Attachment A

House Joint Resolution 24
Report to the General Assembly

HJR 24 Report Vote
Monday, September 27, 2010

Last Name	First Name	Vote
Agnos	Peg	No
Carberry	Michael J.	Yes
Carroll	Dr. Frances	Yes
Conran	Elizabeth	Yes
Cronin	Dan	Absent
Des Jardins	Charlotte	Yes
Hanselman	Elizabeth	Present- Did not vote
Helmholz	Bridget	Yes
Jones, III	The Honorable Emil	Yes
Koch, Ed.D.	Christopher A.	Absent
Kovacevich	Roxanne	No
Lightford	The Honorable Kimberly	Absent
Masear	Sally	No
Muri	F. Timothy	Yes
Pasley	Scott	No
Pihos	The Honorable Sandra M.	No
Schack	Michael	Abstain
Smith	Dr. Richard	Yes
Whitaker	Dr. Sonya	No

House Joint Resolution 24 Report to General Assembly

Introduction

WHEREAS, Special education continues to represent a growing financial burden on school districts as the need for services increases while State and federal funding fails to increase along with that need; therefore be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-FIFTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that a task force shall be created to study current special education funding needs and to make recommendations as to how the State can increase special education funding and ease the financial burden on school districts; and be it further…

RESOLVED, That the task force shall report its findings and recommendations to the Governor and the General Assembly…"
HJR 0024

The above three paragraphs, taken from House Joint Resolution 24 ("HJR 24")[1], form the basis for the authority of the Task Force and the foundation of this report to the Illinois Legislature. The first paragraph states that the Illinois legislature recognizes the growing problem of local school districts being burdened with unfunded mandates in the area of special education and that this burden has only increased over time. The second paragraph establishes an explicit and unambiguous focus for the Task Force members: to develop recommendations as to how to increase special education funding to ease the burden across Illinois for local school districts. Finally, the last paragraph clarifies that, while the Illinois State Board of Education is charged with facilitating the Task Force, the legislature specifically requested that the voices of the Task Force members be heard. The Task Force members acknowledge that not all stakeholders in Illinois

[1] The entire HJR resolution from both the 95th and 96th General Assemblies can be found attached at Appendix A.

were represented on the Task Force. For example, Chicago Public Schools, the largest school district in the state, had *no representation* on the Task Force. Notwithstanding, there existed a diversity of interests and opinions from throughout our state and members did not agree on all recommendations and findings. Consequently, this report is respectfully offered as the majority Task Force report.

In Illinois and across the nation we are experiencing the effects of a recession that are diluting the ability of local school districts to provide the services that they need and want to provide, not just for children with special needs, but for all children. The Task Force was formed prior to these hard times and we applaud the foresight of the General Assembly in its proactive effort on the subject. The members of this Task Force are dedicated to the common goal of providing the most appropriate and cost effective services for Illinois special education children. The Illinois State Board of Education ("ISBE") contracted with the Sangamon County Regional Office of Education to hire Tom Parrish, an out-of-state consultant, to assist the Task Force in the discharge of its duties.[2] Superintendent Koch outlined the responsibilities of the Task Force at the first Task Force meeting on January 13, 2009. "Your task…. in the resolution is to study special education funding needs and to make recommendations as to how we can increase that special education funding." HJR 24 Meeting 1/13/09, Audio at 00:00:48.[3] Later in that meeting, Illinois Assistant Superintendent for Special Education, Beth Hanselman, informed the Task Force that, "a gentleman by the name of Tom Parrish has agreed to help us facilitate this process." *Id.* at 00:12:00. Initially, Parrish appeared interested in assisting the Task Force in implementing its responsibilities. He told

[2] A copy of Tom Parrish's contract is attached as Appendix B.
[3] Most, but not all of the Task Force meetings were recorded. Quotations from actual Task Force meetings will be referenced by the date of meeting followed by the hour, minute and second where the quote can be found on the audio file.

members at his first Task Force meeting, that, "I'm not really here to guide you in one direction or another but simply to be a resource for you." HJR 24 Meeting 2/23/09 at 00:12:10. However, a little more than a year later, Parrish told Task Force members that he did not believe the purpose of the Task Force was to raise more money for special education. HJR meeting 5/12/10 at 03:33:37. Furthermore, he acknowledged that if increasing revenue was the purpose for the Task Force, then he was "not the guy to help you to do that." *Id.* at 03:33:43.

Since ISBE delegated facilitation of Task Force meetings to Parrish, during the investigation and deliberation of Task Force meetings the focus shifted away from the HJR 24 mandate of finding ways to increase funding for special education to the identification of how to *redistribute* current funds. Task Force members, in drafting this report, have refocused their efforts to meet the mandate of HJR 24. Consequently, this Report utilizes our collective knowledge and experiences, the information provided by ISBE, as well as the opinions of Tom Parrish, to identify ways to increase special education funding to ease the burden on local school districts.

This disconnect between the unequivocal language of HJR 24 and the direction taken by the out-of-state consultant hired by ISBE has resulted in two reports, this majority Task Force report and what has been referred to in Task Force meetings as "the Parrish report." On August 18, 2010, Task Force members voted 9-1 to reject adopting the Parrish report as its report to the legislature, as his report did not reflect the opinions and conclusions of the Task Force. In addition, the majority of Task Force members agreed that redistributing special education funds away from poorer districts was not the mandate of HJR 24, was counterproductive, and was not reflective of Illinois values or the intent of the legislature in enacting Illinois's funding formula.

The IDEA and Illinois Funding of Special Education

The Individuals with Disabilities Education Act ("IDEA") conditions a state's receipt of federal funds on the implementation of statewide special education programs guaranteeing a free appropriate public education ("FAPE") to eligible disabled children. 20 U.S.C. §1412(a)(1)(A). Consistent with the IDEA, Illinois appropriates funding to local school districts on an annual basis, specifically for special education. For example, in Fiscal Year ("FY") 2008, the state special education formula generated approximately $1.34 billion in state special education categorical support to the State's school districts.[4] Chicago Public School District 299 ("CPS") receives all of its state special education funds through the Educational Services Block Grant ("block grant"). In 1995, as part of the law that gave the Mayor of Chicago control of CPS, two new state block grants were created for CPS by consolidating (for CPS only) many smaller state categorical grants. In FY 2010 the total of these two block grants was $643 million. This consists of $482 million for the Education Services Block Grant (94% of which is for special education) and $161 million for the General Education Block Grant (79% of which is for early childhood).

The transfer of control to the Chicago Mayor was intended to be revenue neutral and to give the Mayor more flexibility to manage the CPS budget. The creation of the CPS block grant mirrored successful changes occurring in other large cities throughout the country and reflected and understanding that large city school districts face unique challenges. The CPS share of funding for each program in the block grants has been frozen, to date, at the FY 1995 level.

[4] These figures are taken from the Parrish report, pg. 11, in the most recent final version provided to the Task Force on June 11, 2010. Pursuant to the contract with Tom Parrish, the Illinois State Board of Education owns all rights, title and interest to the Parrish report. In that report, Parrish indicates this data was provided to him by the Illinois Board of Education (2009). (*Illinois State Board of Education Special Education Historical.* Received January 13, 2010 from http:/www.isbe.net/funding/pdf/sped_appro_pro.pdf.

All other Illinois school districts receive their special education state funding through the funding formulas contained in six categories of special education support. More than 80 percent of state funds are distributed through three major formulas: (1) The Personnel Component, (2) The Children Requiring Special Education Services Component, and (3) Reimbursement for 4/5 of Special Education Transportation Costs. The remaining funds are distributed through three additional formulas: (1) The Nonpublic Schools Component, (2) Children in Orphanages, Foster Families, Children's Homes, or State Housing Component, and (3) The Extended Year Component.

The Personnel Component[5]

The state reimbursement component of the formula contains the following provisions:

- Full-time certified qualified workers employed 180 days ($9,000 per special education certified teacher, state approved special education director, related services provider, registered therapist, professional consultant, and special education administrator or supervisor (and others who qualify)).
- Hospital/homebound instruction (one-half of the teacher's salary, but not more than $1,000 annually per child or $9,000 per teacher, whichever is less)
- Readers for the blind or partially sighted (one-half of salary - not more than $400 annually per child).
- Noncertified employees employed 180 days (the lesser of one-half of the salary or $3,500 annually per employee).

[5] The following information regarding the description of the funding components was taken from the Parrish Report, pgs. 10-13, in the most recent final version provided to the Task Force, dated June 11, 2010.

The Children Requiring Special Education Services Component[6]

This component represents a fairly recent change (FY 2004) from the prior "extraordinary" cost component of the formula. Some of its more relevant points are:

- These funding provisions started with a "hold harmless" base, which was the amount each district received under the last year of the old "extraordinary" formula (FY 2004). This base was to remain in effect for three years, i.e. beginning with FY 2008 these funds were to be distributed to all districts based on the "remaining funds" provisions below.
- The "remaining funds" under these provisions are distributed 85% based on average daily attendance and 15% based on district poverty (as derived from data provided by the Department of Human Services and calculated on a three-year running average of individuals who are recipients of Food Stamps, Temporary Assistance for Needy Families ("TANF"), Kid Care and Medicaid).
- It was further specified (January 5, 2008) that districts will not receive payments under these provisions less than that received for fiscal year 2007. (Because this funding is to be "computed last and shall be separate from other calculations," a supplemental appropriation was required each year for this purpose. In FY 2008, $21 million was appropriated, which dropped to $17.5 million in FY 2009. For FY 2010, the estimated cost is approximately $17.1 million, although currently there is no appropriation for this purpose).

[6] The following information regarding the description of the funding components was taken from the Parrish Report, pgs. 10-13, in the most recent final version provided to the Task Force, dated June 11, 2010.

- As an additional feature under this component of the formula, districts are provided reimbursement for high, or "excess," cost students.
    - This occurs when a student's education program costs exceed four times their resident district's per capita tuition rate (which is derived from each district's annual financial report and in general represents the amount a district would charge to educate a nonresident student).
    - Excess cost students are funded with a discrete amount of federal dollars, specifically, the funds earmarked for room and board costs for severe needs students after all room and board costs are paid out.
    - Due to fluctuations in the funds available for this purpose and due to an increasing number of unverified claims that have limited accounting requirements and no cost containment, the relatively small appropriation in this part of the formula does not pay for the burgeoning costs.

The Nonpublic Schools Component[7]

Illinois provides a two-tier funding mechanism to school districts for special education students placed in a special education private facility that has been approved by the Illinois State Board of Education and that has received a rate from the Illinois Purchased Care Review Board ("IPCRB"). The IPCRB is comprised of representatives from various state agencies such as Education, Children and Family Services, Public Health, Public Aid and the Governor's Office of Management and Budget. The IPCRB establishes uniform rules and regulations for its

[7] The following information regarding the description of the funding components was taken from the Parrish Report, pgs. 10-13, in the most recent final version provided to the Task Force, dated June 11, 2010.

determination of allowable audited costs and payments made by school districts to special education facilities for tuition and/or room and board. The two-tier funding provisions are:

- Tier 1 reimbursement: Reimburses the difference between the district's first per capita charge and $4,500 assuming the tuition that the district paid is above $4,500. (Less than five districts in the State are eligible because most district per capita amounts are above $4,500.)
- Tier 2 reimbursement: Total tuition paid is compared to the two per capita offset and any difference is eligible to be reimbursed by the State. (Most districts fall into this category.)

The Extended School Year (ESY) Component[8]

This funding is for school districts that operate, or are billed by a special education cooperative that operates special education programs in excess of the adopted school calendar. Extended School Year ("ESY") must be provided when an Individualized Education Program ("IEP") team determines it is necessary for the student to receive a free appropriate public education. Eligibility requirements for students claimed under this provision are:

(1) The student must be enrolled in one or more courses offered for at least 60 clock hours in the summer session;

(2) The student must be eligible pursuant to the requirements for continued summer school services per his or her IEP;

(3) There can be no tuition charge to families.

[8] The following information regarding the description of the funding components was taken from the Parrish Report, pgs. 10-13, in the most recent final version provided to the Task Force, dated June 11, 2010.

Other Formula Provisions[9]

These include the following:

- Reimbursement for the actual costs of educating eligible children with disabilities who reside in orphanages, foster family homes, children's homes, or state housing units. Funding is guaranteed at 100% of eligible costs, with any shortage borrowed from the following year's appropriation to ensure full funding.
- Reimbursement for 4/5 of the cost of transportation for each child who requires it and is approved in the IEP for special transportation as a related service.

[9] The following information regarding the description of the funding components was taken from the Parrish Report, pgs. 10-13, in the most recent final version provided to the Task Force, dated June 11, 2010.

HJR 24 Task Force Findings

The Task Force has reviewed the state funding formulas, the legislative history and intention of the General Assembly in creating the state funding statutes, data provided by the facilitator, data provided by ISBE, the comments, and the experiences and information provided by other members. With the assistance of the facilitator, the Task Force attempted to to define "equity" so members could review Illinois funding mechanisms to determine how to best increase special education funding. While there was no consensus on a definition, the majority of the Task Force strongly believes that equity cannot and should not be defined as the equal distribution of state and federal revenues among those with unequal resources, as will be discussed below. There were also members present who felt that equalization should be defined as everyone getting an equal share of state funds. However, those in the majority felt it was appropriate and legally required for state funds to provide adequate resources for all special needs children regardless of any disparity in local wealth.

The Task Force debated for whom fiscal equity is being sought: the child or the school district? In other words, is the goal (1) equal distribution of state and federal funds, or (2) providing Illinois children, regardless of what district they live in, an appropriate education? The majority of Task Force members believe the law requires a focus on the children. Of course, the Task Force recognizes that only by adequately funding school districts will children receive an appropriate education. In this regard, providing educational opportunities for all children by increasing revenues is the very charge placed by the Illinois General Assembly to the appointed members of Task Force. Consequently, the Task Force acknowledges the variables of poverty and

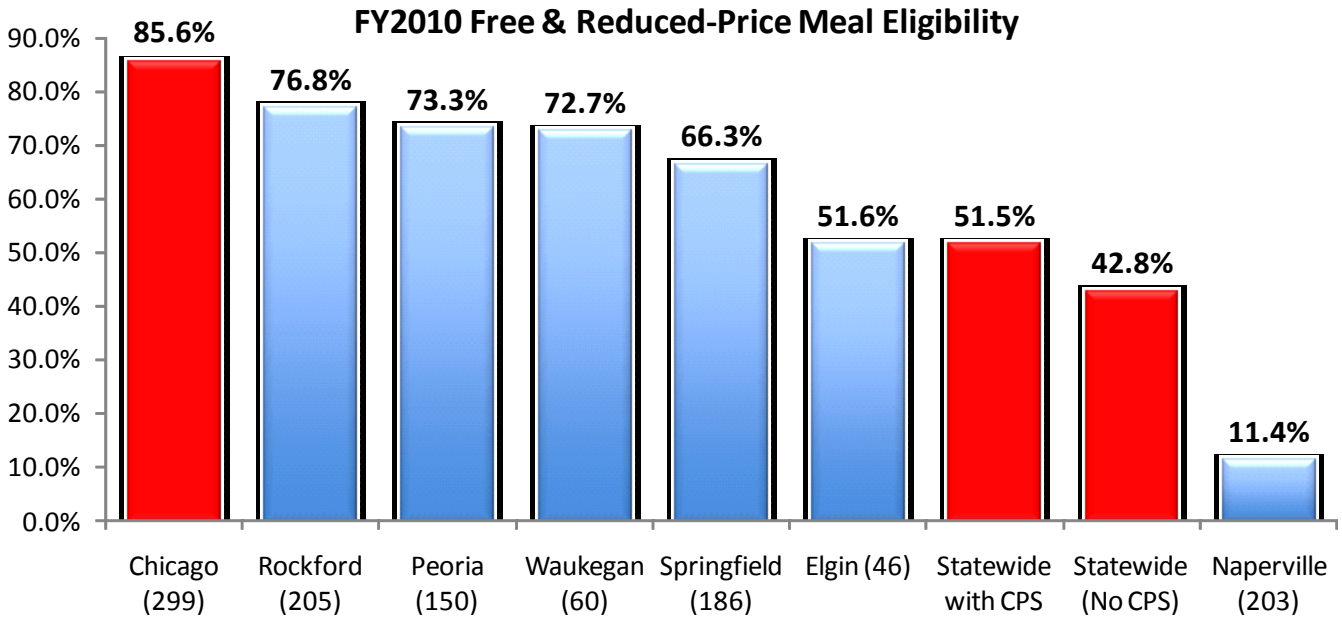
a local school district's ability to raise funds when discussing funding for special education, and makes the following findings:

1. Chicago Public Schools Face a Unique Set of Challenges that Justify Continuation of the Chicago Block Grant

As a major metropolitan school district, Chicago Public Schools ("CPS") faces unique challenges not found in other districts throughout Illinois. Research indicates that some special needs children are more costly to educate than others. One factor that contributes to a child being more costly to educate is poverty, which has a significant negative impact on a child's education. Children who live in poverty and who are also disabled face additional barriers that must be acknowledged when developing and funding state formulas for special education.

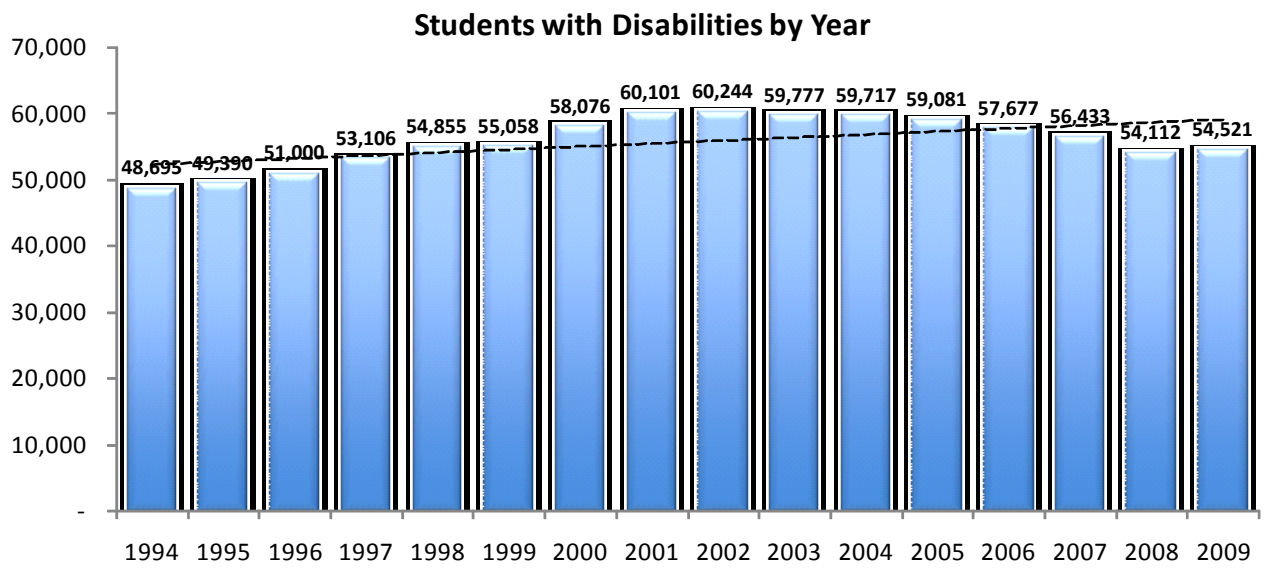
CPS also has a high percentage of students who qualify for free and reduced priced meals. It should be noted that the use of the Department of Human Services ("DHS") poverty count does not accurately reflect the demographics of the children who actually attend CPS. DHS averages in all Chicago families, including those that privately pay to send their children to private or parochial schools. By using the DHS numbers, one obtains a false perceptions of the CPS student population. In fact, the poverty rate for students attending CPS schools is almost 20% higher than the DHS poverty count.

Exhibit 1.



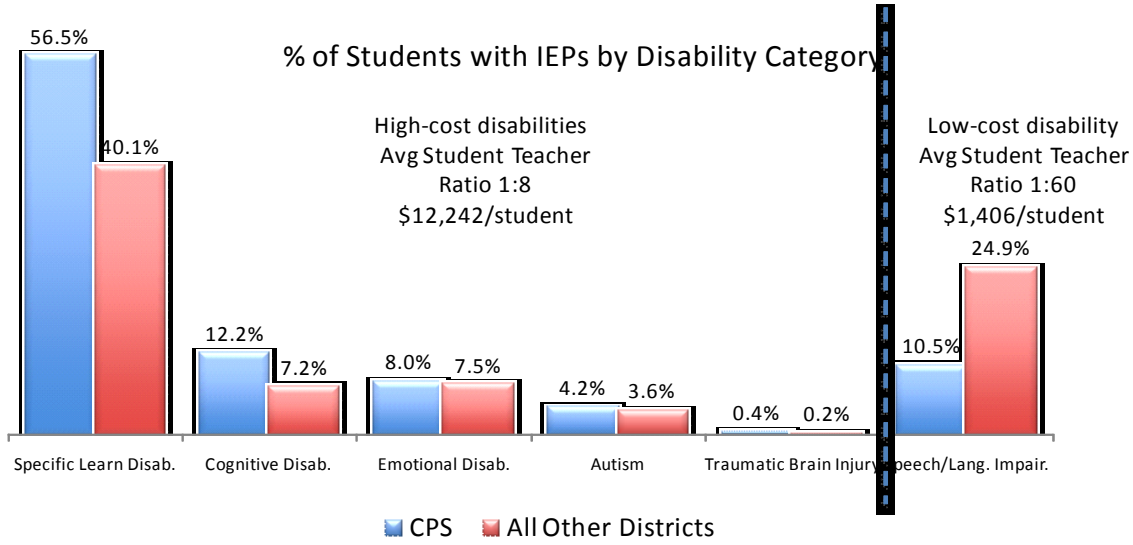
In addition to being the largest district in the state with one of the highest poverty rates, there is a statistically significant difference in the make up of the population of disabled children attending Chicago Public Schools as compared to disabled children in other Illinois districts. From 1994 through 2009, CPS experienced a 12% increase in the number of students requiring special education services, as shown below in Exhibit 2.

Exhibit 2.



More importantly, 90% of CPS students with disabilities have disabilities other than speech-language impairment. Students with only speech-language impairment are less severe and less costly to educate than students with multiple or more severe disabilities. This less severe population makes up a greater percentage of the disabled population in the rest of the school districts in the state, where only 75% of the students have disabilities other than speech-language impairment only. See, Exhibit 3 below.

Exhibit 3.



As the chart indicates, state regulations mandate the student/teacher ratio for speech-language pathologists at 1:60; whereas, ISBE regulations mandate the student/teacher ratio for special education teachers at 1:15 or 1:8, depending on services required. Consequently, Chicago Public Schools has higher personnel costs per student than other Illinois school districts due to the unique composition of its population of students challenged by disabilities.

In addition to being the largest district in the state with the highest poverty and the most severely disabled children, CPS is unique in that is the only school district in the state subject to the Illinois State Board of Education's consent decree, found in *Corey H. v Board of Education of the City of Chicago,* Case No. 92 C 3409 ("*Corey H.*"). In *Corey H*. the Court found that CPS was placing children according to the categories, or "labels," of their disability, and, therefore, placements were determined by the type of disability, in violation of the least restrictive environment ("LRE") requirements of the IDEA. The Court imposed minimum enrollment targets and maximum

enrollment caps on all CPS schools, and LRE targets on the district as a whole. Furthermore, CPS is the only school district in Illinois that must pay teacher pensions out of its budget. Any analysis or recommendations regarding Illinois' funding formula must consider the uniqueness and complexity of CPS, compared to all other districts in the state.

The General Assembly, in recognition of the unique barriers facing CPS, restructured the funding formula so that CPS' educational funds were provided in a block grant. As the Task Force considered a range of options for the future funding of special education for Illinois students, it was important to consider these aforementioned statistics when analyzing CPS's special education block grant. Unique to CPS, it is intended to provide flexibility and account for fundamental management disparities between CPS and the rest of the state. The Task Force majority supports maintaining Chicago's block grant at current or higher levels.

2. The Nonpublic School Component Serves an Important Function in Meeting the Special Education Needs of Illinois' Most Disabled Children

The Task Force finds no justification for elimination of the nonpublic schools component of the formula and, in fact, finds that retention of the nonpublic component is *essential* to provide the most severely disabled children of Illinois with an appropriate continuum of services as mandated by current federal and state law. Task Force members are keenly aware that the preamble to Section 14-7.02 for "Private Tuition," states:

> *The General Assembly recognizes that non-public schools or special education facilities provide an important service in the educational system in Illinois.* 105 ILCS 5/14-7.02.

Under IDEA, state educational agencies must comply with the federal statute that mandates

a full continuum of placement alternatives, including nonpublic placements, as part of providing special needs children with a free and appropriate public education. The Congressional Conference Report (H. Rept. 108-779) for IDEA of 2004 states:

> *The law requires that each public agency shall ensure that a continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services. State funding mechanisms are in place to ensure funding is available to support the requirements of this provision, not to provide an incentive or disincentive for placement.* Rep. Boehner (OH). "Individuals with Disabilities Education Improvement Act Conference Report," Congressional Record. 108th Cong., 2d Sess., 2004 at 89.

This is an area in which Illinois historically has struggled with compliance. In 1996, OSEP found the Illinois State Board of Education had failed to ensure that a full continuum of alternative placements was available to meet the needs and implement the individualized education programs of children with disabilities in violation of federal regulation 34 C.F.R. §300.551. The multi-dimensional funding formula found in Illinois, especially the nonpublic schools component of the formula, currently provides for dollars to *follow the child* and thereby assists local districts in funding for all placements within the continuum, and in compliance with federal law.

When analyzing funding formulas in Illinois, Task Force members have identified that districts do not have the same ability to raise revenue to fund their unfunded special education mandates. In Illinois, local property taxes fund local schools. Historically, this funding system has reflected a value of local control. However, in practice, state and federal mandates (including special education mandates) have taken away some of the local decision making. Furthermore,

"property poor" local school districts (those districts that do not have the ability to raise sufficient local revenue due to a lack of property value within the boundaries of the district) often raise less revenue than "property rich" districts, even when residents were assessed at a higher rate. As a nation and a state, we have embraced these differences and afforded additional resources in our efforts, as a society, to provide more equal opportunities and a Free Appropriate Public Education as required by federal law for Illinois children. The nonpublic schools formula was created to assist those local school districts, which, despite taxing at the same or higher rates as local districts with more property wealth, could not raise sufficient funds to pay for the cost of special education students requiring the most intensive level of services and placements.

The original purpose of the private placement line item (the nonpublic school component) was to provide equity for smaller or poorer school districts and their residents. As this provision stands, whenever a school district places a child in a nonpublic school, that district must spend twice what it spends annually on a regular education child before the reimbursement system is triggered. Anything over twice the school district per capita is reimbursed historically between 80 and 100% back to the placing district. Reimbursement is able to flow more readily to districts that are not able to raise as much revenue due to less wealth in the district. For example, if a school district can only raise, and thereby spend, $6,000 per capita and has to place a severely disabled student in a nonpublic facility that costs $40,000 per year, that district is historically reimbursed every dollar spent over $12,000. On the other hand, a wealthy school district, such as New Trier Township High School District 203, that can raise and spend almost $18,000 per capita, will receive far less reimbursement from the state (about $4,000) due to the district's local fiscal capacity to independently fund private facility placements. The Task Force finds this arrangement continues to be fair and equitable.

Those who originally designed Section 14-7.02 knew that the idea behind this very important statutory provision was to provide equity for the poorer and less advantaged districts, so that the students living in those districts would have every opportunity to avail themselves of the federally mandated full continuum of educational settings that residents of the wealthy districts enjoyed. Tragically, those pushing for the elimination of the nonpublic placement line item do not have the historical memory of the original purpose of this provision. To eliminate this provision would be to destroy the equity that it provides to all of the poorer districts in the state, and their students.

The Task Force finds that redistributing existing funds by eliminating the nonpublic statutory mandate and Chicago block grant components of the Illinois funding formula would cause harm to the children of Illinois. Furthermore, eliminating the nonpublic school component would place Illinois at risk for a finding of noncompliance with the IDEA's requirement to provide a full continuum of services and placements. By setting aside funds for students placed in more restrictive settings, the nonpublic school component ensures that state and federal funds follow the child and are directed to the services and placement that child needs. In addition, since all nonpublic school placements are subject to rigorous cost containment through an extensive auditing process by the Illinois Purchased Care Review Board, the state rate setting agency for nonpublic schools, taxpayers are assured that the delivery of special education services to the most severely disabled children will be economical. Finally, when the state of Pennsylvania attempted to "redistribute" funds away from poorer districts, the state found itself (and continues to find itself) involved in extensive and costly litigation. Task Force members find such risk unnecessary, not to mention contrary to the interests of the children of Illinois.

3. The Illinois Funding Formula is in Compliance with the IDEA

The Task Force finds that the Illinois appropriation formulas currently funding special education are in compliance with federal law.

The least restrictive environment requirement is found at 20 U.S.C. §1412 (5)(A) and states,

> *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 education environment occurs only when the nature of the 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.*

In 1997, Congress reauthorized the Individuals with Disabilities Education Act ("IDEA"). Additional language was added to Section 1412, addressing state funding formulas. See, 20. U.S.C. §1412(5)(B)(i). The IDEA was amended to reflect that,

> *If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A)." 20. U.S.C. 1412(5)(B)(i).*
>
> *If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements." 20. U.S.C. 1412(5)(B)(ii).*

In 2004, Congress reauthorized the IDEA and the language of 1412(5)(B)(i) was further amended to state that:

> *A state funding mechanism shall not result in placements that violate the requirements of subparagraph A, and a state shall not use a funding mechanism by which the state distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a free appropriate public education according to the unique needs of the child as described in the child's IEP.*

The U.S. Supreme Court has repeatedly set forth the standards for interpreting statutes and has found that the primary rule of statutory construction is to give effect to the "intent" of the legislature. *Bankamerica Corp. v. United States,* 462 U.S. 122, 149 (1983). In order to interpret a statute the starting point is "the language [of the statute] itself." *United States v. James*, 478 U.S. 597, 604 (1986) (quoting *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975)(Powell, J., concurring). There exists a strong presumption that "the plain language of the statute expresses congressional intent," and, thus, should be given effect. *Ardestani v. I.N.S.,* 502 U.S. 129, 135 (1991). Extrinsic materials only have a role in statutory interpretation "to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Services, Inc.,* 545 U.S. 546, 568 (2005).

In *Engine Manufacturers Assoc. v. South Coast Air Quality Management Dist.,* 541 U.S. 246, 252 (2004)(quoting *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985)), the Court yet again noted that, "[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." Where the language of the statute is plain, the only function of a court is "to enforce it according to its terms." *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 241 (1989)(quoting *Caminetti v. United States*, 742 U.S. 470, 485 (1917)). If the plain language of a

statute is found to be ambiguous, a court may examine the "textual evolution" and legislative history of a statute; however, in doing that, the function of the courts is to "determine the intent of the legislature, *not to rewrite the statute based on our notions of appropriate policy*." *Bankamerica*, 462 U.S. 122 at 140 (Emphasis added). Statutory interpretation shall be guided by the language of the whole law, and not just by a single sentence or sentence fragment. *Greenfield Mills, Inc. v. Macklin,* 361 F.3d 934, 954 (7th Cir. 2004). Furthermore, a restricted meaning of a word may be accepted, where the literal meaning would lead to absurd results. *Id.* In fact, it is a well-established rule of statutory interpretation that a statute must be construed to avoid absurd results. *U.S. v. Villa,* 589 F.3d 1334, 1344 (10th Cir. 2009).

Applying statutory analysis to the 1997 IDEA amendments regarding funding formulas, it is clear that states are permitted to use a funding mechanism by which a state distributes funds on the basis of the type of setting in which a child is served. Pursuant to the 1997 IDEA, if a state utilized such a funding formula, two additional requirements were imposed. First, the funding mechanism could not result in a violation of the least restrictive environment requirements found in 20 U.S.C. §1412(5)(A). Second, the state needed to have policies and procedures in place to ensure compliance with 20 U.S.C. §1412(5)(A), or assure the Secretary of the U.S. Department of Education that it would revise the funding mechanism so that placements were not made in violation of the LRE clause. This is the only explanation that gives effect to the entirety of the applicable sections of the statute, as mandated by decisional case law.

Under IDEA 2004, the changes to this section were minimal and do not affect the above analysis. Congress clarified that the adherence to the LRE clause (which, notably, Congress has let

stand to date as it was written in 1975) is not dependent on the nature of the funding mechanisms employed. All states must adhere to LRE whether or not they utilize a funding mechanism by which a state distributes funds on the basis of the type of setting in which a child is served. However, if a state does utilize a funding mechanism by which a state distributes funds on the basis of the type of setting, the funding mechanism cannot result in a failure to provide the child with a FAPE according to the unique needs of the child as described in the child's IEP. Therefore, it remains permissible under IDEA 2004 to use funding mechanisms by which a state distributes funds on the basis of the type of setting in which a child is served.

Federal agency interpretation of the statute is also supportive of the proposition that states can set up funding mechanisms on the basis of the type of setting in which a child is served. For example, in 2001 OSEP issued a report based on its review in the state of Maryland for the purpose of assessing compliance in the implementation of the Individuals with Disabilities Act. Maryland had a similar funding formula to Illinois in that it provided reimbursement to local districts for nonpublic placements. Specifically, Maryland reimbursed local districts for approximately 80% of the costs when a child with a disability was in an out-of-district placement. Even though a building administrator told OSEP that the funding formula provided no incentive to maintain a child in the home school (because the funding provided out-of-district did not follow the child to the in-district placement), OSEP did not find Maryland out-of-compliance for having such a formula.

> *OSEP suggests that MSDE look closely at the impact of the funding formula to determine whether the formula results in students with disabilities being placed in more restrictive environments and whether there is a need to revise either the formula or the State's placement policies and procedures to*

> *ensure compliance with the least restrictive environment requirements of IDEA 1997.*

The statements to Maryland by OSEP make it clear that (1) a funding formula based on placement is permissible, and (2) if the formula is subsequently found to have violated the LRE requirement, it can be corrected by revising policies and procedures to ensure compliance or by revising the formula. Therefore, according to OSEP, even a finding that LRE has been violated does not require a state to discontinue a funding scheme that is based on placement *if the deficiency can be cured through policies and procedures*. OSEP's findings in other states are consistent with this analysis.[10]

Illinois' current funding formula has repeatedly been found in compliance with federal law. In 2002, OSEP issued its last monitoring report assessing Illinois' compliance with IDEA. OSEP was aware that the Illinois funding formula was, in part, based on the type of setting in which the child was served. Significantly, OSEP did not mandate that Illinois change its funding mechanism. Instead, OSEP was concerned that ISBE did not have the data necessary to properly ensure that LRE requirements were being met. Since the 2002 OSEP report, ISBE has been collecting data, which clearly establishes that the Illinois funding formula, specifically the nonpublic schools component, does not violate the LRE requirements. For example, in 2009, data collected as part of the State Performance Plan indicates that <u>two thirds of the students placed in a separate facility are placed in public placements</u> and less than one third are placed in nonpublic schools. Consequently, Task Force members find that there is no evidence the State of Illinois is out of

[10] In 2001, OSEP issued a monitoring report on Ohio. In that report, OSEP recognized that Ohio's funding mechanism distributed state funds on the basis of the type of setting, but did not make a finding of noncompliance. Instead, similar to Maryland, OSEP was concerned that the effects of the funding mechanism were not known to the state and suggested the issue be investigated and that the state ensure that policies and procedures are developed to ensure compliance. Again, OSEP's actions are consistent with this report's legal analysis and inconsistent with the analysis contained in the 1998 White Paper and the Parrish Report.

compliance with the LRE provision of Federal law or that the nonpublic schools funding component undercuts individual IEP and placement processes in either an individual or systematic way.

4. The Illinois Funding Formula for "High Cost Students" Educated in the Public Sector is Insufficient

The Illinois funding formula for reimbursing "high cost students" educated in the public schools is not sufficient because: (1) There are not sufficient funds dedicated to adequately reimburse local districts and (2) The claims submitted by local districts for these high cost students often lack integrity, suggesting the dollars allocated for these severely disabled children are not being utilized appropriately. Unfortunately, "high cost students" has become a euphemism for "high administrative costs", as some districts use creative accounting to build their case for reimbursement for a "high cost student."[11] We agree a fellow Task Force member, who accurately pointed out that the term should really describe the "most severe/complex" population of disabled children. Consequently, the Task Force believes that "high cost students" should be defined as the most severely disabled students being educated in the public sector who require additional resources in order to achieve educational benefit.

Tim Imler, ISBE Funding and Disbursement Division Administrator identified these problems throughout Task Force Meetings.

> *I hope that there is a better way to address students of high cost. We currently have a provision to address for high – not just for*

[11] Unlike the private sector, where the capping of administrative costs allows dollars to flow directly to the children, not administrators, the public sector has no enforceable limitations.

> *Chicago, but for all districts – for students that are considered "high cost." We have defined it as any student who has an education cost that is greater than four resident district per capita tuition charges. The costs are documented and governed under administrative rule, the Part 130 state administrative rules are the rules that govern how costs are determined, and the amount of money that is available for high cost students that are in programs – it comes from unused federal room and board funds. But this has been woefully inadequate, there has been very, very steep proration, and districts – it is just not working.* Imler, HJR Task Force Meeting 2/23/09 at 01:07:15.

Mr. Immler further explained the problems associated with local districts reporting claims for high cost students.

> *We have an administrative rule, Part 130, but the thing is they don't follow them accurately. Some of it is pure ignorance. But other, you know, it's just, they're trying to push the envelope and include as much costs as what they think they can without violating the law. But again, it all comes down to the fact to I get claims in, I have a limited pool of funds to distribute, and everybody is harmed because a few outliers are basically reporting costs that I know cannot be accurate.* Imler HJR Meeting 24, 5/11/09 at 01:13:29.

> *I can't trust a district that tells me it costs them $140,000 to educate one child.* Imler, HJR 24 Meeting, 3/8/10 at 02:11:38 (Referring to an in-district high cost student).

The Task Force finds that ISBE does not trust the integrity of the unaudited costs being reported on claims for reimbursement.

Currently, the costs associated with high cost students are being reimbursed with a relatively small discrete pool of funds; unused federal funds allocated for room and board costs.

There is little question that educating high cost students places a tremendous financial burden on local school districts. While the Task Force finds that the amount of funds needs to be increased to reduce this burden, the current culture of submitting unaudited costs, with some districts reporting inaccurate data, and "pushing the envelope" must first be changed.

Recommendations

The majority of the members of the Task Force have agreed that there are several ways in which the legislative mission of the Task Force can be implemented. Several of these methods are found in the funding formulas developed in other states as described in the paper "*Financing Special Education: State Funding Formulas,"* by Eileen Ahearn (April 2010). These methods are itemized below:

1. Create Opportunities for Local Communities to Increase Funding for the Most Vulnerable and Severely Disabled Student Population

The General Assembly could amend 105 ILCS 5/17-2.2a of the Illinois School Code to increase the ceiling on the amount of the special education levy. This increase could be exclusively used to fund high cost students who are not receiving full reimbursement from the State as part of the "excessive cost" formula in the Children Requiring Special Education Services component of the formula. The benefit of such an amendment is that this change does not require a state tax increase. Instead, the amendment would allow local school districts and communities to make a policy determination as to the level at which they wish to levy and fund special education programs for the most severely disabled children in their community.

2. Serve the Most Vulnerable Special Needs Children Qualifying Under Excess Cost with Additional Federal Funds

The former extraordinary formula and the current formula for high cost students in the Children Requiring Special Education Services component ("CRSES") have been capped in one of

two ways. First, the extraordinary formula provided a discrete amount of $2,000 per student. At the time this formula was implemented this figure matched the formula for nonpublic school tuition. However, the absence of any inflation factor for the extraordinary formula has resulted in the amount of funding available remaining static, and ultimately dwindling over time to the detriment of services to students for whom this formula was originally designed. Second, when the extraordinary formula was replaced by the CRSES component in 2004, the funds available to pay for services to the highest cost students were tied to a relatively small and finite amount of money - the money left over after room and board funds were paid from the federal discretionary money.

Each year the state receives federal IDEA grant dollars. Legislation could be enacted that would freeze each local school district's federal funds to what was received in FY 2010. Any increase in IDEA grant dollars would be earmarked through legislation for high cost students until an appropriate amount was received to ease the burden of high cost students throughout the state. Once achieved, subsequent increases, or a percentage of subsequent increases, would be redirected back to local school districts. However, due to the current problems with the integrity of cost accounting by some Illinois districts for this population of students, the Task Force makes this recommendation with an important contingency, as discussed in recommendation No. 4, below.

3. Fund the Most Vulnerable Special Needs Children Qualifying Under Excess Cost with Funds from the Census-Based Formula

An alternative method of addressing the problem of funding high cost students is to rely upon the existing funds available. The CRSES formula provides an alternative source of funding for school districts - the census-based formula that, when combined with the formula for excess costs, results in a large appropriation of $331,051,100 (FY 2009 figures), which can easily be available in its entirety to underwrite the $52 million currently needed to fund the most vulnerable students who are over four per capita. As of FY 2004, this $331 million, which formerly went to pay for high cost students, has been spread to all districts. In utilizing the funds in the census-based formula, local districts with a high cost special needs child will be reimbursed fully for the educational costs of a child's program. However, the Task Force makes this recommendation with an important contingency, as discussed in recommendation No. 4, below.

4. More Appropriations Require Greater Accountability, Cost Containment and Transparency

Much discussion has occurred during the Task Force deliberations about the monitoring, cost-reporting/containment, and substantial consequences for non-compliance that exist in the private sector for services to the most vulnerable population. It is a suggestion of the Task Force that public school districts that apply for extraordinary costs for so-called "high cost students" be subjected to the same financial rigor as nonpublic schools. The Illinois Purchased Care Review Board should be expanded in scope to independently evaluate reimbursement applications, or other methodologies should be explored for increased accountability.

Given best practices, the General Assembly's and Governor's Office's call for accountability and transparency, and the concerns of legislators who are knowledgeable about education and mismanagement of funds in education, a larger appropriation for high cost students must include:

- **Cost containment:** The Illinois Purchased Care Review Board[12] governs all rate-setting for private programs. Rates are set on two-year-old costs, with annual caps provided on occupancy, support and administrative costs.
- **Auditing:** In the private sector, all costs for each program are audited annually.
- **Effective Monitoring:** On-site monitoring occurs every three years; and approval is required every year.
- **Effective sanctions for non-compliance:** Approval for private schools requires compliance with every area of the administrative rules. If compliance is not corrected within a specified period of time, private schools will be placed on "pending" status and cannot provide services to children.
- **Program evaluation:** Although school districts receive monitoring, there is no specific schedule for monitoring the highest cost programs for the most vulnerable students, as there should be. Other states provide such monitoring. In the report "*Financing Special Education: State Funding Formulas," (April 2010)*[13] the author found the State of Iowa requires that students funded with specific weights and funded under specific sections shall have their programs audited to determine that the "children…have received the appropriate special education instruction and support services." In addition, "an evaluation of the special education instructional

[12] See, 89 Ill. Adm. Code Part 900.
[13] Attached as Appendix E.

program (shall) determine if the program is adequate and proper to meet the needs of the child."

The most recent Illinois State Performance Plan repeatedly referred to the need for improvement of systems administration and monitoring of the compliance of school districts in areas that are fundamentally important to the provision of a free appropriate public education for students. ISBE should: a) "[E]mploy incentives and sanctions as identified within the focused monitoring procedures 'to ensure school district compliance;' b) "[I]dentify and impose sanctions to school districts for timeline violations;" and c) Provide "prompt and appropriate remediation or professional discipline for failure to document appropriate timelines." The Task Force believes it is important to link the additional funds with additional accountability and transparency. Including these elements will fix the recurring problem of the lack of integrity in some districts' cost reporting, which continues to occur.

5. Incorporate an Inflation Factor

The Task Force recognizes that given the current financial circumstances, new appropriations are unlikely. However, consideration of the use of an inflation factor in at least one of the formulas, such as Personnel Reimbursement or Services for Students Requiring Special Education, would help to relieve the burden to local school districts throughout the state. States using this method are California (Cost of Living Adjustment or COLA), New York (Consumer Price Index or CPI), Pennsylvania (inflation index with modifications), and South Dakota (CPI or 3%, whichever is less).

Conclusion

The HJR 24 Task Force respectfully submits this report to the General Assembly. The Task Force has provided the legislature with its study and recommendations concerning the current funding system for the delivery of special education services. Our current funding formula delivers special education funds to local districts in accord with Illinois values as well as in compliance with federal law. The Task Force finds that the funding formula is not broken, but certain components within the formula could be improved. By focusing additional funding toward the most severe/complex disabled students, the Task Force recommendations would ease the financial burden on school districts. By focusing additional accountability on public expenditure of these funds, we can insure that funds requested are actually used to educate these students and that each district gets its fair share of reimbursement.

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Executive Summary

Our current funding formula delivers special education funds to local districts in accord with Illinois values as well as in compliance with federal law. The Task Force finds that the funding formula is not broken, but certain components within the formula could be improved. By focusing additional funding toward the most severe/complex disabled students, Task Force recommendations would ease the financial burden on school districts. By focusing additional accountability on public expenditure of these funds, we can guarantee that funds requested are actually used to educate these students and that each district gets its fair share of reimbursement.

The Illinois Funding Formula has Six Components

The components of Illinois funding formula reflects Illinois values by setting aside discrete funds for students with severe needs.

Eighty Percent (80%) of State Funds Distributed through Three Components

- The Personnel Component
- The Children Requiring Special Education Services Component
- Reimbursement for 4/5 of Special Education Transportation Costs

Remaining Funds Distributed through Three Additional Formulas

- Non Public School Component
- Children in Orphanages, Foster Families, Children's Home, or State Housing Component
- Extended School Year Component

The Illinois Funding Formula is Not Broken

The Non Public funding component is an important component to keep Illinois in compliance with federal law and to meet the needs of the most severe children.

- Federal law mandates a full continuum of services
- Cost containment and fiscal responsibility built into the reimbursement mechanism
- Only funding provision that is equitable and accounts for disparity in local wealth, allowing for funds to follow the child

The Chicago Block Grant addresses the unique needs of Chicago Public Schools.

- Mayoral control
- More severe special needs children
- Higher poverty
- Federal court mandates

The Illinois Funding Formula Can Be Improved

The most severely disabled kids in public schools are not being adequately funded.

- Reimbursement dollars are tied to a limited pool of federal funds
- Unaudited cost reporting results in excessive claim reimbursement and an additional drain on limited funds

The integrity of the district cost reporting is suspect.

- Unaudited cost reporting (including suspicious $140,000 claim for one student)
- ISBE Funding and Disbursement Division Administrator does not trust some school districts' cost reporting under the current system

Recommendations

1. Create opportunities for local communities to supplement funding for the most severely disabled students.

2. Allocate new funding towards reimbursing for the most severely disabled children, including:

   - Additional federal funding
   - Current state funds from the Children Requiring Special Education Services component

3. More appropriations require greater accountability, cost containment and transparency.