,522– \$97,837,560

Missouri⁶⁹

Enrollments	2015-16		2016-17		2017-18		2018-19		2019-20	
TOTAL enrollment	-		-		978,061		-		-	
Public (PE)	887,700		882,496		882,763		885,970		881,696	
Private (NPE)	-		-		95,298 ⁷⁰		-		-	
Public Schools	#	% PE	#	% PE	#	% PE	#	% PE	#	% PE
Referred:	-	-	-	-	-	-	-	-	-	-
Tested:	-	-	-	-	-	-	-	-	-	-
Identified:	-	-	-	-	-	-	-	-	-	-
Total IDEA Allocation	\$224,734,475		\$232,034,826		\$233,913,239		\$238,429,634		\$239,942,211	
Served:	112,738	12.7	113,842	12.9	115,642	13.1	117,834	13.3	119,029	13.5
Private schools	#	% NPE	#	% NPE	#	% NPE	#	% NPE	#	% NPE
Referred:	752	-	831	-	711	0.7	389	-	-	-
Tested:	-	-	-	-	-	-	-	-	-	-
Identified:	485	-	495	-	434	0.5	196	-	-	-
Proportionate Share	-		-		\$874,685 ⁷¹		-		-	
Served:	408	-	426	-	367	0.4	145	-	-	-

Assuming that the real percentage of private school students attending school in any given LEA in Missouri is between 7 and 14 percent, then the number of Missouri's private school students who should have been identified as requiring special education and/or related services and the corresponding private school proportionate share between 2015-2020 are as follows:

	2017-2018
# private school students identified (range)	6,671- 13,342
Proportionate Share (range)	\$12,757,722- \$24,195,796

As follows is a comparison between the State of Missouri's actual and rightful numbers of private school students identified and their actual and rightful proportionate share:

	2017-2018	
	Actual	Rightful
# private school students identified	434 (identified)	6,671- 13,342 (identified)
Proportionate Share (range)	\$874,685	\$12,757,722- \$24,195,796

Denver

Enrollments	2015-16		2016-17		2017-18		2018-19		2019-20	
TOTAL Enrollment	98,249		99,331		99,984		100,356		101,166	
Public (PE)	91,429 ⁷²		92,331 ⁷³		92,984 ⁷⁴		93,356 ⁷⁵		93,815 ⁷⁶	
Private (NPE)	5,950 ⁷⁷		6,300		6,650		7,000		7,372	
Public Schools	#	% PE	#	% PE	#	% PE	#	% PE	#	% PE
Referred:	2,889	3.2	3,322	3.6	3,475	3.7	3,477	3.7	-	-
Tested:	2,889	3.2	3,322	3.6	3,458	3.7	3,401	3.6	-	-
Identified:	2,346	2.6	2,643	2.9	2,731	2.9	2,625	2.8	-	-
Total IDEA Allocation (\$)	\$15,269,928		\$16,125,575		\$16,309,699		\$16,997,561		\$17,236,549	
Served:	13,893	15.2	14,213	15.4	14,874	16.0	15,193	16.3	-	-
Private schools	#	% NPE	#	% NPE	#	% NPE	#	% NPE	#	% NPE
Referred:	-	-	-	-	-	-	-	-	-	-
Tested:	89	1.3	96	1.4	84	1.2	124	1.8	-	-
Identified: ⁷⁸	193	2.8	216	3.1	231	3.3	299	4.3	-	-
Proportionate Share	\$209,221 ⁷⁹		\$241,397		\$249,423		\$328,057		-	
Served:	124	1.8	185	2.6	200	2.9	149	2.1	-	-

Assuming that the real percentage of private school students attending school in the Denver LEA is between 7 and 14 percent, then the number of students who should have been identified as requiring special education and/or related services and the corresponding private school proportionate share between 2015-2020 are as follows:

	2015-2016	2016-2017	2017-2018	2018-2019
# private school students identified (range)	417- 833	441- 882	466- 931	490- 980
Proportionate Share (range)	\$444,973- \$863,768	\$485,286- \$881,624	\$495,458- \$960,729	\$531,072- \$1,029,964

Below is a per-year comparison between the Denver LEA's actual and rightful numbers of private school students identified and their actual and rightful proportionate share:

	2015-2016		2016-2017	
	Actual	Rightful	Actual	Rightful
# private school students identified	193 (identified)	417- 833 (identified)	216 (identified)	441- 882 (identified)
Proportionate Share (range)	\$209,221	\$444,973- \$863,768	\$241,397	\$485,286- \$881,624
	2017-2018		2018-2019	
	Actual	Rightful	Actual	Rightful
# private school students identified	231 (identified)	466- 931 (identified)	299 (identified)	490- 980 (identified)
Proportionate Share (range)	\$249,423	\$495,458- \$960,729	\$328,057	\$531,072- \$1,029,964

Los Angeles

Enrollments	2015–16		2016–17		2017–18		2018–19		2019–20	
TOTAL Enrollment	796,926		786,554		771,923		–		–	
Public (PE)	639,337 ⁸⁰		633,621 ⁸¹		621,414 ⁸²		607,723 ⁸³		596,937 ⁸⁴	
Private (NPE)	157,589 ⁸⁵		152,933		150,509		–		–	
Public Schools	#	% PE	#	% PE	#	% PE	#	% PE	#	% PE
Referred:	13,741	2.1	13,651	2.2	14,084	2.3	13,934	2.2	–	–
Tested:	13,692	2.1	13,682	2.2	13,944	2.2	14,058	2.3	–	–
Identified:	11,888	1.9	11,915	1.9	12,299	2	12,321	2	–	–
Total IDEA Allocation	\$142,287,542		\$161,057,559		\$150,897,485		\$152,606,074		\$145,857,239	
Served:	93,335	14.6	97,669	15.4	96,306	15.5	98,053	16.1	–	–
Private schools	#	% NPE	#	% NPE	#	% NPE	#	% NPE	#	% NPE
Referred:	289	0.2	284	0.2	229	0.2	272	0.04	–	–
Tested:	266	0.2	314	0.2	247	0.2	272	0.04	–	–
Identified:	187	0.1	226	0.1	177	0.1	188	0.03	–	–
Proportionate Share	\$1,966,464 ⁸⁶		\$2,415,311		\$2,136,281		\$2,013,696		–	
Served:	1,308	0.8	1,487	1	1,383	0.9	1,311	–	–	–

Assuming that the real percentage of private school students attending school in the Los Angeles LEA is between 7 and 14 percent, then the number of private school students who should have been identified as requiring special education and/or related services and the corresponding private school proportionate share between 2015–2020 are as follows:

	2015–2016	2016–2017	2017–2018
# private school students identified (range)	11,031– 22,062	10,705– 21,411	10,535– 21,071
Proportionate Share (range)	\$15,039,130– \$27,203,027	\$15,908,993– \$28,958,712	\$15,309,030– \$27,798,954

As follows is a per-year comparison between the Los Angeles LEA’s actual and rightful numbers of private school students identified and their actual and rightful proportionate share:

	2015–2016		2016–2017	
	Actual	Rightful	Actual	Rightful
# private school students identified	1,308 (served)	11,031– 22,062 (identified)	1,487 (served)	10,705– 21,411 (identified)
Proportionate Share (range)	\$1,966,464	\$15,039,130– \$27,203,027	\$2,415,311	\$15,908,993– \$28,958,712
	2017–2018			
	Actual	Rightful		
# private school students identified	1,383 (served)	10,535– 21,071 (identified)		
Proportionate Share (range)	\$2,136,281	\$15,309,030– \$27,798,954		

Portland

Enrollments	2015-16		2016-17		2017-18		2018-19		2019-20	
TOTAL Enrollment	-		-		62,759		-		65,901	
Public (PE)	49,075		49,189		49,557		49,550		49,478	
Private (NPE)	-		-		13,202 ⁸⁷		-		16,423 ⁸⁸	
Public Schools	#	% PE	#	% PE	#	% PE	#	% PE	#	% PE
Referred:	-	-	-	-	-	-	-	-	-	-
Tested:	1,204	2.5	1,173	2.5	1,255	2.5	1,258	2.6	-	-
Identified:	1,002	2.1	1,017	2.1	1,078	2.2	1,079	2.2	-	-
Total IDEA Allocation	\$7,896,190		\$7,965,550		\$8,100,657		\$8,186,346		\$8,207,824	
Served:	6,657	14.0	6,683	14.0	7,010	14.6	7,344	15.3	-	-
Private schools	#	% NPE	#	% NPE	#	% NPE	#	% NPE	#	% NPE
Referred:	-	-	-	-	-	-	-	-	-	-
Tested:	42	-	27	-	10	0.07	9	-	-	-
Identified:	34	-	20	-	7	0.05	6	-	-	-
Proportionate Share	-		-		\$101,558 ⁸⁹		-		-	
Served:	50	-	50	-	89	0.6	80	-	-	-

Assuming that the real percentage of private school students attending school in the Portland LEA is between 7 and 14 percent, then the number of students who should have been identified as requiring special education and/or related services and the corresponding private school proportionate share between 2015-2020 are as follows:

	2017-2018
# private school students identified (range)	924-1,848
Proportionate Share (range)	\$943,409- \$1,689,999

As follows is a per-year comparison between the Portland's LEA's actual and rightful numbers of private school students identified and their actual and rightful proportionate share:

	2017-2018	
	Actual	Rightful
# students identified	89 (served)	924- 1,848 (identified)
Proportionate Share (range)	\$101,558	\$943,409- \$1,689,999

Analysis:

In comparison to the other ten SEAs and five LEAs from which the authors attempted to attain data, Florida, Missouri, Denver, Los Angeles, and Portland (Oregon) were the SEAs and LEAs, respectively, for which the most amount of data was either publicly available or made available by the agencies themselves in response to the authors' FOIA requests.

As evidenced above, however, even this data was incomplete and/or inaccurately provisioned. For instance, in some cases, the agencies failed to distinguish between the number of students identified and the number served. In other cases, it seems that the agencies failed to provide to the authors the aggregate number of students identified during any three-year period, which in those cases means that the number of students the agencies cited as having been identified for the purpose of calculating the proportionate share was artificially low. Said another way, the agencies did not provide to the authors the aggregate number of students on active IEPs during any

[I]n most LEAs, the overall scope and quality of the IDEA-funded services being provided to private school students are wholly insufficient.

given year, providing instead *only* those students who, during each year in question, were *newly* identified. In other cases, the agencies only provided the number of students served, but not the total number of students who were identified. As a result, precise calculation of the private school proportionate share was impossible. In nearly all cases the agencies did not provide the proportionate share

amount, which for the purposes of this paper has meant that the authors were required to calculate it themselves. However, given the at-best questionable data the agencies did provide, the probability that those calculations — and the extrapolation by which means those calculations were made — are imprecise is, unfortunately, quite high.

In general, the foregoing data demonstrates that child-find is clearly not occurring in the manner required by IDEA. Because of this, the rightful proportionate share is also not being calculated, and this in turn has meant that, in most LEAs, the overall scope and quality of the IDEA-funded services being provided to private school students are wholly insufficient. Furthermore, because data regarding child-find and proportionate share is not being gathered in any manner that makes transparency possible, it is challenging — if not impossible — to hold these agencies accountable in any meaningful way.

“A popular government, without popular information, or the means of acquiring it,” as James Madison remarked in 1832, “is but a prologue to a farce or a tragedy; or, perhaps both.”⁹⁰ In the case of IDEA's implementation *vis a vis* the nation's private school students, the farce at play is that

parentally-placed private school students with disabilities are not being served, despite the intent of Congress to make available to these students through IDEA the services for which their parents and guardians, as taxpayers, pay. For these students and society at-large — for the common good of which the nation's public support for education exists — the tragedy is clear: these students may not be given the chance to reach their full potential.

Recommendations:

- Existing child-find and consultation regulations should be enforced by USED such that every LEA is conducting child-find and engaging in consultation in an efficient, timely, and meaningful manner. In the current regulations, “efficient, timely, and meaningful” should be explicitly defined to mean that public agencies must *proactively* initiate contact and facilitate the scheduling of consultation meetings to ensure private school representatives' maximal participation in the consultation process. The intent behind this proposed change in the regulations is to ensure that consultation is *de jure* and *de facto* consultative. This will result in a superlatively more accurate calculation of proportionate share.
- For the sake of fostering transparency and increasing accountability, USED should collect and publicize on an annual basis from each SEA (1) the number of private school students referred for child-find, (2) the number of private school students evaluated, (3) the number of private school students found to be eligible, and (4) the number of private school students served. Furthermore, USED should conduct an annual audit of any SEA in which this data is statistically implausible. Additionally, SEAs should be required by USED to order their respective LEAs in which the data is similarly suspect to also perform and report the results of audits.
- To ensure that parentally-placed private school students can reasonably participate in the required child-find activities, Congress should amend the IDEA regulations to strengthen the requirement that the location of child-find is to be determined during consultation.
- Congress should amend the IDEA statute to require each SEA to appoint an IDEA private school ombudsperson.
- Congress should amend the IDEA statute so that in the calculation of proportionate share there is a rebuttable presumption that at least 7-percent of private school students are students with disabilities. If the LEA is not able to overcome this presumption, then this funding should be set aside for the provision of IDEA-funded services to eligible private school students. If in any given LEA the total

number of private school students eligible for IDEA-funded services exceeds 7-percent of that LEA's total population of students (public, charter, home-schooled, and private), then the LEA should be required to reserve an additional percentage of IDEA funds equivalent to that total number.

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Endnotes

- 1 The authors are mindful that in current parlance the preferred referent for “disability” is “learning difference.” That notwithstanding and in light of the language of the applicable IDEA statutes and regulations, the authors use throughout this paper “disability.”
- 2 United States Department of Education, Office of Special Education and Rehabilitative Services, History: Twenty-Five Years of Progress in Educating Children With Disabilities Through IDEA, last modified July 19, 2007, February 23, 2018 <<https://www2.ed.gov/policy/speced/leg/idea/history.html>>.
- 3 20 U.S.C. § 1412(a)(1). In education law-related circles, “free and appropriate public education” is often acronymically referred to as “FAPE.” Cf. U.S. Department of Education, Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools (March of 2011), 1.
- 4 20 U.S.C. § 1412(a)(10)(A)(i); See also Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question C-1.
- 5 34 CFR § 300.137(a).
- 6 U.S. Department of Education, ED Facts Data Warehouse (EDW): “IDEA Part B Child Count and Educational Environments Collection,” 2017-18. Data extracted as of July 11, 2018 from file specifications 002 and 089; available for download at <https://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html>.
- 7 National Center for Education Statistics, “The Condition of Education: Children and Youth With Disabilities” (updated May of 2019), <https://nces.ed.gov/programs/coe/indicator_cgg.asp>, accessed January 1, 2019.
- 8 U.S. Department of Education, ED Facts Data Warehouse (EDW): “IDEA Part B Child Count and Educational Environments Collection,” 2017-18. Data extracted as of July 11, 2018 from file specifications 002 and 089. available for download at <https://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html>.
- 9 In education law, LEA’s are equivalent to “school districts.” For example, the Boston Public School District is the Boston LEA.
- 10 Congressional Research Service, “The Individuals with Disabilities Education Act (IDEA) Funding: A Primer,” Updated August 29, 2019, Summary. As noted in this source and elsewhere, the IDEA statute consists of 4 “parts” (A, B, C, & D), and as noted above, Part B is the largest and costliest part of the program.
- 11 20 U.S.C. § 1412(a)(10)(A)(ii).
- 12 20 U.S.C. § 1412(a)(10)(A)(iii).
- 13 20 U.S.C. § 1412(a)(10)(A)(i)(I).
- 14 34 CFR § 300.131(a).
- 15 34 CFR § 300.131(c).
- 16 34 CFR § 300.131(a).
- 17 34 CFR § 300.131(f).
- 18 34 CFR § 300.301(b).
- 19 34 CFR § 300.131(c).
- 20 34 CFR § 300.301(c).
- 21 20 U.S.C. § 1412(a)(10)(A)(ii)(IV).
- 22 “Response to Intervention” (RTI) is a technical term that refers to the set of interventions that any school (public or private) undertakes in response to any particular student’s perceived disabilities. In practice, RTI can be as informal as moving a child’s seat closer to the front of the room or as formal as prescribing for an individual student the support of an in-classroom teacher’s aide.
- 23 34 CFR § 300.307(a)(2).
- 24 The Office of Special Education Programs (OSEP) at the United States Department of Education (USED) clarified this in a memorandum in 2011. Cf. USED, OSEP, Memorandum to State Directors of Education, “A Response to Intervention (RTI) Process Cannot be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act, January 21, 2011 <<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>>, accessed November 5, 2020.
- 25 34 CFR § 300.303(b)(2).
- 26 34 CFR § 300.502.
- 27 An LEA may request a due-process hearing to demonstrate that its initial evaluation of a parentally-placed private school student was appropriate. If said initial evaluation is determined to be appropriate, then the IEE is not at public expense. Cf. Massachusetts State Department of Elementary and Secondary Education (DESE), “Administrative Advisory SPED 2004-1: Independent Educational Evaluations,” October 23, 2003 <https://www.doe.mass.edu/sped/advisories/04_1.html>, accessed November 5, 2020.
- 28 20 U.S.C. § 1412(a)(10)(A)(iii).
- 29 See Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question A-4.
- 30 20 U.S.C. § 1412(a)(10)(A)(iv).
- 31 20 U.S.C. § 1412(a)(10)(A)(iii).
- 32 See Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question A-1.
- 33 20 U.S.C. § 1412(a)(10)(A)(i)(III).
- 34 34 CFR § 300.137(b)(2).
- 35 See Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question A-1.
- 36 20 U.S.C. § 1412(a)(10)(A)(iii)(V).
- 37 20 U.S.C. § 1412(a)(10)(A)(v).
- 38 34 CFR § 300.133.
- 39 34 CFR § 300.138(a)(2).
- 40 U.S. Department of Education, “The Individuals with Disabilities Education Act: Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools,” Washington, D.C.: U.S. Department of Education, March 2011, 10 <https://www2.ed.gov/admins/lead/speced/privateschools/report_pg11.html>, accessed October 30, 2020.

- 41 20 U.S.C. § 1412(a)(10)(A)(ii)(IV).
- 42 20 U.S.C. § 1412(a)(10)(A)(vii).
- 43 34 CFR § 300.133(c)(1).
- 44 34 CFR § 300.133(c)(2).
- 45 34 CFR § 300.133(a)(3).
- 46 See Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question D-3.
- 47 See Q and A: Questions and Answers On Serving Children With Disabilities Placed by Their Parents at Private Schools, OSERS, April 2011 (revised), Answer to Question B-5: The district where the private school is located is responsible for providing equitable services under IDEA to parentally placed private school students with disabilities while the district of residence has the obligation to offer FAPE.
- 48 Under Massachusetts' State Law, Mass. Gen. L. c. 71B, § 3, all school-aged children with disabilities are granted an individual entitlement to special education and related services from the school district where the child resides.
- 49 This amendment occurred to the Massachusetts state Constitution in 1855. Along with the State of New York, Massachusetts was the first state in the Union to adopt such an amendment. Cf. U.S. Commission on Civil Rights, *The Blaine Amendments & Anti-Catholicism*, 2007, 5, 35, 43, 53, downloaded from <<http://www.usccr.gov/pubs/BlaineReport.pdf>> February 23, 2018.
- 50 603 CMR 28.03(1)(e)(3).
- 51 For more information about Project Access and its leadership team, please consult its website at <https://maprojectaccess.org/>.
- 52 Ruth Ryder, "Letter to Mitchell Chester (Massachusetts Commissioner of Education)," May 13, 2016, US Department of Education, Office of Special Education & Rehabilitative Services <<https://www2.ed.gov/fund/data/report/idea/partbfmltrs/fml-ma-2016b.pdf>>, accessed November 6, 2020.
- 53 Two of the complaints were voluntarily withdrawn.
- 54 Johnny W. Collett, "Letter to Stephen Perla, David Perda, Sister Andrea M. Ciszewski, Nancy Kriegel and Ariella Hellman," August 15, 2019, US Department of Education, Office of Special Education & Rehabilitative Services, 18-19 <<https://www2.ed.gov/fund/data/report/idea/partbdmsrpts/dms-ma-b-2019-letter-08-15-2019.pdf>>, accessed November 11, 2020.
- 55 The veracity of this core claim is validated by sources and data that are external to this paper. For example, a recently completed white paper concludes that, nationwide, approximately 13-percent of all public-school students have been identified through IDEA as requiring special education and/or related services, but only 2.83-percent of all private school students have been so identified. This reality is even starker in individual States. For instance, in California and Massachusetts, 10.9-percent and 16.2-percent of public-school students, respectively, have been identified as requiring special education and/or related services whereas in those same two States only 0.5-percent and 1 percent of private school students, respectively, have been so identified. Cf. Michelle Doyle, "The Failure of Child Find for Students Attending Private Schools," October 2019, Michelle Doyle Educational Consulting, available for download at <https://app.box.com/s/aen4mupdz99vmj6zrnobpn6jt2gg0jmc>, accessed December 9, 2020.
- 56 National Center for Education Statistics, "Number of private schools, students, and teachers (headcount), by school membership in private school associations: United States, 2017-18," downloaded from <https://nces.ed.gov/surveys/pss/tables1718.asp>.
- 57 According to the [National Catholic Education Association](#), there are 6,352 Catholic schools in the United States.
- 58 During school year 2017-18 the total national private school enrollment was 4,898,154 students. According to the [National Catholic Education Association](#), 1,835,376 (37.5%) of those 4.9 million students attended Catholic schools. Thus, the total number of students in the USA who attended during school year 2017-18 non-Catholic private schools is 3,062,778 (62.5%).
- 59 Education Committee of the United States Conference of Catholic Bishops, "An IDEA for Catholic Schools," Tom Olson & Steve Perla, as-yet unpublished.
- 60 Cf. Abby Crowley, Shavaun Wall, "Supporting Children With Learning differences in the Catholic Schools," *Journal of Catholic Education* (2007) 10 (4), 508-22, 508.
- 61 34 CFR § 300.132 (c).
- 62 Individuals with Disabilities Education Act, Appendix B to Part 300, <<https://sites.ed.gov/idea/regs/b/appendix-b>>, accessed October 30, 2020.
- 63 Florida Department of Education, Florida's Private Schools, 2018-19 School Year Annual Report, available for download from <http://www.fldoe.org/core/fileparse.php/7562/urlt/PS-AnnualReport1819.pdf>, accessed October 26, 2020.
- 64 Ibid.
- 65 Ibid.
- 66 Ibid.
- 67 This and the following NPE figures are extrapolated from data from the source cited in note 61.
- 68 Utilizing the Appendix B formula, this and the following proportionate share calculations are calculated based on the foregoing data in this chart. This calculation may be based on the number of private school students served, as the number identified provided by the LEA may have seemed suspect.
- 69 Data regarding the participation of 3 – 5-year old students (pre-K) in IDEA is not included in this chart.
- 70 National Center for Education Statistics, "PSS Private School Universe Survey data 2017-2018 school year," downloaded from <https://nces.ed.gov/surveys/pss/tables1718.asp>, accessed November 20, 2020.
- 71 Utilizing the Appendix B formula, this proportionate share calculation is calculated based on the foregoing data in this chart.
- 72 Denver Public Schools, Strategic Regional Analysis, Fall 2018, 6 <https://www.dpsk12.org/wp-content/uploads/Denver_Public_Schools_Strategic_Regional_Analysis_2018.pdf>.
- 73 Ibid.
- 74 Ibid.
- 75 Ibid.
- 76 Denver Public Schools, "Facts & Figures," "Student Membership," <https://www.dpsk12.org/about/facts-figures/>, accessed October 30, 2020.

- 77 This and the rest of the non-public (private) school enrollment numbers in this row of this chart are estimated based on (1) the 2019-2020 real number of the private school enrollment and the relative stability of the public-school enrollment. For the purposes of this chart, it is estimated that during these years the private school enrollment increased by circa 350 each year.
- 78 The data provided indicates that the number of students identified exceeds the number of students tested. Although this appears to be an error, the authors are presenting this data as it was provided.
- 79 Utilizing the Appendix B formula, this and the following proportionate share calculations are calculated based on the foregoing data in this chart. This calculation may be based on the number of private school students served, as the number identified provided by the LEA may have seemed suspect.
- 80 Yuxuan Xie, California Department of Education and EdSource Analysis. Xie's data is cited by Michael Burke in his article, "Los Angeles Unified enrollment dips below 600,000, a first in more than three decades," EdSource, April 21, 2020 <<https://edsources.org/2020/los-angeles-unified-enrollment-dips-below-600000-a-first-in-more-than-three-decades/629378>>, accessed October 30, 2020.
- 81 Ibid.
- 82 Ibid.
- 83 Ibid.
- 84 Ibid.
- 85 The source of the private school enrollment data in this chart are the Excel files provided on the California Department of Education website. Cf. California Department of Education, "Private School Data," "Private School Affidavit Information," <<https://www.cde.ca.gov/ds/si/ps/>>, accessed October 30, 2020.
- 86 Utilizing the Appendix B formula, this and the following proportionate share calculations are calculated based on the foregoing data in this chart. This calculation may be based on the number of private school students served, as the number identified provided by the LEA may have seemed suspect.
- 87 Romana DeNies, "Portland Private Schools, by the Numbers: 2019," Portland Monthly, February 2019 <<https://www.pdxmonthly.com/news-and-city-life/2019/01/portland-private-schools-by-the-numbers-2019>>, accessed October 30, 2020.
- 88 Ibid.
- 89 Utilizing the Appendix B formula, this and the following proportionate share calculations are calculated based on the foregoing data in this chart. This calculation may be based on the number of private school students served, as the number identified provided by the LEA may have seemed suspect.
- 90 James Madison, "James Madison to W.T. Barry," The Writings of James Madison, Vol 1., chapter 18, document 35, Edited by Gaillard Hunt, New York: G. P. Putnam's Sons, 1900—1910 <<https://press-pubs.uchicago.edu/founders/documents/v1ch18s35.html>>, accessed October 30, 2020.

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Pioneer Institute develops and communicates dynamic ideas that advance prosperity and a vibrant civic life in Massachusetts and beyond.

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