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**Statement presented to the President's Commission on Excellence in Special Education**

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**Miami, Florida**

Submitted by  
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We wish to thank Governor Brandstad and the members of the President's Commission for the opportunity to speak today on behalf of the United States Conference of Catholic Bishops (USCCB), and on behalf of the interests of Catholic families whose children attend both public and Catholic schools throughout the country.

To begin, we offer a brief overview of the issues and recommendations we would like to discuss, followed by a more detailed analysis of the context of these issues and recommendations. While the particular issues we address here apply specifically to the category of "parentally-placed private school children" under the Individuals with Disabilities Education Act (IDEA), we anticipate that these issues will quite naturally pertain to concerns that affect all parents, regardless of where their children attend school.

**RECOMMENDATIONS**

**Funding**

- We recommend a change in the manner in which funds are generated to serve private school students. Currently, a proportionate amount of IDEA funds is subtracted from the total allocation received by a local school district for serving private school students, based on the number of those students with an identified disability. We recommend that

the private school allocation be set aside based on a presumed percentage of private school students with disabilities, in order to remove an inherent disincentive for local school districts to identify private school children.

- We recommend that the IDEA include a provision that prohibits state and local districts from using state and local funds to satisfy their federal obligation to use a proportionate amount of IDEA funds to serve private school students with disabilities.

### **Child Find and Evaluation Process**

- We recommend that the process for referring, identifying, and evaluating private school students suspected of having a disability be adapted to accommodate private school students within a familiar learning environment, through such means as on-site assessments performed by private evaluators who meet the same professional criteria as those employed by public schools.
- We recommend that provisions be included in the law that will reduce the paperwork and other requirements for accessing evaluations and services through IDEA, and that will ensure that evaluations are completed in a timely manner.

### **Flexibility**

- We recommend that the reauthorization of IDEA include provisions that allow parents greater flexibility in determining the environment in which their children may receive special education and related services. Increased flexibility could include giving parents greater discretion in their choice of providers of special education services, especially when such choices would not incur a greater cost than the services their child would be offered if they attended a public school. The McKay Scholarship program serves as an apt model for this kind of flexibility.

## **Accountability**

- We recommend that the reauthorization of IDEA incorporate strengthened provisions to ensure timely and ongoing consultation between local school districts and private school families and representatives during all phases of the special education program.
- We recommend that the law include requirements for reporting the number of private school students referred, identified, evaluated, and served through IDEA.
- We recommend that the law require districts to invite private school representatives in the federal monitoring of state and local compliance with IDEA.

## **GENERAL COMMENTS**

### **Commitment to the Spirit of IDEA**

First and foremost, we are grateful for the chance to convey our heartfelt support for the federal commitment underlying the Individuals with Disabilities Education Act (IDEA), that is, to ensuring that all children with special needs are afforded an equitable opportunity to access a quality education suited to their individual learning requirements. We know that we join many here today who approach this commitment not primarily as a legal requirement, but as an obligation rooted in our shared commitment to valuing the unique gifts of all members of our human family. The church's institutional ministries in both education and health services have long reflected that commitment, as have our many partnerships with government agencies in serving children and adults with special needs.

### **Background on Catholic Schools**

In addressing the issue of serving students with special needs in our Catholic schools specifically, we also share with everyone here today the same struggles and challenges involved

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in adapting any institution to the needs of the individuals served by that institution. Without hesitation, we can say that as a whole our community embraces the goal of fully including students with all varieties of special needs in our Catholic schools. Despite the frequent misperception that children with special needs do not attend Catholic schools, we hope the Commissioners are well aware of the many programs for students with special needs currently operated by Catholic schools throughout the country, as is evident in the array of programs described in our recently published Special Needs Directory.

It is important to note that the private and parochial schools we refer to here are not high-cost private special education facilities, but rather, typical parish and diocesan schools that most often provide inclusive special education programs as part of their regular elementary and secondary academic programs. On average, these schools operate at a per pupil cost of only \$2,823 for Catholic elementary schools; and for \$5,700 for high schools. While Catholic schools that offer extensive special education programs may frequently charge an additional fee to cover the cost of those services, they make every effort to keep these additional fees at an affordable level for parents. Even so, many parents cannot afford the additional cost of special education and related services for their child in a Catholic school.

We fully acknowledge, on the other hand, the great need for expanding such programs in our schools. In my role at the Conference as the parent advocacy coordinator, I receive almost daily calls from parents looking for advice and support in their efforts to enroll their child with a special need in a Catholic school. The reality for these parents, and for our schools, is that all too

often, there are insufficient resources available to provide special needs services to private school children.

### **Parental Choice**

It is this dilemma that leads to another issue of great interest to us today, namely that of parental choice. As long-standing advocates for the right of every parent to choose the education best suited to their children's needs, we find this issue especially compelling in addressing the needs of families of children with disabilities. Every parent wants the option of placing their child in an educational environment that holistically meets their child's needs, but as we all know, this desire is most acute for parents of special needs children. These families already face enough challenges in securing a quality education for their children; we believe strongly that the focus of IDEA should be to open as many doors as possible to children with special needs, rather than to unnecessarily limit their educational options.

## **DETAILED BACKGROUND ON RECOMMENDATIONS**

### **Funding**

The immediate difficulty posed by the current IDEA for parents of parentally-placed private school students rests in the fact that the law carries no mandate for services to be provided to an individual private school student with an identified disability. Essentially, parents of private school children with special needs are informed that they must send their child to a public school if they wish their child to receive services, or to assume the cost of those services

themselves if they wish to keep their child at a private school.

For instance, subsequent to the issuing of final regulations in 1999 after the last reauthorization of IDEA, a well-known publication, *The Special Educator*, provided the following advice to local education agencies: “Under the IDEA statute and regulations, a student with a disability who is placed by his/her parents in a private school has no individual legal entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. The LEA must inform parents that should they enroll their child in the public school, the school will develop an IEP, which provides a FAPE.”

Needless to say, for families with limited means, this advice leaves them with little choice at all. Likewise, families whose other children attend private schools often face the difficult choice of having to separate their children so that their child with a special need can attend a public school in order to access special education services through IDEA.

Realistically, we are well aware that urging a change in the mandate of IDEA to serve parentally-place private school students poses steep political challenges, but it is an issue that in all justice to these parents we have an obligation to raise. And while we recognize the difficulty of achieving that ultimate goal, we also suggest that there may be interim improvements to the current IDEA that may significantly move us closer to that goal.

While the current IDEA does not prohibit state and local districts from using their own funds to provide services to private school students, many school districts have ceased to provide services over and above their federal obligation since the last reauthorization of IDEA. A limited

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number of states do however have state and local laws that require or allow for the provision of special education services to private school students through the use of state and local funds. (*See Appendix A*) Currently, IDEA allows such jurisdictions to satisfy their federal requirement through the use of these funds; we recommend that the law prohibit states from using state and local dollars otherwise available to private school students to satisfy their federal obligations under IDEA. This provision is similar to the common policy found elsewhere that federal education programs should supplement and not supplant state and local education programs.

A somewhat more complicated issue linked to funding however, is the manner in which that proportionate amount of funding is determined. Under the current IDEA, local school districts use a proportionate amount of their IDEA funds to serve private school students based on the number of those students who have been identified as having a disability. That is, the more private school students they identify, the more funds the LEA “loses” from the limited federal funds they have available to serve students in public schools.

A solution that we believe would remove this disincentive would be to disconnect the manner in which funds are generated for private school students from the evaluation process for private school students. By assuming that a certain percentage of private school students have disabilities, the proportionate amount of IDEA funds could be set aside from the outset to serve private school students. Once students were actually identified, they would be eligible to receive services from the amount of funds that had been set aside. This concept of assumed proportionality is consistent with a similar provision included in Title I of the recently enacted

No Child Left Behind Act for determining the number of low-income private school children.

### **Child Find and Evaluation Process**

As with our counterparts in the public school system, our parents, teachers, school administrators and students often find the paperwork associated with complying with IDEA regulations to be inhibiting and burdensome. We would like to focus specifically however on an issue we alluded to above, namely, the process through which private school students suspected of having a disability are referred, identified, and evaluated. Although current law requires that this process be accessible to private school students at no cost, and in a timely manner, this is not often the reality. Because of this our parents will also have their children assessed by a private evaluator, or forego the public evaluation altogether in lieu of a private evaluation.

Parents and schools cite many reasons for this fact, including an unwillingness to bring their children to an unfamiliar, or sometimes even unfriendly environment for testing, discrepancies in the criteria by which public schools and private schools determine that a child is manifesting learning difficulties, and discrepancies in public and private evaluations in terms of identifying specific disabilities.

For instance, our parents and schools often report that although a private school child suspected of having a disability may be performing below grade level in the private school, when referred for testing at a public school, the child will be determined not to warrant an assessment because their initial screening indicates that they are performing at grade level according to the standards of the public school. In other instances, public school administrators will delay testing

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a student for a disability until the private school can demonstrate over a period of as long as ten weeks that they have engaged in interventions recommended by the public school, such as sight and hearing tests; consultations with parents; and classroom interventions; many of which the private school may have already performed. Finally, even if the public school finally agrees to perform an evaluation, the private school child will be found to have no disability, though the same child, when assessed by a private evaluator, will result in a clear determination of a disability.

In addition to our earlier recommendation that the formula for generating funds for private school students be detached from this process, we strongly recommend improvements in the process by which private school students suspected of having a disability are identified and evaluated. Such improvements might include, for instance, provisions in the law that require the LEA to fund the cost of private evaluators chosen by private school families who meet the same professional criteria as public school personnel, but who are familiar with the child's academic history and background and familiar with the program of instruction in the private school.

### **Flexibility**

While we recognize the difficulties inherent in extending the mandate of IDEA to ensure that private school students receive the same entitlement to services as they would if they attended a public school, we urge the Commission to consider recommending improvements to the law that would expand the "either-or" choice currently available to families: either send your child with a disability to a public school, or send your child to a private school, assuming the

financial burden of accessing services for your child on your own or having your child go without special education and related services. We have here in Florida of course an excellent model of how other options could be available to parents, if for instance, they could use their federal allocation, or even a portion of state and local funding that would be available to them, to cover the cost of enrolling their child in a special education program operated by a private school. Extending the McKay concept to children with disabilities currently enrolled in private schools would help provide families with the flexibility needed to best meet their child's needs.

### **Accountability**

Even without an individual entitlement to services for parentally-placed private school students, we strongly recommend that provisions in the law should be strengthened with regard to the services that are available to private school students through IDEA.

Specifically, we recommend strengthened provisions in the law governing the requirements for timely and ongoing consultation between public and private school representatives, the Child find and evaluation process, and the development and implementation of services plans for private school students, and that oversight be given to these provisions to ensure they are being carried out locally.

Additionally, we recommend that the law include requirements that will better facilitate the collection of data regarding the participation of private school students in IDEA. Currently, state and local districts only report the number of private school students *served* through IDEA. We recommend that the number of private school students referred, identified, evaluated, and

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served should be reported, to give a more accurate picture of the population of students with special needs who attend private schools. Finally, we recommend that the law require public school district to invite the participation of private school representatives during federal monitoring of state and local compliance with IDEA.

#### **CONCLUSION**

Again, we thank you for this opportunity to speak, and emphasize our eagerness to work with the Commission, the administration, the U.S. Department of Education, members of Congress, and other advocacy groups, to ensure that students with special needs, and their families, including those students whose families have chosen a private school learning environment, receive the support and opportunities they deserve through our mutual involvement in this country's educational community.

## **Appendix A**

### **STATE LAWS PERTAINING TO THE PROVISION OF SPECIAL EDUCATION SERVICES TO CATHOLIC AND OTHER PRIVATE SCHOOL STUDENTS**

#### **FLORIDA**

The recently enacted state-sponsored McKay Scholarship Program provides funding for students with special needs to enroll in schools chosen by their parents, including religiously-affiliated schools, if the public school in which they are currently enrolled is not meeting their particular needs.

#### **ILLINOIS**

State law allows for the provision of special education services by local school districts to students attending private schools. The level of services varies by jurisdiction.

#### **IOWA**

State law requires that special education and other auxiliary services be provided to students attending private schools to the same extent as those provided to public school students. Services must be accessed at the local public school. The state allocated \$37,000 for services to private school students during the 1999-00 school year.

#### **KANSAS**

State law requires that special education services be provided equitably to private and public school students. Services may be accessed at the local public school, or at the private school as long as the cost is not greater than the cost of providing services at the public school. During the 1999-00 school year, private school students received up to \$4,000 per student for special education services.

#### **MASSACHUSETTS**

State law requires that special education services, and related services, such as speech, occupational and physical therapy, be provided to private school students on an individual and equitable basis as those provided to public school students.

#### **MICHIGAN**

State law requires that local school districts that provide auxiliary services, including special education, health, speech, language, and other auxiliary services, must provide equitable services to both public and private school students.

**MINNESOTA**

State law requires that private school students are entitled to receive special education services on a shared-time basis through the local public school. Transportation may also be provided.

**NEBRASKA**

State law entitles public and private school students to receive equitable special education services, though private school participation in state services is limited in many instances.

**NEW HAMPSHIRE**

State law allows special education services to be provided to private school students by local school districts.

**NEW JERSEY**

State law requires the provision of equitable special education services to students attending both public and private schools. During the 2000-01 school year, the state allocated \$26,433,000 for the provision of special education services to Catholic school students. In August, 2001, the state passed legislation that stipulates that state funding for special education services to students attending private schools cannot be counted against the private-school proportional share of federal funding provided through the Individuals with Disabilities Education Act.

**NEW YORK**

State law allows special education services to be provided to private school students by local school districts.

**OHIO**

Funding for special education services for students attending private schools is provided through the state's auxiliary services appropriation for private school students.

**PENNSYLVANIA**

Special education services are provided to private school students as a component of the auxiliary services funding for private school students. This program is operated separately from the special education programs provided to public school students.