



PUBLICLY PLACED PRIVATE SCHOOL  
STUDENTS WITH DISABILITIES:

# **Issues and Recommendations**

PREPARED BY PAULA BURDETTE, PH.D.  
OCTOBER 2006





Project Forum at the National Association of State Directors of Special Education (NASDSE) is a cooperative agreement funded by the Office of Special Education Programs of the U.S. Department of Education. The project carries out a variety of activities that provide information needed for program improvement and promotes the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues and convenes small work groups to gather expert input, obtain feedback and develop conceptual frameworks related to critical topics in special education.

This report was supported by the U.S. Department of Education, Office of Special Education Programs (Cooperative Agreement No. H326F000001). However, the opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

Note: There are no copyright restrictions on this document; however, please credit the source and support of federal funds when copying all or part of this material.



This document, along with many other Project Forum publications, can be downloaded from the Project Forum at NASDSE web address:

<http://www.projectforum.org>

To order a hard copy of this document or any other Forum publications, please contact Nancy Tucker at

NASDSE, 1800 Diagonal Road, Suite 320, Alexandria, VA 22314

Ph: 703-519-3800 ext. 326 or Email: [nancy.tucker@nasdse.org](mailto:nancy.tucker@nasdse.org)

# Table of Contents

<b>Introduction</b> .....	1	Recommendations .....	9
<b>Legislative Background</b> .....	2	Outcomes .....	9
<b>Relevant Research</b> .....	3	Out-of-state placements .....	9
<b>Publicly Placed Private School Students with Disabilities Policy Forums</b> .....	4	Reporting .....	9
Funding Issues .....	4	Miscellaneous Data/Accountability Recommendations .....	10
State Profiles .....	4	Relationship-Building Activities and Issues .....	11
Massachusetts .....	4	State Profiles .....	11
Maryland .....	4	Massachusetts .....	11
Washington, D.C. ....	5	Maryland .....	11
Recommendations .....	6	Washington, D.C. ....	11
Flexibility .....	6	Recommendations .....	12
Parity .....	6	Student-Related Issues .....	13
Reintegration to Public Schools .....	6	State Profiles .....	13
Secondary Transition .....	6	Massachusetts .....	13
Risk Pools .....	7	Maryland .....	13
Miscellaneous Funding Recommendations .....	7	Recommendations .....	14
Data and Accountability Issues .....	7	Leadership .....	14
State Profiles .....	7	Least Restrictive Environment (LRE) .....	14
Massachusetts .....	7	Other Recommendations: Research .....	15
Maryland .....	8	<b>Concluding Remarks</b> .....	15
Washington, D.C. ....	8	<b>References</b> .....	16
		<b>Appendix A</b> .....	17
		<b>Appendix B</b> .....	18

## **Acknowledgements**

Project Forum extends its sincere appreciation to the policy forum participants who reviewed an earlier draft of this document. Their efforts have served to enrich the quality and accuracy of this document.

# PUBLICLY PLACED PRIVATE SCHOOL STUDENTS WITH DISABILITIES: **Issues and Recommendations**

## Introduction

**A**ccording to state-reported data at [www.ideadata.org](http://www.ideadata.org), approximately 90,000 or 1.5% of all students with disabilities were publicly placed in private day and residential settings in 2004. All categories of disabilities are represented by these publicly placed students to some extent. However, the following categories were represented at a higher percentage than others: multiple disabilities; emotionally disturbed; and deaf-blind. States struggle with a variety of challenges related to management systems and placement of these students. This document provides legislative background information related to publicly placed private students with disabilities, a brief overview of relevant research, and a summary of state issues and recommendations from two consecutive policy forums held in March 2006 on the areas of management systems and student-related issues on this topic. (See Appendix A for the process for determining topics and sources of information.)

The policy forums, held March 21–24, 2006, were conducted by Project Forum at the National Association of State Directors of Special Education (NASDSE) as part of its cooperative agreement with the U.S. Department

of Education's Office of Special Education Programs (OSEP). At the first forum, state panels from Massachusetts, Maryland and Washington, D.C. described how they handle funding, data and accountability and relationship issues. At the second forum, Massachusetts and Maryland described student-related issues pertaining to publicly placed private students with disabilities. Policy forum participants, including representatives from state education agencies (SEAs), local education agencies (LEAs), private schools, public agencies, national associations and families, generated policy recommendations for each of these four areas. See Appendix B for a list of policy forum participants. Participants developed recommendations based on the presentations from the above-mentioned states, plus an Arkansas "Utilization of Funding Resources" presentation and a "Community-based School" presentation. The purpose of this document is to assist SEAs, LEAs, private schools and other interested parties to individually and collaboratively develop policies and practices based on what other states report as supportive of providing a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the students who are placed by public agencies in private facilities.

“The clear mandate of the law is for the education of students with disabilities to take place in general education classrooms to the maximum extent possible and appropriate for the child. In some cases, the needs of individual students are such that it is necessary for public school districts, through the ... IEP process, to send them to private special education placements...

## Legislative Background

The Individuals with Disabilities Education Act (IDEA) requires schools to provide FAPE in the LRE to students with disabilities. IDEA defines LRE as follows:

*(A) IN GENERAL—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily [P. L. 108-446 § 612(a)(5)(A)].*

The clear mandate of the law is for the education of students with disabilities to take place in general education classrooms to the maximum extent possible and appropriate for the child. In some cases, the needs of individual students are such that it is necessary for public school districts, through the Individualized Education Program (IEP) process, to send them to private special education placements, including private day-schools or residential care facilities. Given that these students are publicly placed, SEAs must ensure that services are provided at a school or facility that meets SEA and LEA standards and that the students have all of the rights of any other stu-

dent with disabilities who is served by a public agency, including transportation and other related services (OSEP Letter to Garvin, May 14, 1998).

Beginning with the reauthorization of IDEA 1997 and its subsequent regulations, and continuing with IDEA 2004, states have focused their efforts and changed their practices regarding provision of services in the LRE while continuing to provide a continuum of placements. OSEP has defined the following categories as a representative continuum of placements:

- **Regular class** includes students who receive the majority of their instruction in a regular classroom and receive special education and related services outside the regular classroom for less than 21% of the school day.
- **Resource room** includes students who receive special education and related services outside the regular classroom for at least 21% but not more than 60% of the school day.
- **Separate class** includes students who receive special education and related services outside the general classroom for more than 60% of the school day.
- **Separate school facility** includes students who receive special education and related services in separate public or private day schools for students with disabilities for more than 50% of the school day.
- **Residential facility** includes students who receive education in a public or private residential facility, at public expense, for more than 50% of the school day.

“ States ... are struggling with funding, accountability, relationships between agencies and LRE issues related to their publicly placed private school students.

■ **Homebound/hospital environment** includes students placed in and receiving special education in hospital or homebound programs (Crockett & Kauffman, 1999).

The policy forums were convened to discuss policy and practice recommendations related to students placed by any public agency (e.g., Department of Education, LEAs, Department of Corrections, Department of Mental Health, Department of Social Services, etc.) in privately-run facilities that fall into any of the last three placements.

## Relevant Research

According to a June 2004 Project Forum document, *Non-Public Placements: State Policies and Procedures*<sup>1</sup> (for which 47 states responded), 36 states have either regulations or policy guidance specifically related to non-public, out-of-state placements and 40 have regulations or policy guidance related to non-public, in-state placements. At least 13 SEAs have a formal process to approve each non-public placement, both in and out of state, while only one state approves only out-of-state placements and two other states approve only in-state placements. Additional findings show that 15 states approve the funding level for specific students in both in- and out-of-state placements and one state approves the funding level for only in-state placements; eight states pay the total cost of both in- and out-of-state place-

ments some of the time; and 28 states pay part of the cost some of the time for both in- and out-of-state placements. Furthermore, 37 states monitor the placement of students with disabilities in non-public settings. Project Forum's 2004 document provides a portrait of states that are struggling with funding, accountability, relationships between agencies and LRE issues related to their publicly placed private school students.

---

<sup>1</sup>This Project Forum document and others can be found at [www.projectforum.org](http://www.projectforum.org) and at [www.nasdse.org](http://www.nasdse.org).

## Publicly Placed Private School Students with Disabilities Policy Forums

The following state profiles and recommendations are organized by funding, data and accountability, relationships and student-related issues. The recommendations were generated by policy forum participants and analyzed by Project Forum staff using Atlas.ti, a software program designed to organize and assist in the analysis of qualitative data.

### FUNDING ISSUES

#### State Profiles

States described a range of issues related to funding publicly placed private school students with disabilities, including setting rates for special education and related services in private schools, teacher salaries, funding private schools co-located within public schools, implementing hearing decisions and timely payments to private schools for service provision.

Rate setting for private schools was typically viewed by state department of education staff as a necessary method for ensuring services are provided at a reasonable cost to the state and LEAs, allowing departments of education to more accurately predict expenditures and budget funds on a yearly basis.

Another funding issue that was discussed was accessing funds—what funds could be made available to support the education of these students. Within this conversation, the term “braided funding” was mentioned, meaning the utilization of funds from a variety of sources for one common purpose. Also, “excess costs” were discussed, meaning those costs that are in excess of the average annual student expenditure in an LEA.

Since costs are directly aligned to the delivery of special education and related services of individual students, the forum participants recognized that a large variance in tuition rates among private facilities is found due to the intensity, duration and type of programmatic responses required to appropriately implement a student’s IEP.

#### Massachusetts

Special education in Massachusetts is primarily funded through local appropriations and state aid. State aid comes from two sources: Chapter 70 funds and Circuit Breaker reimbursements. Both help fund publicly placed private school students. The Chapter 70 formula, as revised by the Education Reform Act of 1993, assumes that one percent of a district’s enrollment will be in out-of-district special needs placements and provides for the state to pay 50% of the tuition for students in residential settings. The state legislature was convinced that these sources of relief would not sufficiently fund special education, so another provision, known as the Circuit Breaker, was enacted. This has been in effect since 2000 to alleviate LEA funding issues by providing assistance to districts with students with high cost needs, defined as a student whose program cost exceeds four times the statewide average foundation budget cost for a year (\$31,616 for fiscal year 2006). Districts are reimbursed for 75% of the eligible costs above this for instruction and tuition. Circuit Breaker funding for 2006 was \$201.6 million with 12,030 students subsidized. In order for these funds to be released, the Massachusetts Department of Education (MA DOE) must approve the program. Funding goes directly to the LEA in which the student is assigned.

Issues in tuition payment to the private schools arise when the LEA does not agree that the child is from its district (e.g., when a child is in state custody and it is therefore difficult to determine appropriate LEA assignment; however MA DOE has implemented a more “user-friendly” approach to LEA assignment, see [http://www.doe.mass.edu/sped/advisories/06\\_html](http://www.doe.mass.edu/sped/advisories/06_html)); the Massachusetts’ Operational Services Division has not yet agreed to pay for the child’s program; or districts are slow to pay.

#### Maryland

The Maryland State Department of Education (MSDE) has developed and implemented a Nonpublic Tuition Assistance Program Application (NPTAP) process as mandated by state law. The NPTAP provides a consistent method for LEAs to notify MSDE of those students that the LEA plans to place in a private school setting for implementation of their IEPs. The state



and LEA share costs of educational services provided in a nonpublic setting. NPTAP also includes a standard budget process for nonpublic special education schools that results in an MSDE-approved cost sheet specifying the allowable amounts that a nonpublic special education school may charge. The NPTAP application process also includes the use of automated tracking systems, databases and standardized budget packets. The budget packet is disseminated annually to all prospective educational providers. Additionally the process enhances outreach, technical assistance and communication to the nonpublic special education section of MSDE and the LEAs on an ongoing basis. MSDE has the responsibility for approving rates for special education and related services provided in nonpublic special education programs. MSDE has developed a procedure for obtaining and reviewing detailed expense information from the nonpublic special education programs. Nonpublic providers are required to substantiate costs as they develop program cost projections that are aligned to school operation and education service provision for the next year.

MSDE has been given the responsibility, under Maryland law, to approve rates for special education and related services provided in nonpublic special education programs. The current program cost allowance methodology is aligned to the Consumer Price Index (CPI) and jurisdictional/LEA Cost of Living Allowances (COLAs). The result is the calculation of a per diem rate that is aligned to educational services. However, it should be noted that the final funding level is based on the costs of tuition and related services for a specific student rather than basing the funding level on a flat rate for the specific facility.

Maryland LEAs are responsible for approving the placement and reimbursing the private school for service provision. MSDE contributes its share of the program costs through a reconciliation process based on the current funding formula outlined in state statute. Annually, nonpublic special education schools must substantiate costs as they develop program cost projections aligned to school operation and educational service provision, including IEP implementation.

Since Maryland mandates “highly qualified teachers” in private schools, meeting these standards in the private schools without the same level of

resources as the public schools is difficult. This causes problems with recruitment and retention of teachers. A “parity workgroup” with interagency membership has been developed to address this issue.

### Washington, D.C.

The District of Columbia is a unique system in that it is both an LEA and an SEA. Funds are allocated through the SEA to the District of Columbia Public Schools (DCPS), considered an LEA. However, these funds are inadequate and have been consistently under-budgeted. Under the *Pettis v. The District of Columbia*, a U.S. District Court decision, DCPS has been ordered to make timely payment and provide transportation to publicly placed private school students with disabilities. The current program cost allowance methodology is aligned to the CPI and jurisdictional/LEA-specific COLAs. Budgeting for this is difficult because DCPS is unable to establish a projected enrollment due to hearing officer decisions and court orders. DCPS’ funding responsibilities include students who are wards of the District. While DCPS is fiscally responsible for publicly placed students with disabilities who are in foster care, DCPS is not responsible for those students who are adopted and are no longer wards. DCPS relies on the Child and Family Services Agency (CFSA) of Washington, D.C. to provide a current status of students who are wards of the District. Accurate and timely notification of a student’s ward status affects DCPS’ fiscal responsibility. There have been instances when interagency partners moved wards to educational placements without notification to DCPS, despite a notification requirement in the current memorandum of understanding. In those instances, DCPS reserves the right to dispute funding until it is determined that the student is eligible for special education services.

DCPS does not set rates for the private schools in which it places students with disabilities, but legislation is currently proposed to permit rate setting. This will enable more effective budget management. However, the private school representative perspective was that private schools should be allowed to set their own rates and the public school should choose the best setting at the best cost for individual students, thereby rendering rate setting unnecessary.

“ While ... leveraging of funds will look different in every state, participants agreed it was worth the effort if it resulted in the reduction of agency competition for legislative dollars...

## **Recommendations**

Funding recommendations fell under four main areas with an additional group of miscellaneous suggestions.

### **Flexibility**

Some participants thought that public schools should use Title I (ESEA) and Part B (IDEA) monies for the costs associated with students in private settings since these students would receive benefit from these funds if placement were in the public setting. Participants agreed that utilizing inter-agency collaboration to “braid funds” and tap public and private funds (e.g., foundation funds) in a cohesive manner would decrease dependency on federal funding, reduce duplication of work and build capacity. While this leveraging of funds will look different in every state, participants agreed it was worth the effort if it resulted in the reduction of agency competition for legislative dollars each year. Furthermore, participants suggested following Arkansas’ and Maryland’s lead in developing policy or legislation that enhances capacity and provides LEAs flexibility with service delivery options for students with disabilities. For example, the co-locating of private programs and/or classes within public schools demonstrated heightened cost-effectiveness and compliance with the No Child Left Behind Act (NCLB) and IDEA in its provision of special education and related services in the LRE with typically-developing peers. Flexible funding recommendations also included “diversionary-type funds” to encourage LEAs to build internal capacity to serve students at risk for a more restrictive private school placement. The final flexible-funding recommendations dealt with allowing funds to be used for work that is not directly related to service provision such as

data collection; case management; analyzing needs of students in order to provide services to groups of students; analyzing current models in order to scale-up ones that are proven effective; and analyzing cost implications in terms of data collection, attendance, type of service provision and other variables in order to determine a reasonable cost per student.

### **Parity**

This issue spawned recommendations for both teacher pay parity and private school rate equity. Participants felt that tuition for private schools should be based on the cost of running the program as well as the cost of paying teachers at a comparable rate to public school teachers with similar qualifications.

### **Reintegration into Public Schools**

With the goal of returning students to schools with their typically developing peers as appropriate, costs of transition back into public school should be determined and this cost should be integrated into tuition for private schools and budgeted for the receiving public schools. The cost of this transition should include services such as case management, training for receiving teachers, orientation for parents and district personnel and tracking of progress for a minimum of 90 days after the initiation of the transition.

### **Secondary Transition**

Participants were in agreement that transition into community life including adult and post-secondary programs is often fragmentary. Forum participants recommended the coordination of funding streams and work efforts among



Forum participants recommended the coordination of funding streams and work efforts among and between the federal/state education and social agencies and public and private schools to ensure successful secondary transitions.

and between the federal/state education and social agencies and public and private schools to ensure successful secondary transitions.

### Risk Pools

Most states have funding pools to support LEAs with extraordinary costs of educating students with high-cost needs.<sup>2</sup> For more information on this topic, see the related document, *Risk Pools: State Approaches* at [www.projectforum.org](http://www.projectforum.org). Participants suggested that the federal government develop funding pools for which states can apply.

### Miscellaneous Funding Recommendations

- Timely payment was an issue for private schools. Most participants recommended that LEAs or SEAs pay for services in advance.
- SEAs should collaborate with other state agencies to offset costs for LEAs (e.g., mental health).
- Medicaid often allows students to be placed for short timeframes without documenting student needs and a treatment plan/window. The recommendation for this issue was that public schools should not place, and private schools should not accept, students for unreasonably short periods—other cooperative placement options should be considered.
- The federal government should collaborate across agencies that deal with students with disabilities who are publicly placed in private schools in order that funding sources be clarified.

---

<sup>2</sup>An IDEA 2004 provision allows states to use funds to develop “risk pools.” [20 U.S.C. 1412 §611(e)(3)(A)(i)].

## DATA AND ACCOUNTABILITY ISSUES

### State Profiles

States described a range of issues related to data and accountability, including approval and quality assurance of private school programs, monitoring of private programs, collecting data in different formats by private schools for different agencies and complaint resolution systems.

### Massachusetts

MA DOE requires that private schools submit annual applications that include information on select federally mandated requirements and any new state regulations. The MA DOE liaisons conduct an on-site visit at least annually to review this documentation with private school staff. For the private school in attendance at the forum, the benefits of this review include that the MA DOE sees the quality of the program beyond state and federal requirements; it ensures that students are receiving legally mandated services and it provides a conduit for good relations with the department of education. The liaisons from MA DOE learn the details of every private school. For program reviews and mid-cycle reviews, which are conducted once every six years, the reports serve as good public relations tools because they are published on MA DOE’s website at <http://www.doe.mass.edu>. The private school staff also reported challenges regarding this review: It is time consuming to prepare for the reviews; requires coordination between the private school and the MA DOE; staff turnover at either entity causes lack of continuity from year to year; scarce resources of the private school and

“State indicators of successful outcomes, including academic and post-school outcomes, must be appropriate for the most difficult to teach (i.e., those publicly placed in private schools) as well as the rest of the school population.

the MA DOE must be utilized; and there are required elements that are out of the private school’s jurisdiction but for which they are nonetheless responsible.

### **Maryland**

Maryland law mandates that noncollegiate educational institutions may not operate without approval from the state board of education and compliance is reassessed on a three-year cycle.

MSDE staff review private school student records using the same standards they use to review LEA records. They also look for integrated participation of the private schools and LEA personnel for placement decisions and hold the LEA responsible for correcting any noncompliance found. Additionally, MSDE annually develops a “state of nonpublic,” data-driven accountability document that focuses on quality instruction, specialty programming and outcomes directly related to individual student success. The “state of nonpublic” provides quantifiable data and documents the assurance of high accountability standards in the education of students with disabilities.

Components of the “state of nonpublic” include: a nonpublic school overview (i.e., tuition, capacity and staffing); teaching profile; jurisdictional/LEA usage; program profile; program highlights (i.e., adequate yearly progress [AYP] status, academic interventions, and program statistics with standardized comparisons); LRE results; and transitional outcomes and linkages.

To further document state results, the Maryland Association of Nonpublic Special Education Facilities (MANSEF) is conducting a longitudinal study that

will provide information on graduation rates and postsecondary outcomes including further education and employment. This information will be reported to the MSDE and stakeholders as both a record of postsecondary success and as a means to enhance decision making for students with disabilities.

### **Washington, D.C.**

DCPS (the LEA) currently uses two systems to collect and report on suspension/expulsion, attendance, graduation, dropout and other OSEP-required data to the SEA. DCPS uses a process to monitor and track students with disabilities who are wards of the District through “tuition contracts” received from the Child and Family Service Agency (CFSA) that provide current information on wards of non-resident status who require tuition payments. In addition, in view of the transient nature of this population, CFSA provides a monthly report that provides ward status of children under its care, including providers’ names and school placement if known. The private school participant’s perspective on data collection is that private schools provide most of the necessary information to the LEA rather than receiving the information from DCPS. This includes AYP information, which they feel is not useful to the private program. While private schools would prefer to report on their service effectiveness (i.e., return to the LRE, attainment of IEP goals, weaning from one-on-one assistance and academic progress since entry into their program), the LEA systems only allow for reporting of OSEP and AYP data.

“The issue of ranking states publicly based on LRE data was a key concern for participants. Most agreed that since OSEP explained that the data used to rank states has limitations, using it was considered “a disservice to states and families.”

## Recommendations

Data and accountability recommendations fell under three main categories with various miscellaneous recommendations.

### Outcomes

Baseline data and specific exit goals should be determined and tracked longitudinally for individual students based on standard outcomes for all students. Therefore state indicators of successful outcomes, including academic and post-school outcomes, must be appropriate for the most difficult to teach (i.e., those publicly placed in private schools) as well as the rest of the school population. For a subset of the publicly placed population of students, satisfaction of the customers (i.e., parents and students) and appropriate placement (i.e., appropriate use of continuum of placements and movement to less restrictive environments) could be fitting indicators of successful outcomes when teamed with other state progress indicators. Terminology for successful outcomes, such as “gainful employment” must be defined. Furthermore, some recognition should be made that length of stay often has an impact on outcomes of individual students and might affect school ratings and AYP status.

### Out-of-state placements

Participants described numerous challenges with out-of-state placements, including choosing quality programs, monitoring programs, developing relationships with school staff and providing FAPE for their students. Participants recommended the development of a national registry for all

approved special education non-public schools, coupled with a survey of all state standards for program approval and monitoring, as a means of reliable program review, expeditious placement and ensuring quality programming. Minimum standards of program approval, monitoring and data collection should be developed at the national or regional level. It was recommended that through this process, states develop memoranda of understanding regarding the monitoring of private schools in their state, which would provide assurances to sending states.

### Reporting

Forum participants recognized the importance of collecting and reporting data in the educational decision-making process for students with disabilities. However, the issue of ranking states publicly based on LRE data was a key concern for participants. Most agreed that since OSEP explained that the data used to rank states has limitations, using it was considered “a disservice to states and families.” Participants recommended that OSEP develop common, minimal meaningful data domains for each state to collect that will improve programs in regards to LRE. If standardization of data domains that define LRE were acted upon beginning at the federal level (i.e., developing minimal standards of data collection on non-public schools), states, LEAs and families would incur fewer placement issues in the case of residence changes.

Standardized data collection elements support the outcome of uniform services to students and their families, and forum participants saw interagency access to this data as invaluable. Due to the interoperability that is



Participants recommended the development of a national registry for all approved special education non-public schools, coupled with a survey of all state standards for program approval and monitoring, as a means of reliable program review, expeditious placement and ensuring quality programming.

possible between large systems (i.e., mental health agencies; departments of education and their various units such as certification/accreditation, special education, school improvement, private schools, etc.), data could be easily shared between agencies. It is imperative that confidentiality concerns (e.g., Family Education Rights and Privacy Act [FERPA] and Health Insurance Portability and Accountability Act of 1996 [HIPAA]) be addressed in a thorough and straightforward manner so that agencies feel legally protected while serving students.

Private school participants expressed a desire for the federal-level definition of LRE to focus on appropriate settings (i.e., based on individual student needs), not necessarily the general education classroom. Finally, since private schools must respond to numerous governing agencies, a recommendation was made to develop one state reporting system that would enhance time efficiency and data accuracy, thus allowing enhanced service/resource allocation to improving services to students with disabilities.

### Miscellaneous Data/Accountability Recommendations

■ **Program approval:** Information and data accessibility is important for determining the quality of a program. Minimum school building and educational services standards should be developed. Forum participants expressed divergent thoughts on the issue of program approval. While some believed that private programs should not be approved if there are others in the area that serve the same needs, others believed that competition would drive better outcomes for students. Under the latter scenario, IEP teams would be allowed to determine the most appropri-

ate private school in which to implement their students' IEPs without concern for state approval beyond the basic building and educational services standards.

- **Adequate Yearly Progress:** Participants appeared to agree that in order to encourage LEAs to take responsibility for the FAPE of publicly-place private school students with disabilities, these students' assessment scores should be reported on the home school's AYP report. Furthermore, private schools must have a mechanism to report how well their students, disaggregated into the same or similar subgroups as used by public schools, are meeting standards. However, participants were clear that comparing private schools' AYP to those of public schools without recognition of the population served would be uninformative and unfair.
- **Collecting and sharing program information:** Many participants suggested that the development of a "national registry" of private programs for students with disabilities, including the population served, programs, services, costs, program approval status and outcome information, would be useful in providing the best services to students.

“ It is imperative that confidentiality concerns (e.g., Family Education Rights and Privacy Act [FERPA] and Health Insurance Portability and Accountability Act of 1996 [HIPAA]) be addressed in a thorough and straightforward manner so that agencies feel legally protected while serving students.

## **RELATIONSHIP-BUILDING ACTIVITIES AND ISSUES**

### **State Profiles**

States described a range of activities related to relationships, including the role of a state liaison to private schools and LEAs, interagency collaboration, open communication and shared training.

#### **Massachusetts**

Relationship issues for the MA DOE focus around the goal of meeting the needs of students in the LRE while maintaining compliance with state and federal regulations. The MA DOE provides technical assistance in the form of troubleshooting, updates and trainings, and maintains a close relationship with the trade association—the Massachusetts Association of Approved Private Schools (MAAPS)—and with other agencies (e.g., the Department of Social Services and the Department of Early Education and Care). Additional resources available to maintain these relationships include the MA DOE website, joint monitoring, monitoring booklets and curriculum resources. The private school, MA DOE and the LEAs agree that helping children move to the LRE is best for children and is required by the law. These entities acknowledge that this poses challenges to the private school including: meeting the changing needs of students; meeting the MA DOE program requirements; responding to requests from sending school districts; and coordinating with LEAs to develop and implement programs for students in the LRE.

#### **Maryland**

In Maryland, interagency collaboration focuses on ensuring that all children with disabilities have FAPE available to them. This includes cooperative development of the Maryland Interagency Agreement and the coordinated planning, tracking and transition planning for children in the community or residential centers. MSDE provides annual trainings for LEAs and nonpublic schools, regular correspondence and technical assistance, including the scheduling/convening of quarterly meetings with Maryland Association of Nonpublic Special Education Facilities (MANSEF) leaders and executive staff and the LEA Nonpublic School Consortium to discuss current and relevant issues. MANSEF is a non-profit organization of nonpublic special education schools located in Maryland that are approved by the MSDE. MANSEF routinely provides LEAs with individualized, family-centered, “wrap-around” support services when service voids are recognized in the implementation of an IEP. A critical relationship between LEAs and the nonpublic schools is the “Public/Private Partnerships.” These will be discussed further under the section on “Student-Related Issues.”

#### **Washington, D.C.**

Critical relationships for DCPS include the private schools, other child serving agencies (i.e., Child and Family Service Agency, Department of Mental Health, Health Services for Students with Special Needs and Department of Youth and Rehabilitation Services), and families. Since child-serving agencies other than DCPS place students with disabilities in private settings (i.e., not always private special education programs), cooperation with private non-

“ There is a need for a federal partnership among the Departments of Education, Justice and Health and Human Services and a state-level partnership among LEAs and local mental health agencies, juvenile justice and law enforcement to provide seed money to bring representatives from these agencies together to leverage their combined resources and build capacity to address the needs of students who are publicly placed in private settings.

special education schools is also important though frequently more difficult. DCPS acknowledges that the stage of student placement at which the DCPS is brought into the process affects the relationship. DCPS is focused on working toward placement in the LRE while some other agencies and especially private non-special education schools are not as concerned and possibly not even aware of this requirement. Historically, there has been a lack of trust on the part of families with DCPS. DCPS is currently working to establish this trust through providing information to help family members make informed decisions. DC’s Office of Special Education Nonpublic Unit has set a goal to ensure that their policies and procedures are implemented by the other child serving agencies for the more than 540 students with disabilities currently enrolled in either nonpublic day programs, residential treatment facilities or attending public schools in the surrounding counties with the states of Maryland and Virginia.

### **Recommendations**

Relationship recommendations fell under one broad area: cross-agency collaboration. Many relationship recommendations have been previously captured under funding and data/accountability.

There is a need for a federal partnership among the Departments of Education, Justice and Health and Human Services and a state-level partnership among LEAs and local mental health agencies, juvenile justice and law enforcement to provide seed money to bring representatives from these agencies together to leverage their combined resources and build capacity to address the needs of students who are publicly placed in private settings.

This would also allow for more flexible resource avenues beyond Medicaid and third-party billing to private insurance.

As mentioned in the funding section, various federal education funds should be combined to serve populations as appropriate. For instance, NCLB and IDEA funds could, in some cases, be blended to help serve students who have been publicly placed in a private setting.

Interagency training and joint policy and guidance development should become commonplace in order that each agency understands the constraints under which the others function. This should include an enhanced understanding of policies, procedures and roles and promote the sharing of best practices across agencies, LEAs, advocacy groups and private schools.

Within the realm of placement, cross-agency collaboration appears to be of paramount importance. When students are placed by non-education agencies (i.e., juvenile justice, foster care, etc.), payment and proper services are issues. The need for collaborative communication across these agencies permeated the forum conversation as a method to address these issues. The apparent lack of trust amongst agencies, LEAs, private schools and communities, including families, was frequently noted.

Forum participants recommended building models and processes for developing public/private school combinations, assuming that further research shows that methods of combining private school support within public schools has positive outcomes for students and is cost effective. Examples of such combinations include community schools, full-service schools, the



Massachusetts' Alliance for Inclusive Partnerships and Maryland's "Public Private Partnership" programs. Similar approaches should be considered and utilized in more districts across the country. To further this recommendation, participants believe that federal grants should support the development of demonstration programs that would yield information about effective model systems.

## STUDENT-RELATED ISSUES

### State Profiles

States described a range of issues related to students, including intensity of services, placements, length of placements and transition of students back to public schools.

#### Massachusetts

In Massachusetts, there is a focus on serving students in the LRE, with the knowledge that some students need services in a private setting. Typically, students are placed in private schools with agreement from all that this setting is temporary and that reintegration into the public school is the goal. Private schools can collaborate with public schools to support students within their home public school. In order for appropriate programs to be sustainable within the public schools, funds used for separate programs, tertiary care and private placements need to be brought back to the local district. Programs for students with severe emotional disturbance are sometimes separate programs within the public school with a means for students to "earn" time in the general education class. One focus of the reintegration program is preparing students, teachers and parents to be "ready for inclusion." Strategies include:

- allowing students with disabilities to enter less restrictive placements before they are 100% ready by having support resources from the private setting follow the students to inclusive placements;

- partnering of private schools with public school-based mental health staff to modify professional practice and provide on-going support and professional development for teachers;
- providing less restrictive placements in regular public schools with intensive supports and opportunities for gradual mainstreaming;
- guaranteeing access to the same level of service as in a private setting, as needed, while placement is in a less restrictive setting; and
- making data-based decisions regarding placement.

#### Maryland

In Maryland, nonpublic placements are made only when an IEP team determines that the public school continuum cannot provide an appropriate placement for IEP implementation. The IEP for private placement includes a "returnee" plan that is reviewed annually. Returnee plans outline areas of functioning that will foster an LRE transition and/or discussion.

In the 1990s, MSDE developed a state initiative entitled, "Public/Private Partnerships" between nonpublic schools and the LEAs. These partnerships ensured IEP service implementation for students based on a full-time equivalence (FTE) contract. Public/Private Partnerships identify placement slots for the provision of special education and related services. Over the course of a school year, multiple students can be served with both fiscal responsibility and an enhanced relationship regarding programming quality and results. Partnerships support: (1) incremental student movement back into the public school setting; (2) an interim placement/programming requirement; (3) diagnostic/short-term placements; and (4) provision of services when an IEP team determines placement other than a public school is required for a specified amount of time. Public/Private Partnerships enhance opportunities and prioritization of discussions regarding LRE and transition. Additionally, Type II Public/Private Partnerships provide services in a natural setting and extend expertise and supports in the form of diversionary measures and outreach to the public schools.

 School leadership must prepare teachers and other staff to serve a more diverse population of students.

## Recommendations

Student-related recommendations fell into two main categories, leadership and LRE.

### Leadership

Participants recommended that district and building-level administrators exercise leadership in identifying program barriers/service requirements to be successful in a public setting prior to moving the student to a more restrictive (as currently defined by federal law and the literature) private setting. School leadership must prepare teachers and other staff to serve a more diverse population of students. As a result of acquiring skill competency in this area, school staff might be able to provide the LRE to many students who are currently served in private settings. One strategy to do this is through the establishment of partnerships with institutes of higher education and state departments of education. Other recommendations relevant to leadership included utilizing the ideology of full-service and community-based schools.

Public school administrators must also be prepared to work collaboratively with private schools to successfully transition students back to public schools. Specific recommendations around this issue focused on ensuring that the public school be prepared to provide transition services to individual returning students by working collaboratively with the serving private school; providing support for returning students to the public setting; and evaluating resources through the state.

### Least Restrictive Environment (LRE)

Participants agreed that the continuum of placements should be available to all students. Most also conceded that, for most students, placement in a private school separate from typically-developing peers for their entire school career was not meeting the intent of LRE in IDEA. However, dissent on this point was expressed by one person who said, “If the [private] school gives kids the opportunity to be more meaningfully integrated into the community after graduation, that’s a successful LRE.” Another person said that when considering LRE, the emphasis should be on appropriate programs in the LRE, and another stated, “separate is inherently unequal.”

Again, in order to support LRE, recommendations were made that public schools should support the ideologies of full-service community schools including those described in Maryland’s and Massachusetts’ presentations. These types of schools build internal capacity and institute preventive services. However, it was mentioned that public schools must also be prepared to appropriately place students in private schools prior to allowing them to fail, possibly avoiding a longer private placement than necessary. Private schools must develop policies and procedures that include working closely with families, community-based settings and educational environments. Private schools should also focus on enhancing students’ skill generalization to less restrictive environments while promoting student independence.

Participants felt strongly that students with disabilities must be considered “general education students first.” If this, as stated in the President’s Commission on Special Education and elsewhere, were to be strongly com-

Public schools must also be prepared to appropriately place students in private schools prior to allowing them to fail, possibly avoiding a longer private placement than necessary.

municated by the U.S. Department of Education, states, districts and school staff would be more likely to embrace these students and strive to serve them within public schools while acknowledging the continuum of placements.

### Other Recommendations: Research

Research recommendations were made across most of the above issue areas. These included conducting cross state studies in:

- cost-sharing/funding formula standard development;
- interagency agreements (i.e., content of the various agreements, negotiation strategies, etc.);
- best practices for monitoring in-state and out-of-state private school placements for students with disabilities;
- jointly operated (LEA/private school) placements (i.e., operations and outcomes); and
- publicly placed private school placement trends (i.e., demographics, needs and services provided).

### CONCLUDING REMARKS

As evidenced by the recommendations, more work is yet to be done in order to achieve fluid working systems for publicly placed private school students. Different states place students with disabilities in private schools at different rates (i.e., from 0% to 16.34% of all students with disabilities);<sup>3</sup> have different policies regarding placement, and therefore face different challenges. However, as states continue to offer a continuum of placements, each state will have similar issues to the ones discussed in this document related to finance, data and reporting, relationships and student concerns. The recommendations to address these issues, while not exhaustive, are intended to assist states as they work to provide FAPE in the LRE to all students with disabilities.

---

<sup>3</sup>Data on placements of students with disabilities can be found at [www.ideadata.org](http://www.ideadata.org).

## References

- Crockett, J.B. & Kauffman, J.M. (1999). *The least restrictive environment: Its origins and interpretations in special education*. New Jersey: Lawrence Erlbaum Associates.
- Jackson, T.L. & Ahearn, E. (June 2004). *Non-public placements: State policies and procedures*. Alexandria, VA: Project Forum at NASDSE.
- Letter to Garvin* (May 14, 1998). Washington, DC: Office of Special Education Programs, U.S. Government Printing Office.
- U.S. Department of Education. (1996). *Eighteenth annual report to congress on the implementation of the Individuals with Disabilities Education Act*. Washington, DC: Office of Special Education Programs, U.S. Government Printing Office.

## Appendix A

The process that Project Forum followed in determining the issues and the sources of information utilized to determine recommendations included the following:

- The topic of “publicly placed private school students with disabilities” was suggested to Project Forum by a source within a state department of education.
- The topic was researched by Project Forum staff and confirmed through the National Association of State Directors of Special Education (NASDSE) as a topic of significant national interest.
- Project Forum determined that the topic called for discussion and clarification with a diverse group of knowledgeable stakeholders and so presented the topic to OSEP as two possible Policy Forums – Management-related issues and Student-related issues of publicly placed private schools students with disabilities. OSEP approved these topics as policy forums.
- Project Forum continued to conduct background research through conversations with state staff who were fluent in their state systems and student-related issues of placement and through reviewing current literature on this topic. In this manner, three states were chosen to coordinate panel presentations – Maryland, Massachusetts and Washington, DC. Other necessary participants were identified through coordination with OSEP, NASDSE/Project Forum and primary state staff contacts. These included Arkansas’ state director of special education, and staff from the Coalition on Community Schools, OSEP, NASDSE/Project Forum, Department of Health and Human Services, and other national associations.
- Panel members for the management-related issues forum were to include state department of education staff involved in the management systems of publicly placed private school students, the funding aspects, the data and accountability issues; private school staff; and related-services providers and/or interagency collaborative partners.
- Separate Maryland and Massachusetts panels were developed for the student-related forum and included a minimum of state department of education staff, private school staff, local representation, and parent representation. Maryland also included interagency collaborative partners and a student.
- Once primary contacts were identified in each state, the Project Forum director began assisting each state in determining appropriate panel members, developing relevant presentations and ensuring that Policy Forum objectives were understood and supported by the final presentation materials.
- Project Forum staff developed a process agenda designed to facilitate the objective of determining policy and practice recommendations for the field.
- Project Forum staff, in collaboration with presenters, determined appropriate background materials and sent to all participants.

## Appendix B

### Participant List

**Amy Berg**

Coalition on Community Schools  
Institution for Ed Leadership

**Ruth Blake**

D.C. Public Schools  
Office of Special Education

**Linda Bluth**

Maryland State Department of  
Education

**Dorothy Coleman**

Maryland State Department of  
Education

**Sandy and Frankie D'Erasmus**

Family Representatives

**Wanda Elliott**

D.C. Public Schools  
Office of Special Education

**Dorie Flynn**

MANSEF

**Anne Gay**

Private Consultant

**Marcia Harding**

Arkansas Department of Education

**Linda Jacobs**

Harbour School

**Bill Kelley**

Boston Public Schools

**Robert Kilkenny**

Alliance for Inclusion and Prevention  
Washington Irving Middle School

**Sherry Kolbe**

National Association of Private Special  
Education Centers  
NAPSEC

**Thomas Latus**

Walker Home & School (Needham, MA)

**Nina Marchese**

Massachusetts Department of Education

**Carolyn Martin**

Hannah More School

**Deborah O'Toole**

Walker School

**Ingrid Oxaal**

U.S. Department of Special Education  
OSEP

**Mary Lee Phelps**

D.C. Public Schools  
Office of Special Education

**Kristin Reedy**

Northeast Regional Resource Center  
Learning Innovations at WestEd

**Lynne Riggins**

D.C. Department of Mental Health

**Andrew Ross**

The Children's Guild

**Jay Sullivan**

Massachusetts Department of Education

**Wendy Tada**

U.S. Department of Special Education  
OSEP

**Mary Tillar**

Maryland State Department of  
Education  
Nonpublic Schools Sped/EI Division

**Scott and Joey Ullrich**

Family Representative

**Mark Weist**

University of Maryland/CSWHA

**Patrick Weld**

Center for Mental Health  
Services/SAMHSA

### National Association of State Directors of Special Education (NASDSE)

**Bill East****Nancy Reder****Paula Burdette****Eileen Ahearn****Eve Müller****Donna Reynolds****Chandra Keller-Allen**

### Evaluators: The Study Group

**Mike Norman****Patricia Mueller**





**National Association of State Directors  
of Special Education (NASDSE)**

1800 Diagonal Road, Suite 320

Alexandria, VA 22314

PH: 703-519-3800 • Fax: 703-519-3808



PROJECT FORUM