

# Improving Educational Options for Pennsylvania's Special Needs Students

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The public school system has a well-documented history of drawing the ire of parents, students, teachers, administrators, legislators, and taxpayers alike for a variety of failures in the efficacy of educating America's youth.

Every state in the country employs the same basic education system based on federal laws and statutes handed down by the national government. Although each individual state implements these guidelines in its own way based upon state government decisions, the tenets of public education in America remain fairly constant across state lines. The principles and regulations which govern the public education, enforced by the given state's department of education, are comparatively uniform, as are the potential problems and downfalls associated with said system. The public school system has a well-documented history of drawing the ire of parents, students, teachers, administrators, legislators, and taxpayers alike for a variety of failures in the efficacy of educating America's youth. Among these failures is a general propensity for ignorance and incompetence with regards to special needs students. Students with learning, emotional, physical, or social disabilities are oftentimes the victim of both social and educational difficulties. These students must deal with teasing, bullying, and discrimination from their peers outside of the classroom environment, and also the lack of resources, knowledge, and understanding by instructors while attending their classes. Unfortunately, as is the case with most improprieties in the public education system, these serious problems continue unnoticed until one fateful incident exposes part of a broader, chronic trend of irresponsible behavior. In the case of Pennsylvania, that incident proved to be the *Gaskin v. Pennsylvania Department of Education* case.

The Gaskin lawsuit was originally filed by the Gaskin family of Carlisle, PA on June 30, 1994. Their child, Lydia Gaskin, along with twelve other disabled students and eleven disability organizations, were the plaintiffs and the Pennsylvania Department of Education (PDE) and the State Board of Education (SBE) were the defendants in the case.<sup>1</sup> The Gaskin family alleged that students with disabilities

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had been denied the “free appropriate public education” decreed through the Individuals with Disabilities Education Act (IDEA) by Pennsylvania public schools. The plaintiffs claimed that the PDE failed to assure that students with disabilities were included in regular education classroom activities to the maximum extent possible, and that students also failed to receive suitable auxiliary aids and services in general classrooms. Following years of surveys, expert witnesses, depositions, and documentary evidence, both sides filed cross-motions for judgment in their favor in the summer of 2003. After the primary judge elected to place the case in suspension and mandate a mediator oversee temporary negotiations, the two sides reached a settlement on December 21, 2004.<sup>2</sup> Both sides were pleased with the outcome; Education Secretary Francis S. Barnes said “We’re delighted with the settlement,” while Gaskin family were sufficiently satisfied with the reforms prescribed in the settlement as well.<sup>3</sup> Those changes include improved federal and state law compliance monitoring (Least Restrictive Environment monitoring), on-site training and technical assistance in order for school districts to better include special education students in common classroom practices, and the establishment of an advisory panel of parents, educators, and advocates to assess the delivery of instruction to disabled students.<sup>4</sup>

Despite the implementation of special education reforms in 2004 as a result of the settlement in the Gaskin case, Pennsylvania represents a state plagued by a myriad of special education concerns. Given the fact that the reforms outlined in this settlement were applied for the first time during the 2005-2006 academic year, no formative and comprehensive evaluation of their effectiveness is readily available yet. While these reforms provide positive rhetoric and the theories behind them are sound, their application and practice over time may prove a more daunting task than originally anticipated. In addition, there are many other concerns with special education in Pennsylvania that are not directly addressed in the Gaskin case. For example, it is the finding of a study by Matthew Ladner of the Goldwater Institute that minority children are, on average, placed in special education programs at a higher rate than Caucasian children in majority (predominantly Caucasian) public school districts. While these studies all focus on separate hypotheses to explain this phenomenon, that simple fact remains clear. In Pennsylvania this is particularly evident, as emotionally disturbed, mentally retarded, or learning disabled African American and Hispanic students are 88.9 and 32.9 percent, respectively, more likely to be placed in special education programs in majority school districts. Likewise, Caucasian students are 39.1 percent less likely to be placed in such programs.<sup>5</sup> The theories used to explain this disparity vary, but this problem is real and serious. This study represents only one of the problems associated with special education practices in Pennsylvania’s public school system. In addition to these problems, the number of special needs students, as well as the overall percentage of students classified under IDEA, in the state are among

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<sup>2</sup> Summary of Proposed Settlement Agreement, pg.1

<sup>3</sup> Agreement in Special Education case, pg. 1

<sup>4</sup> Agreement in Special Education case, pg. 1

<sup>5</sup> Ladner, pg. 15

## ***SUMMARY, CONCLUSION, AND POSSIBLE SOLUTIONS***

In this report, the current state of special education in Pennsylvania, history and purpose behind IDEA and its reauthorizations, and the special needs model programs in three other states were all covered. In PA, there are over a quarter of a million disabled students, with many more under the age of three already under the watchful eye of the federal government through IDEA's early intervention services. Despite the hopeful provisions enacted by means of the Gaskin case, many other issues exist, such as: improper and inconsistent designation of special needs students, lack of proper, individualized attention, verbal and physical abuse, and the special education labeling disparity by race. The federal government has recognized these issues, and has clearly and concisely attempted to assuage their impact on American schoolchildren through the reauthorization of IDEA. After its original creation more than thirty years ago, Congress has realized the need for two amendments in the last ten years, indicating the growing concern and need for more government intervention to assure a "free appropriate education" for all students. When these precepts fail to be properly implemented, states have taken school choice options with regards to special needs students into their own hands. State legislatures, pressured by the dissatisfaction of both students and parents, have identified the need for specialized programs, the purpose of which is allowing for a variety of school choice options for disabled students.

A program, similar to the three discussed in this essay, designed to give these students and their families a choice in enrollment would help alleviate the aforementioned concerns with the application of special education in Pennsylvania. School choice experts, policy analysts, and legislators alike have contributed ideas regarding the best methods to improve the special education programs in public schools, as well as implementation processes of school choice programs designed for special needs students. The school choice options are plentiful: private schools, charter schools, cyber charter schools, home schooling, sectarian, and nonsectarian schools are the most prevalent options available to special needs students. These programs have been successful in other states, and along with the satisfaction and support of Pennsylvania's Educational Improvement Tax Credit (EITC) Program, such a program has the vast potential for success with the Pennsylvania special needs students as well. A program similar to these others could take many forms, with the variables being the number of students able to participate, amount of public funding allotted, inclusion or exclusion of varying degrees of disabilities, and means by which the program is implemented and governed.

One solution is the enacting of a voucher program like the McKay program in Florida. This would allow disabled students in PA to use the funds allotted to them within the education budget to be used in their attendance of an alternative school, whether it is a private school or alternate public school in a neighboring district. Another possible solution is the creation of a separate corporate tax credit program based on the existing EITC program. Since its inception, the EITC Program has been increased several times to its current total of \$75 million showing the legislatures understanding and willingness to give greater educational options to students and parents. Creating a separate tax credit program aimed at special educational students – with separate guidelines and qualifications – would allow for a program to be tailored to the unique needs of special needs students and families.

There are a variety of options available to Pennsylvania legislators and policy makers on how best to begin improving educational options for the special needs students all across the Commonwealth. The fact remains that there are serious problems present with the special education system in Pennsylvania. We must begin to identify and implement a change in the current system of how those educational services are provided if we are to offer these most special of students the same kinds of educational opportunities that we expect all students to receive.

the highest in the nation. As of the 2004-2005 school year, there were nearly 300,000 special needs students in the state, or about one out of every twenty school-aged children.<sup>6</sup> In addition, the percentage of children age three and below receiving early intervention services under IDEA is 3.08%, ranking PA in the top ten in that category and indicating that the pre-kindergarten population will require special education services on a larger scale in the future.<sup>7</sup> With such overwhelming numbers and the list of prevalent problems in the state, Pennsylvania represents an ideal environment for action in the form of focused special needs legislation.

## ***INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)***

In 1975, Congress enacted Public Law 94-175, the Education for All Handicapped Children Act. This act is now called the Individuals with Disabilities Education Act (IDEA), and authorizes a "free appropriate public education" for all special education students.<sup>8</sup> It also gives parents the ability to decide the intricacies of their child's education, and requires the development of an individualized education program (IEP) specifically designed for each child. Congress reauthorized IDEA in 1997 and required several changes in the implementation of the act. The IEPs developed for special education students must more closely resemble the curricula designed for the general student population, the inclusion of regular classroom teachers in the process, and the results achieved by special education students in state and district assessment programs count in the setting and reporting of performance goals.<sup>9</sup> The IDEA statute was again reauthorized two years ago, and was called IDEA 2004. The purpose of the bill was to institute provisions in an attempt to more closely align IDEA with No Child Left Behind Act.<sup>10</sup> There are ten basic provisions set forth in IDEA 2004, which, among other stipulations: provides more stringent and specialized funding regulations for states' use of federal funding; links migratory special needs students amongst states; requires more frequent and detailed reporting on individual state and district progress; specifies what services are afforded to special needs children in private schools; and allows for the use of federal funding specifically for accommodations for special needs students in public schools.<sup>11</sup> These new provisions are all meant to benefit students suffering in special education classes throughout the nation.

With the passage of IDEA and its subsequent reauthorizations, the federal government recognized the importance of proper education for special needs students, and also committed itself to both funding and regulating these services provided by local school districts. As proved by the Gaskin case in Pennsylvania, the implementation of these guidelines has proven to be a more difficult task, given ideological differences regarding the designation of disabled students on a state-by-state basis. There also exists a greater degree of variation between districts. Differences in both designation methods and the given level of satisfaction with special education services in public school districts have lead some states to enact legislation allowing disabled students to attend schools of their choosing using public funds.<sup>12</sup> These acts take a variety of forms, and are usually based on either the expansion of an existing school choice program to include special education students or the creation of a new program specifically designed to afford these students and their families the ability to select the school of their choice. There are special needs programs which meet this criteria currently operating within three states in the country.

## ***PRECEDENT PROGRAMS***<sup>13</sup>

The McKay Scholarship Program in Florida, the Carson Smith Special Education Scholarship Program in

<sup>6</sup> U.S. Dept. of Education IDEA statistics

<sup>7</sup> U.S. Dept. of Education IDEA statistics

<sup>8</sup> Hammons and Ladner, pg. 85

<sup>9</sup> Hammons and Ladner, pg. 85

<sup>10</sup> U.S. Dept. of Education IDEA 2004 webpage

<sup>11</sup> U.S. Dept. of Education IDEA 2004 webpage

<sup>12</sup> Hammons and Ladner, pg. 85

<sup>13</sup> Arizona (late 2006) and Georgia (2007) passed educational programs aimed at special educational students. The 2007-08 school year will be the first full year that students will be able to enroll in these new programs. This brings the total number of special needs states up to five.

Utah, and the Ohio Autism Scholarship Program are examples of school choice legislation with the purpose of extending options to special education students and their families. These programs have garnered support and praise from parents, students, legislators, and even public school districts. They are the first programs of their kind in the country, and provide the blueprint for future success stories with regards to special needs legislation. Each has subtle differences from the others, but all succeed in reaching the same goal: parental choice in education for special needs students. Apathy, underperformance, or lack of proper resources to suitably educate students with disabilities all contribute to the dissatisfaction felt by both these students and their parents. Under the precepts of these programs, these special students can have the individualized attention and instruction they deserve, yet oftentimes fail to receive, in the public school system.

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Named after a six-year-old autistic boy in Utah, the Carson Smith program is available to any student with a physical and learning disability, and who is eligible for an Individualized Education Program (IEP).<sup>14</sup> The program works as a voucher program, providing scholarship money to special needs students to attend the private school of their choice. For the 2006-2007 school year, the maximum scholarship allowed for a single student is \$6,042.50, and is based on a weighted valuation of a special needs student's education needs for one academic year.<sup>15</sup> In Utah, the basic funding unit for public education is the "weighted pupil unit," and it is the benchmark by which funding for both public education and this scholarship program are allotted. In order to account for the increased cost of effectively educating a special needs student, the Carson Smith Program employs a system whereby each of these students is awarded a scholarship equal to 2.5 times that of the basic pupil unit in the state.<sup>16</sup> During the 2005-2006 Utah state legislative session (due to overwhelming public support for the program), the legislature voted to expand both the number of private schools which may participate, as well as the number of special needs students likely to participate.

The Ohio Autism Scholarship Program was enacted in 2004 as a response to the rapidly growing number of autistic students in the state. Ohio experienced a 1,000% increase in six years, with 5,406 autistic students reported in the 2003-2004 school year.<sup>17</sup> This statistic, augmented by the frustration caused by the ineffectiveness of the public school system to meet these new needs, was the catalyst for the passing of this legislation. The Ohio Autism program is similar to the Carson Smith program in many ways, yet it is much more narrowly defined and specific. Instead of applying to all students with disabilities, the Ohio program is designed specifically for students with autism, complicating both the diagnosis and labeling processes.<sup>18</sup> In comparison to the other programs, there are many less students enrolled in each of the years since the program's inception, but the scholarship award amount is significantly higher than other programs of the same type. The cap on scholarships was originally \$15,000 per year, as prescribed in the initial legislation. However, subsequent amendments to this bill have raised the cap per scholarship to \$20,000, and as of the end of the 2005 school year, 270 of the 5,406 autistic students in the state were participants in this innovative program.<sup>19</sup>

While these programs have both experienced success, support, and expansion since their inception, Florida's John M. McKay Scholarships for Students with Disabilities Program was the first of its kind in the country. It is currently the largest and most inclusive, and has set the benchmark for all future special needs legislation. Enacted before the 2000-2001 academic year, the program is designed to extend a choice in educational options (another public school within the district, a public school in a neighboring district, or a private, sectarian, or nonsectarian school) to students suffering from learning disabilities in Florida's public schools. The program is less restrictive than its counterparts, as any student suffering from a myriad of learning or physical disabilities can enroll, provided they have an IEP and have completed kindergarten.<sup>20</sup> Since the time of its enactment, the amount allotted to the program, as well as the number of both participating schools and students, has risen dramatically. The individual scholarships remain constant (equal to either the amount the student would have received in the public school in his/her district or the amount of the attended private school's tuition and fees, whichever is less), but the increase in the number of participants has increased the amount designated to the program.<sup>21</sup> In the 2000-2001 school year, 970 students were enrolled in schools other than the primary public school in their district. By the 2005-2006 school year, the number had risen steadily to 16,144 students enrolled at 727 private schools within the state. The scholarship amount varies from \$4,805 to \$20,703, with an average amount of \$6,897.<sup>22</sup>

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In addition to the McKay Program's inclusion of students with more types learning and physical disabilities, the support and optimism of parents and students are factors in the continued growth and success of the program. For example, surveys conducted regarding parent and student satisfaction with the program have been overwhelmingly positive. A staggering 92.7 percent of current McKay participants are either satisfied or very satisfied with the McKay schools, versus 32.7 percent satisfied with the public schools left in order to attend their new school.<sup>23</sup> Parents reported that average class size dropped from 25.1 to 12.8 students per class. Similarly, students reported a 46.8 percent rate of being bothered and a 24.7 percent rate of physical assault in their public schools, and only 5.3 percent and 6.0 percent in their McKay schools, respectively.<sup>24</sup> Finally, the most intriguing statistic is that 90 percent of parents who have withdrawn their children from the McKay program believe that it should continue to be available to families and students.<sup>25</sup> These aforementioned programs represent the blueprint for the expansion of the EITC program or for the creation of a new and separate voucher program in Pennsylvania. Drawbacks and criticisms of these programs remain, yet their success and popularity provide the potential for the enacting of a similar program in Pennsylvania.

<sup>14</sup>Parent Power, pg. 5

<sup>15</sup>Utah Dept. of Education Carson Smith Program website

<sup>16</sup>Utah Dept. of Education Carson Smith Program website

<sup>17</sup>LOEO Evaluation, pg. 1

<sup>18</sup>LOEO Evaluation, pg. 1

<sup>19</sup>LOEO Evaluation, pg. 1

<sup>20</sup> Florida Dept. of Education McKay Program website

<sup>21</sup> Alliance for School Choice Website

<sup>22</sup> Florida Dept. of Education McKay Program website

<sup>23</sup> Ladner, pg. 16

<sup>24</sup> Ladner, pg. 16

<sup>25</sup> Ladner, pg. 16