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HELPING KIDS, SAVING MONEY *How to Reform New York's Special Education System*

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HELPING KIDS, SAVING MONEY

How to Reform New York's Special Education System

EXECUTIVE SUMMARY

This report shows that New York can reduce special ed costs and enrollment – and improve parental satisfaction with the program as part of the bargain – by adopting two simple reforms: changing the formula funding special education from a “bounty” system to a “lump-sum” system; and implementing a voucher program for children in special education.

The authors note that the problem of increased number of children in special-ed is largely a self-inflicted one. There is little evidence to support contentions that increased disability rates are to blame. Indeed, the special education category which has grown the most in the 1990s, Special Learning Disability (SLD), is the one with the fewest objective standards governing its diagnosis, and hence the one most open to unintentional manipulation.

There is strong evidence that New York has unintentionally misidentified thousands of children as needing special education as a result of its special-ed funding formula. States use one of two methods to fund special education: a “bounty” system, which reimburses school districts for each child they designate, and a “lump-sum” system, which gives districts a net amount of money for special education each year which does not vary with the size of the student population. New York employs a “bounty” system.

Critics of the bounty system argue that it encourages over inclusion of children in special education programs because school districts receive extra money for each child included. Thus, a district with a child who is a slow learner receives extra money to pay for items like extra tutoring if that child is classified as SLD, but nothing if she is not.

Research suggests these perverse incentives are real. Greene and Forster have studied the case of rising special-ed enrollments nationwide and found that states with bounty systems had a much higher rate of growth in special education population than those with lump-sum systems. Using regression analysis, they found that 62 percent of that additional growth is directly attributable to the bounty system.

Applying their calculations to New York, the authors find that as of the 2001 school year, 17,715 additional students were classified as special education than would have otherwise been had the state shifted to a lump-sum system in the 1994-95 school year. These extra students cost state taxpayers \$220 million-money that could be saved if the state changed its funding formula.

The authors also examined the results of Florida's McKay Scholarship Program. The McKay Program, adopted in 1998, gives parents of every special education child the choice to take a voucher for 100 percent of the amount the state spends on that child and use it at a private school. As of the 2004-05 school year, 15,910 children (4.3 percent of Florida's total special education population) use a McKay voucher.

The authors cite research showing that parents who use a McKay voucher are overwhelmingly satisfied with their child's private school experiences. Among the parents of students currently enrolled in McKay, 32.7 percent were satisfied with their previous public school. However, when asked about their McKay school, that number reached 92.7 percent.

The authors conclude that adopting these two reforms-changing the special education funding formula to a lump-sum system and creating a universal special-ed voucher program-will improve New York's educational outcomes and save taxpayers money.

INTRODUCTION

As of 2002, about 13.4 percent of public school students in the nation and about 15.3 percent of public school students in New York were enrolled in special education programs.¹ On average, New York spends an additional \$12,457 on each special education student above what would have been spent on the student otherwise.² This translates into an additional educational investment of about \$5.5 billion by New York State taxpayers.³

Special education would justify such a significant investment if it were to meet its purpose of providing quality high educational services to the most vulnerable students. However, despite its high cost and legal protections, the special education system does not appear to leave many parents satisfied. Maneuvering through the special education bureaucracy is a burdensome and often overwhelming process.

Furthermore, evidence indicates that many students placed in special education programs are probably not truly disabled. Research finds that special education enrollments in New York, along with several other states, have been inflated by schools responding to an adverse financial incentive to misclassify some students as disabled. This over-identification of students as disabled is costly for taxpayers and could substantially harm students.

Research indicates that a substantial amount of the growth in New York's special education population can be explained by adverse financial incentives rather than real increases in the percentage of students who have a true disability. The best available estimate indicates that New York's funding system led to an additional 44,390 students being placed in special education programs in the 1990s than would have been without the adverse financial incentive.

Many of the problems with parental dissatisfaction with special education could be alleviated by implementing a more flexible choice-based special education system. New York could offer vouchers that would allow parents of disabled students to choose any public or private school they felt would best educate their child. Giving parents greater choice in the school that educates their disabled child would allow them to more easily remove their children from failing schools and to find educational services that they feel would best fulfill their needs. Such a system would circumvent the unnecessarily burdensome legal process, which is expensive both for parents and taxpayers.

Vouchers might also help to curb the growth in the state's special education enrollments. Under a voucher program for disabled students, if a school places a student into special education then it is possible that the school will lose the student's funding if he leaves for a private school. Thus, by placing the entirety of that student's funding in jeopardy once he is placed into special education, vouchers could remove the adverse financial incentive for schools to misidentify students

as disabled.

Another large state, Florida, has experimented with a voucher program for disabled students that could provide substantial lessons for New York and other states facing similar crises in serving disabled students. This report describes the results of a survey conducted by the Manhattan Institute measuring parental satisfaction and characteristics of schooling under the voucher program. The survey found that parents are far more satisfied with the state's voucher program than they were with their previous public school, which was legally required to serve them. Evidence from Florida indicates that parents are not satisfied with the current system and could be better served under an alternative system that provides them with greater choice in the education provided to their children.

Growth of Special Education and Its Causes

Special education has been growing substantially for several decades. Nationally, the percentage of students ages 3–21 who were served in federally supported special education programs grew from 8.3 percent in 1977 to about 13.4 percent in 2002.⁴ This growth accelerated during the 1990s.

Special education programs have grown in New York at an even faster pace in the last decade than they have nationally. The percentage of public school students in New York State who were in special education programs grew from about 12.0 percent in 1991 to 15.3 percent in 2002.⁵

While some might assume that New York State's large special enrollment is due at least in part to its large urban population, the New York City school system actually accounts for a disproportionately small share of the state's disabled students. According to data compiled from the National Center for Education Statistics, New York City's public school district accounted for about 30 percent of the state's special education students, though its enrollment represented about 37 percent of the state's PK–12 population.⁶ Also, while the state's rate of growth has exceeded the already high rate of the national average, New York City's special education enrollment has increased at about same rate as the national average, going from 11.4 percent in 1991 to about 13.4 percent in 2003.⁷

Financial Incentives and Special Education Enrollments

There are many potential explanations for the dramatic increase in special education enrollments throughout the nation. Unfortunately, the only benign explanations for the rise in the special education enrollments are also the least plausible. No compelling evidence exists to suggest that there has been a real increase in the percentage of students with disabilities across the nation. Neither has there been persuasive evidence that improvements in our ability to identify student disabilities can account for the large increase in public school special education enrollments.⁸ Thus, to explain the rise in special education diagnoses, we are forced to consider factors other than those that would lead students to rightly receive such services.

Some compelling evidence exists that a great deal of the growth in disability diagnoses in the nation and in New York State is explained by the way special education programs are funded.

There are two ways that states have chosen to fund special education. One system, referred to as the lump-sum system, funds public school special education programs based upon historical rates of disabilities in the school. Such states provide the same funds for schools regardless of their purported growth in special education enrollments, though each of these states makes exceptions for extreme circumstances. As of 2001, sixteen states funded their special education programs using a lump-sum system.

More often, states fund special education programs by providing additional monies for each student identified and educated as disabled. This more traditional funding mechanism is often candidly referred to as the "bounty system," a term we have adopted. As of 2001, thirty-four states and the District of Columbia fund special education using a bounty system.

Some have worried that by rewarding schools with greater special education enrollments with greater funding, the bounty system might provide schools with a financial incentive to push students toward special education programs, even if those students are not necessarily disabled. If that is so, we should expect the growth in special education enrollments to have been greater in bounty states than in lump-sum states.

Greene and Forster (2002) found evidence that the type of a state's funding system had a substantial effect on the growth of its special education enrollments during the 1990s. Special education enrollments increased by about 2.3 percentage points in bounty states during the 1990s, compared with about 1.3 percentage points in states that operated lump-sum systems. Greene and Forster performed a regression analysis and found that about 62 percent of the increase in special education enrollments in bounty states through the 1990s was explained by the adverse financial incentive to place additional students into special education.

We can translate Greene and Forster's findings directly for New York, which had a bounty system throughout the 1990s. According to calculations using Greene and Forster's findings, New York enrolled 44,390 more students in special education programs in the 1990s than it would have if the state had operated its special education programs with a lump-sum system during that decade.

Other research has produced similar evidence that increased funding incentives could lead schools to place greater numbers of students into special education. Cullen (1999) studied how school districts in Texas responded to changes in financial incentives arising from court-mandated restructuring of the state-education financial system. She found that after the court order took effect, in districts where the amount of money provided for placing a student in special education went up, special education enrollment also went up. Specifically, she found that a 10 percent

increase in the bounty for placing a student in special education could be expected to produce a 1.4 percent increase in a district's special education enrollment rate. The relationship between changes in financial incentives and changes in special education enrollment was strong enough that Cullen found it explained 35 percent of the growth in special education in Texas from the 1991-92 school year through the 1996-97 school year.

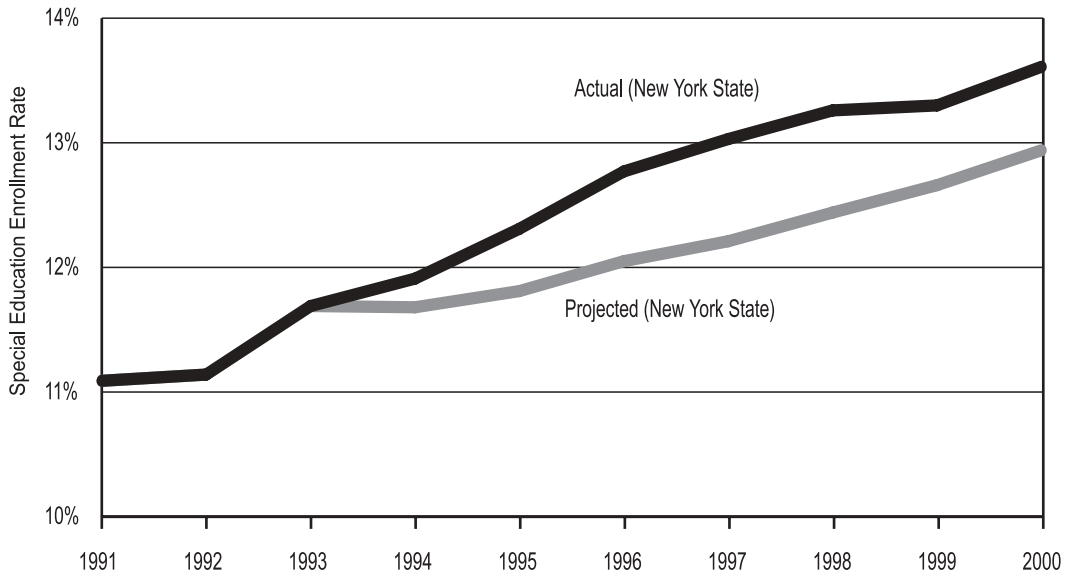
Many might find the results of these studies to be counterintuitive, since growth in special education enrollments is often pointed to as a financial burden on public schools, not a financial boon. If the costs of serving special education students are greater than the extra funding provided per disabled student, the argument goes, then why would schools have an incentive to label students as disabled? However, this misrepresents what truly is and is not a "cost" of placing a child in special education. A true cost is an expenditure that the school would not have made otherwise. Some services that a school would have provided to a particular child, no matter what, can be redefined as "special education services" if the child is placed in special education. These services are not truly special education costs because they would have been provided anyway. Furthermore, there are many fixed costs associated with special education that do not increase with every new child. For example, if a school hires a full-time special education reading teacher, it may spend the same amount whether that teacher handles three students a day or ten. But the school will collect a lot more money for teaching ten special education students than it would for teaching three.

The findings indicating that financial incentives drive much of the increase in special education enrollments are particularly important for New York, which funds special education using a bounty system. Using Greene and Forster's findings, Figure 1 compares actual special education enrollments in New York between 1991 and 2001 with a projected estimate of the enrollments if it had switched from its bounty funding system to a lump-sum system halfway through the decade, in the 1994-95 school year. If New York had switched to a lump-sum system then, the results indicate that its special education enrollment would have been lower in 2000-01 by 0.67 percentage points. This translates to about 17,715 fewer students in special education programs and would have saved New York's taxpayers over \$220 million a year in additional educational expenditures.

The evidence indicating that the way special education is funded is a determinate of the growth of its enrollment begs the question of whether public schools under bounty systems are placing too many students into special education or whether those under lump-sum systems are identifying too few students as disabled. Theoretically, just as the bounty system provides an incentive to place additional students into special education programs, we might worry that the lump-sum system provides schools with an incentive to misplace truly disabled students into regular enrollment.

While it is theoretically possible that evidence on funding incentives is driven by under-identification of students as disabled, this explanation is far less plausible

Figure 1
**Actual vs. Projected NY Special Education Enrollment
 Comparing "Bounty" to "Lump Sum" System***



* Assumes a lump sum system effective in 1994-95

than over-identification of disabilities. If the lump-sum states are driving the results of adverse funding incentives, then we would have to believe that the true rate of disability in the nation is far greater than the current enrollment in special education programs. Currently, more than 13 percent of PK-12 students nationally have been identified as disabled and are educated in special education programs.⁹ To most, it would strain plausibility to believe that the percentage of students with real problems with their brain functions is higher than the current percentage enrolled in special education. It seems far more likely that this number is inflated rather than too low.

Furthermore, the evidence that funding incentives encourage schools to over-identify students as disabled is strengthened by the fact that the increases in special education enrollments over the last three decades have nearly entirely occurred in the easiest manipulated and least expensive-to-educate diagnostic categories. If some societal change has led to true increases in the percentage of children who have real disabilities – for example, improvements in medical technology or environmental dangers – then we would expect the growth in disabilities to occur in a wide variety of categories.

The percentage of students identified in the category of Specific Learning Disability (SLD), a mild form of disability that is easy to treat and is subjectively diagnosed, explains most of the increase in special education enrollments over the last three decades. Nationally, SLD enrollments increased from 1.8 percent of enrollment in

1977 to 6.0 percent of enrollment in 2002. However, there has been little to no growth in difficult-to-treat categories that are more objectively diagnosed. In fact, cases of students placed in the severe category of mental retardation actually decreased from about 796,000 students in 1977 (2.2 percent of the student population) to about 592,000 cases in 2002 (1.2 percent of the student population).¹⁰

There has been a slight increase in the percentage of students identified in the autistic or traumatic-brain-injury category, going from less than a tenth of a percent of the student population in 1992¹¹ to about 0.2 percent of the student population in 2002.¹² This increase could be the result either of true increases in the rate of autism or in improvements in identification procedures. However, this increase in a difficult-to-educate population is hardly large enough to account for the very large increases in the percentage of students identified as disabled in this period.

The evidence indicates that the large growth in special education enrollments in New York and throughout the nation has largely been driven by schools responding to adverse incentives to misclassify students as disabled. This inflation of the special education roles has cost taxpayers significant dollars and might scar some students who must unnecessarily live with the stigma of being considered disabled.

The Process-Based Model for Special Education

Whether or not much of the growth in special education has resulted from misdiagnoses, a significant portion of the population is made up of students with real disabilities, and those students must be educated. Unfortunately, the special education system as it exists today fails to provide many of these students with an acceptable educational environment, despite the legal and procedural guarantees it provides to parents.

The federal Individuals with Disabilities Education Act (IDEA) was a landmark education reform. The law forced public schools to educate disabled students, who once were routinely ignored, by giving parents legally enforceable protections that their child would receive necessary services. The law requires schools to develop legally binding contracts with students, called Individual Educational Plans (IEPs), which develop educational goals and explicitly lay out how the school is going to meet those goals with the child. If the school fails to live up to its end of the bargain under the IEP, students can bring suit against the school and demand adequate services. A school can either provide the services demanded in the ruling on the child's IEP or it can pay the tuition necessary for the child to attend a private school.

Thus, IDEA developed a process-based approach for operating special education programs and for ensuring that disabled children are educated. While the law was essential in providing disabled students with reasonable access to public education, two important drawbacks to the process-based approach of IDEA leave many parents either unable or unwilling to enforce their children's right to an education.

First, schools are often able to write IEPs for students that place minimal requirements on themselves. While parents do have a voice in the development of their child's IEP, they often lack the expertise to recognize exactly what their child requires and thus can be led by school officials to believe that their child needs fewer services than might actually be necessary. Parents are also at a disadvantage when developing their child's IEP because the parent is likely undergoing this process for the first and only time, whereas, for most public school districts, the development of an IEP is a routine operation.

Even after the IEP is established, parents are often unable to realize the guarantees provided by their child's IEP because they are simply overwhelmed by the litigation process required to enforce the rights defined by their child's IEP. It is true that parents have the legal right to sue their public school if they feel that the school is not providing the required services. However, realizing this option requires taking part in an expensive and time-consuming litigation process, for which many parents are fundamentally unprepared. Parents often must acquire legal representation for their IEP case, for which many of them have limited resources, especially when we consider the additional expenses required simply to raise a disabled child. On the other hand, public schools have access to the unlimited resources of the state to make their case that they are already providing adequate services to the child. The parent is also at a disadvantage in the process, since their lawyer almost certainly focuses on various parts of the law, while public school districts have teams of attorneys who specialize only in IEP disputes.

Second, many parents are simply uncomfortable taking legal action against the very people charged with educating their child. If their suit is unsuccessful, parents worry that they will from then on have poor relations with their child's teachers and school administrators, on whom parents with disabled children might especially rely. Such parents might be particularly reluctant to take legal action against their school, especially given the difficulties described previously in actually winning their case.

Private Special Education Placements

Some parents do manage to successfully maneuver through the legal system and successfully challenge their public school's enforcement of their child's IEP. In such circumstances, under IDEA, if a public school either does not or cannot provide a disabled student with acceptable services, the school must pay for the child to attend another school, public or private.

It is often argued that placements of special education students into private schools are widespread and that their cost is a very large burden on taxpayers. However, the evidence indicates that this is simply not the case. According to the U.S. Office of Special Education Programs, only about 1.5 percent of disabled students receiving special education services under IDEA are in private programs.¹³ This translates into 88,156 students placed in private schools nationwide who are receiving services under IDEA.¹⁴

In New York, there were 13,168 students receiving IDEA services in a private setting in 2003.¹⁵ This represents about 3.4 percent of special education students in New York, or about 0.5 percent of the state's total enrollment. While the rate of private placements in New York is higher than the national average, it still accounts for only a small percentage of the state's students.

Private placements are also not overwhelming in New York City. According to the *New York Times*, there are 1,956 students New York City who have obtained these private placements.¹⁶ The *Times* estimates that these students cost the city a total of about \$24 million, which translates into about 0.17 percent of New York City's total education expenditures.¹⁷

Though some of these students might individually cost more than the average special education student, these placements are not an overly large burden on taxpayers. This is especially true when we consider how much would have been spent on the students if they had remained in public school. While the average cost of private placements is not readily available, given that New York public schools spend about \$12,457 in additional expenditures on special education students to educate a disabled child, the cost of private placements would have to be astronomical in order to create a significant financial burden. Thus, the evidence indicates that such private placements are actually quite rare (accounting for about 0.18 percent of the nation's enrollment) and their cost is actually quite reasonable.

Often, schools and parents decide that a student cannot be adequately served in a public school before the child even enrolls. For instance, if a blind child moves into a jurisdiction where the public school does not have adequate facilities for blind students, the school and parents might decide to place the student in a private school for the blind. However, a recent ruling by a federal judge might change this practice in New York. The judge ruled that New York City did not have to reimburse the tuition of students who received a private placement but had never attended a public school.¹⁸ If this ruling holds and is interpreted to apply to special education throughout the nation, it could have dramatic effects on the public schools that do not have the infrastructure to educate such students and the students who must first be failed before they can seek an alternative placement.

A Choice-Based Model for Special Education: Florida's McKay Program

The drawbacks to the IEP process and the lack of success among parents to exit schools they feel are failing their children have led policymakers to seek alternatives to the process-based approach to enforcing the rights of disabled children in public schools. One such measure is to replace the process-based IEP model with a choice-based model that relies on parental decisions to guarantee that disabled students receive quality education instead of the legal process relied upon by the current system.

A choice-based model for policing special education would provide disabled students with vouchers that they could use to pay the tuition at any school they wished,

public or private. Thus, if parents were unhappy with the special education services provided by their local public school, they could remove their child from the school and send him to another school that might better serve his needs. Vouchers would allow parents to express dissatisfaction for their public school and seek alternative services for their child without seeking the protection of the courts, which is burdensome and expensive for both parents and taxpayers.

Vouchers might also help tame the growth in special education enrollments caused by adverse financial incentives from the bounty funding system. If a student is immediately eligible to exit a public school once he is placed in a special education program, that school might be reluctant to misidentify the student as disabled in order to increase its government subsidy. The school must fear that it will lose the entirety of the revenue brought in by the student if he chooses to leave.

In 1998, Florida became the first state to adopt a voucher program for disabled students. Florida implemented the McKay Scholarship Program for Students with Disabilities to offer parents of special education students greater choice in the education their children received. The program offers vouchers to all Florida students in grades 1–12 with an IEP who have been enrolled in a Florida public school for at least one year. The amount of the McKay voucher is particularly generous compared with other school choice programs: it is worth up to the full amount of money that the public schools would have spent to educate the child, which is primarily a function of grade level and the severity of the student's disability. Most voucher programs offer only a small fraction of what public schools spend on each student. Families with McKay vouchers can use them to attend any private school registered with the state, including religiously affiliated private schools. In 2003, there were 362,500 students eligible to receive McKay vouchers, far exceeding the number of students eligible for any other school choice program in the nation.¹⁹ As of the 2004–05 school year, 15,910 students were using a scholarship to attend a public or private school.²⁰ The range of disabilities, from modest to severe, of students using a McKay voucher closely mirrored that in Florida's public schools, indicating that children of all levels of disabilities are served by the program.²¹

Private schools are not required to participate in the McKay program. A private school wishing to be eligible to participate must register with the state. The only restraint on participating private schools is that they employ teachers who have either bachelor's degrees or three years of teaching experience, so the number of private schools able to register is large. During the 2002–03 school year, 962 private schools had registered with the state and became eligible to receive the vouchers.²² Not all these schools actually had McKay voucher students in attendance, but they were still eligible to receive the vouchers.

Importantly, private schools are not legally bound by IEPs. Therefore, when a student uses a McKay voucher to attend a private school, he forfeits the legal protection of his IEP. Private schools can make promises about the education they will provide to a student, but they are not legally required to serve disabled students, as

are public schools. When they use a McKay voucher, parents give up their legal and procedural protections in favor of choice protections – if they are not satisfied with the education provided by the private school, parents can withdraw their child and send him to another school.

An Evaluation of the McKay Program

Greene and Forster (2003) conducted the only empirical evaluation to date on the effectiveness of Florida’s McKay program. The survey covered a wide scope of issues, including overall satisfaction with specific areas of the program, student experiences with academics and social life, and information about parental experiences with the IEP process in their former public school.

The survey included parents who were at that time using a McKay voucher as well as parents who used a voucher at one time but had exited the program. The existence of a group of parents who were no longer using the voucher was particularly interesting, since we might expect parents currently enrolled in the McKay program to view it positively. Parents who had left the McKay program, however, might have particularly harsh feelings about the program.

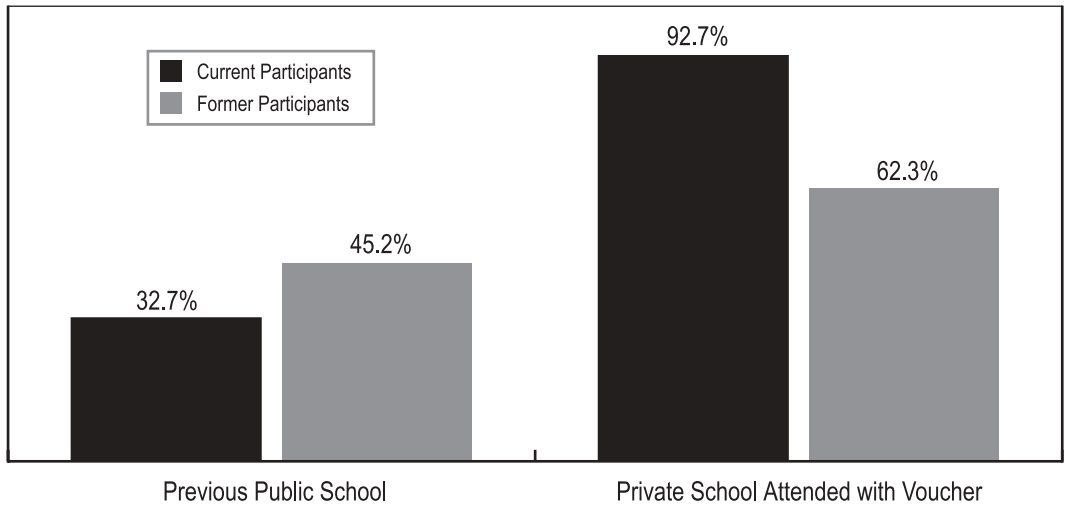
The survey asked parents questions about their experience with the McKay program and their past experience with the process-based IEP model in their previous public school. Thus, the survey provides a valuable comparison of parental satisfaction and student experiences with a process-based and a choice-based model for administering special education services.

Parental Satisfaction

Overall, parents who were currently enrolled in the McKay program and those who had left the program were more satisfied with their McKay school than with their previous public school. Figure 2 compares the percentage of parents in both groups who said that they were either “very satisfied” or “somewhat satisfied” with their experience in their past public school and their McKay school. While only 32.7 percent of parents currently enrolled in McKay and 45.2 percent of parents formerly enrolled in the program were satisfied with their previous public school, 92.7 percent and 62.3 percent of the parents, respectively, were satisfied with their McKay school.

Figure 3 compares the satisfaction of parents with the quality of each type of school’s services for their child’s disability. The figure also breaks out parental responses by the severity of their child’s disability. It is possible that private schools might meet the needs of students with mild disabilities but could fail very difficult-to-educate students. However, the results indicate that even parents of severely disabled students are more satisfied with the services provided by their private school than with those provided by their previous public school.

Figure 2
Overall Satisfaction with Child's Special Education Experience



Far more current participants and a substantially greater percentage of former participants in the McKay program were satisfied with the teachers in their private school than they were in their previous public school. Figure 4 shows that 45.8 percent of current participants were satisfied with the teachers at their public school and that 92.2 percent of them were satisfied with the teachers in their McKay school. Satisfaction with teachers at McKay schools was also higher by 7.5 percentage points among parents who left the McKay program.

Figure 3
Satisfaction with Quality of Services
 Public vs. Private Special Education

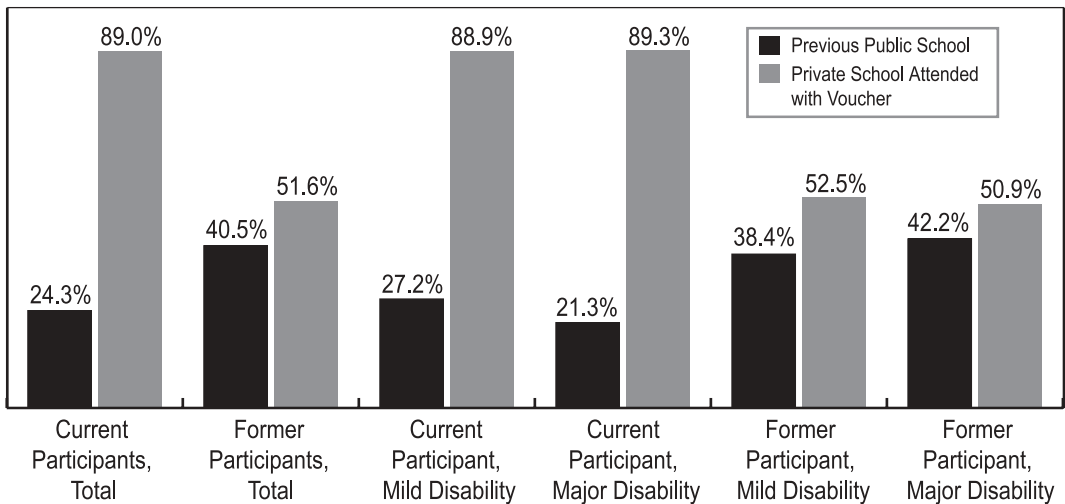


Figure 4
Satisfaction with Teachers
Public vs. Private Special Education

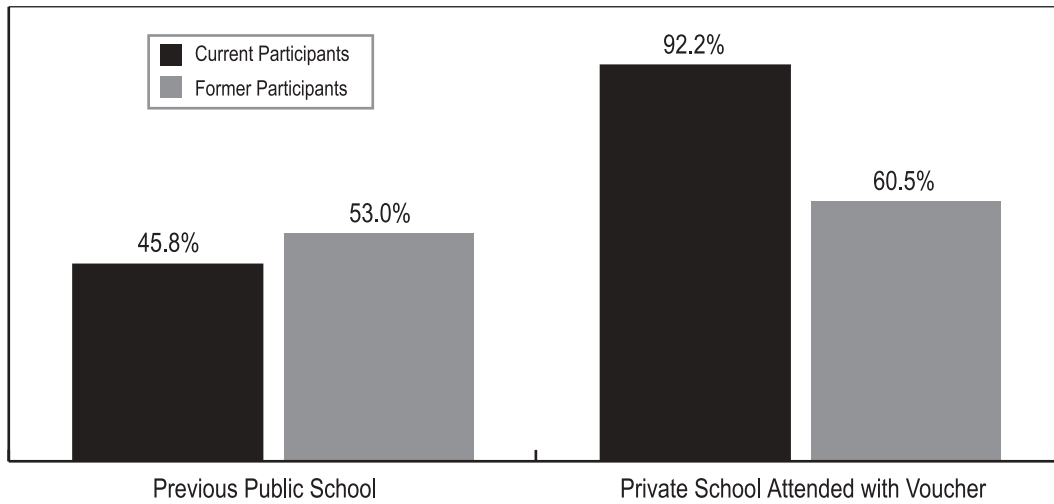


Figure 5 shows that both current and former participants in the McKay program thought that their private school was more responsive to their needs than was their former public school. In the case of those who stuck with the program, more than 90 percent of parents were satisfied with the responsiveness of their private McKay school, while fewer than 30 percent were satisfied with the responsiveness of their former public school.

Figure 5
Satisfaction with School Responsiveness
Public vs. Private Special Education

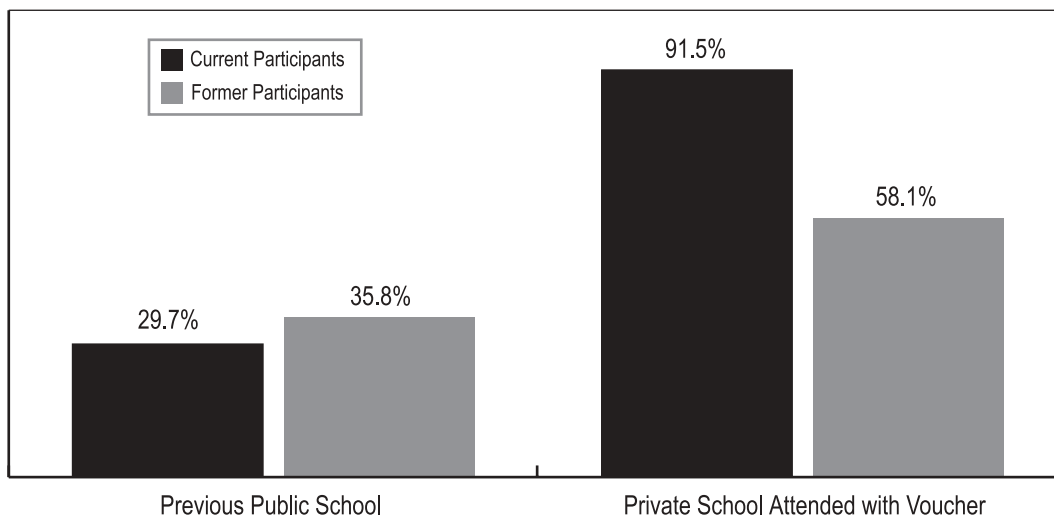
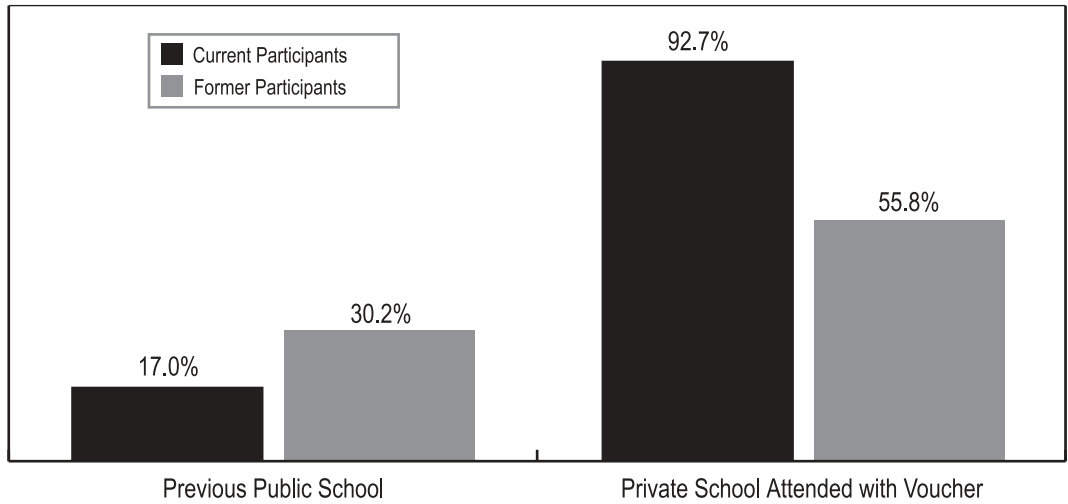


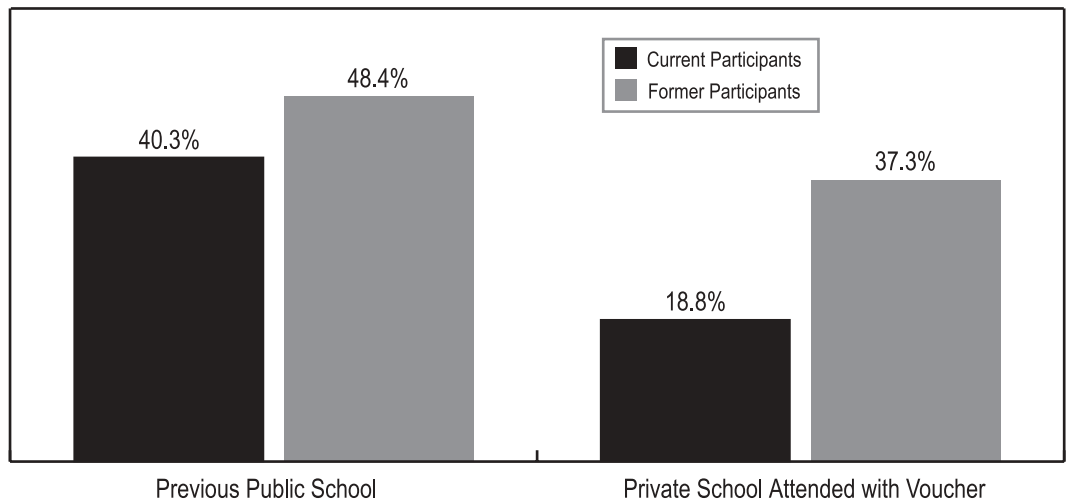
Figure 6
Satisfaction with Child's Academic Progress
 Public vs. Private Special Education



Student Experiences in Private Schools

Greene and Forster's survey indicated that many disabled students had better academic and social experiences in a private school they attended with a voucher than they had previously had in their former public school. Figure 6 shows that a far greater percentage of the parents of both current and former participants in the McKay program were satisfied with their disabled child's academic progress in the private school atmosphere than in the previous public school. Figure 7 shows that disabled students were also less likely to have behavioral problems in their

Figure 7
Percent of Children Who Had Behavior Problems
 Public vs. Private Special Education



McKay school than in their public school. More parents who exited the program also reported that they were satisfied with the responsiveness of their McKay school than reported they were satisfied with the responsiveness of their previous public school.

Along with having fewer behavioral problems themselves, disabled students are also less likely to have problems with other students in private schools that they choose than they were in their former schools. Figures 8 and 9 show that for both

Figure 8
Percent of Students Bothered Due to Disability
Public vs. Private Special Education

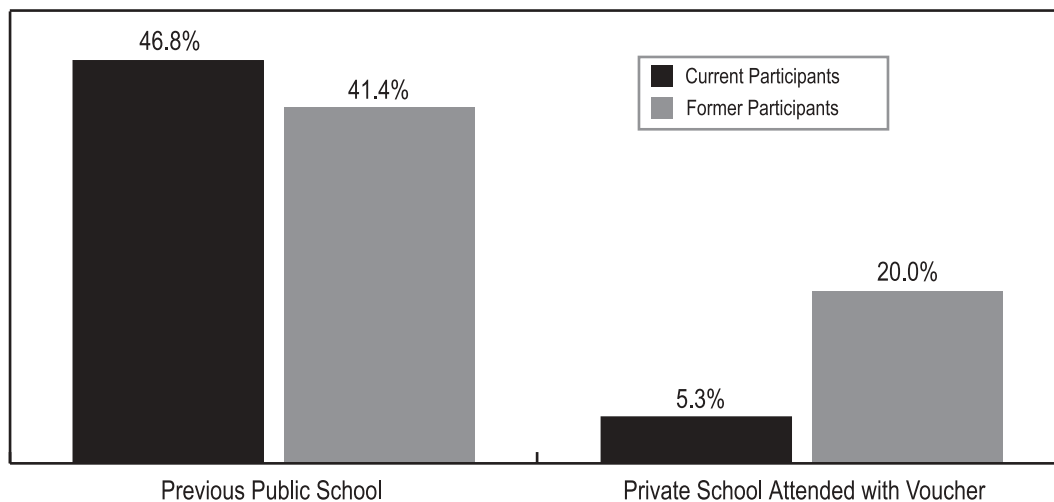
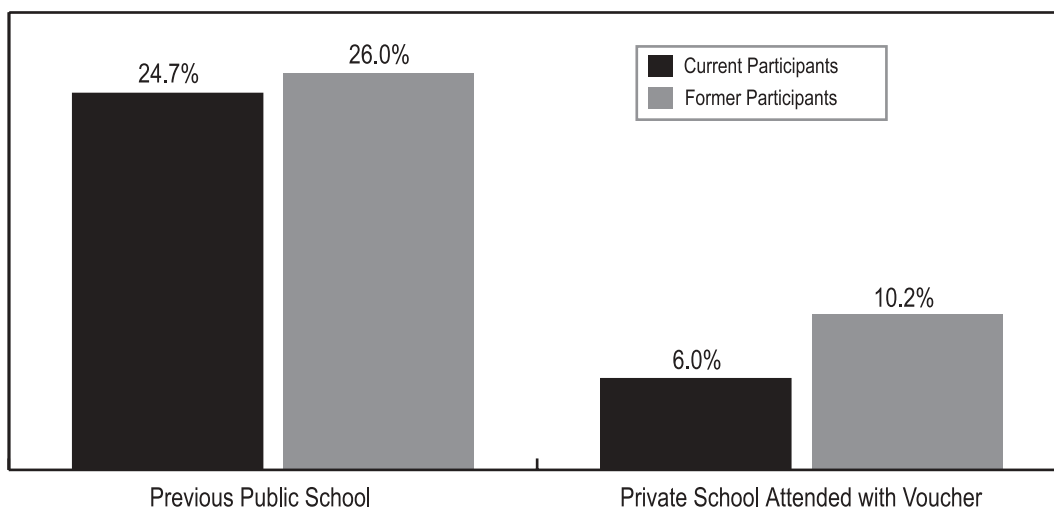


Figure 9
Percent of Students Assaulted Due to Disability
Public vs. Private Special Education



current and former participants, disabled students were less likely to have been bothered or physically assaulted by other children on account of their disability than they were in their previous public school.

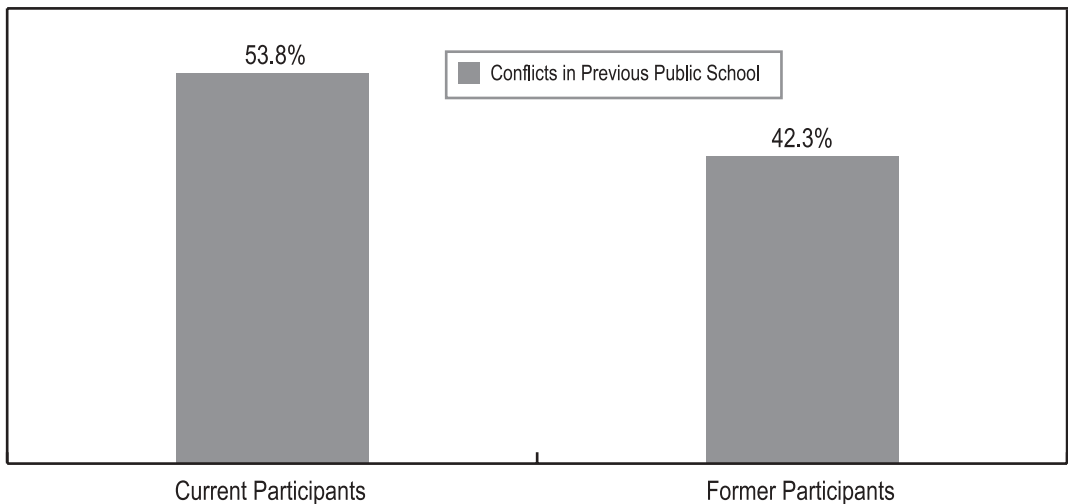
Satisfaction with Choice versus Procedural Special Education Models

In Greene and Forster's survey, parents were also asked about their experiences with IEPs in their former public school, the linchpin of the process-based model for governing special education. The survey results indicated that parents were more satisfied with the choice-based model of the voucher program, even though by using a voucher they forfeited the legal protections of the IEP.

Figure 10 shows that many parents of disabled students who entered the McKay program were dissatisfied with the IEP process. More than half of current participants and 42.3 percent of former McKay participants had conflicts with their previous public school over their child's IEP.

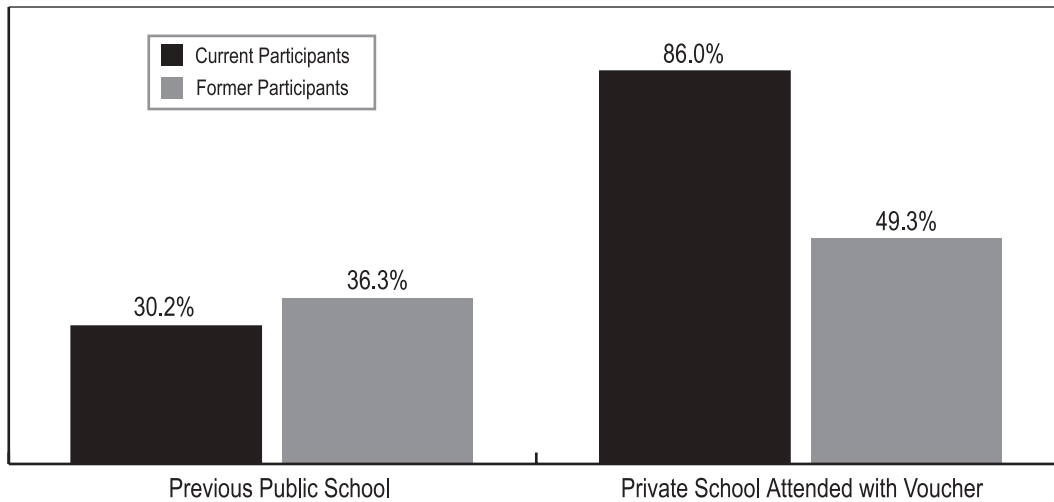
Figure 10

Percent of Parents Who Had Conflicts with Their Child's IEP in Previous Public School



Importantly, the results of the survey also suggest that the legal protections of the IEP process-based model failed to guarantee these parents with what they felt was a suitable education for their child. Figure 11 shows that only about a third of both current and former participants in the McKay program felt that their previous public school provided all of the services legally required according to their child's IEP. On the other hand, while private schools are not legally bound by an IEP, many more of both types of parents felt that their private school provided all the services that it had promised when the child enrolled. These findings indicate that, at least for the substantial number of parents who used a McKay voucher to

Figure 11
School Follow-Through on Services Required (Public) or Promised (Private)



attend a private school, the choice-based model for special education provided greater assurance that students would be adequately served even though it did not provide the legal guarantees of the process-based model.

Alternatives for New York

The evidence indicates that New York and other states that continue to fund special education with a bounty system should strongly consider alternative funding options. New York should consider changing from a bounty to a lump-sum system to fund special education. Replacing the state’s current funding system with a lump-sum system could significantly decrease the growth rate for special education programs in the state’s future. Curtailing the growth in special education enrollments could save taxpayers millions of dollars and save thousands of New York’s students from wrongly being placed in special education programs.²³

New York might consider going a step further in reforming its special education system by adopting a voucher program to serve the state’s disabled students.²⁴ Florida’s experience with the McKay program indicates that a voucher system can provide disabled students with higher-quality services than are often made available by public schools. The process-based model for governing special education that predominates in New York and across the nation provides parents with legal protections that they have neither the resources nor the ability to adequately enforce. Evidence from Florida indicates that a choice-based system for providing disabled students with educational services can provide parents with the leverage they need to ensure that their children receive the best education possible.

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- Greene, Jay P., and Greg Forster, "Effects of Funding Incentives on Special Education Enrollment," Manhattan Institute Civic Report 32 (December 2002).
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ENDNOTES

- ¹ Author calculations using data from the *Digest of Education Statistics 2003*, Table 37 (National Center for Education Statistics), and from data tables from OSEP State Reported Data, Table AA3.
- ² State Special Education Finance Systems, 1999–2000, Exhibit II-6, March 2004.
- ³ Author calculations using data from *Digest of Education Statistics 2003*, Table 54.
- ⁴ *Ibid.*, Table 52.
- ⁵ Percentage of students in special education for 1991 in New York and for the nation estimated from author calculations using data from *Digest of Education Statistics 2003*, Tables 37 and 54. Percentage of students in special education for 2001 obtained from *ibid.*, Table 54.
- ⁶ Author calculations from data obtained from Build a Table function for the Core of Common Data, National Center for Education Statistics.
- ⁷ *Ibid.*
- ⁸ For a complete discussion of this research, see Greene and Forster (2002).
- ⁹ *Digest of Education Statistics 2003*, Table 54.
- ¹⁰ *Ibid.*, Table 52.
- ¹¹ 1992 is the first year that information on this category is made available by the *Digest of Education Statistics*.
- ¹² *Digest of Education Statistics 2003*, Table 52.
- ¹³ Data tables from OSEP State Reported Data, Table AB2,.
- ¹⁴ Data tables from OSEP State Reported Data, Table AB2.
- ¹⁵ Author calculations using data from *Digest of Education Statistics 2003*, Tables 37 and 53, and from data tables from OSEP State Reported Data, Table AA3.
- ¹⁶ Elissa Gootman, "Hundreds May Lose Tuition Under Aid Ruling," *New York Times*, January 7, 2005, p. B1.
- ¹⁷ Author estimates from Gootman, "Hundreds May Lose Tuition," and *Digest of Education Statistics 2003*, Table 90.
- ¹⁸ See Gootman, "Hundreds May Lose Tuition."
- ¹⁹ See Exceptional Student Membership table at <http://www.firn.edu/doe/eias/flmove/florida.htm>.
- ²⁰ See <http://www.miedresearchoffice.org/mckayscholarship.htm>.
- ²¹ Greene and Forster (2003), p. 10 and Table 36; calculations for removing gifted students from the "exceptional" category are based on Florida Department of Education data available at <http://www.firn.edu/doe/eias/flmove/florida.htm>.
- ²² The source for this figure is a data request we made to the state of Florida.
- ²³ The state is not prohibited from changing this funding formula by the consent decree in *Jose P. v. Ambach*. According to New York Law School professor Ross Sandler, author of *Democracy by Decree* (New Haven, Conn.: Yale University Press, 2003), the consent decree deals only with the manner in which New York City public schools administer special education, not how state government funds it. E-mails with editor, July 15, 2005.
- ²⁴ There may be a state constitutional bar to the inclusion of religious schools in such a voucher program. See "Blaine in Florida," *New York Sun*, August 17, 2004. "New York's state constitution provides, 'Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for

examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught' [New York State Constitution, Article XI, § 3]." Even if this clause were held to bar voucher money received by a parent from going to a religious school, there is no legal bar to the legislature adopting a voucher program that permits parents to direct special education funds to a secular or alternative public school of their choice.

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