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COUNCIL FOR AMERICAN
PRIVATE EDUCATION

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Joe McTighe
Executive Director

March 19, 2002

C. Todd Jones
Executive Director
President's Commission on Excellence in Special Education
80 F Street, NW, Suite 408
Washington, DC 20208

Dear Mr. Jones:

The Council for American Private Education (CAPE) is a coalition of 17 national organizations (listed below) that represent religious and independent elementary and secondary schools.

On behalf of our member organizations, and with their unanimous support, we are pleased to submit the enclosed comments to the President's Commission on Excellence in Special Education. We trust that commission members will give these comments careful consideration as they formulate recommendations regarding the reauthorization of IDEA.

Respectfully submitted,



Joe McTighe

Enclosure

Members: American Montessori Society • Association of Christian Schools International • Christian Schools International • Evangelical Lutheran Church in America • Friends Council on Education • International Christian Accrediting Association • Jewish Community Day School Network • Lutheran Church-Missouri Synod • National Association of Episcopal Schools • National Association of Independent Schools • National Catholic Educational Association • National Christian School Association • Seventh-day Adventist Board of Education, K-12 • Solomon Schechter Day School Association • Southern Baptist Association of Christian Schools • Toussaint Institute for Historically Black Independent Schools • U.S. Catholic Conference • Associated State Organizations in Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin.

Comments by the Council for American Private Education to the President's Commission on Excellence in Special Education

The Council for American Private Education (CAPE) is a coalition of 17 national organizations that represent religious and independent elementary and secondary schools. One in four of the nation's schools is a private school; eleven percent of all students attend them. That translates into 27,000 schools and more than 5 million students. CAPE member organizations collectively represent about 80 percent of the private school community nationwide. On behalf of our member organizations, and with their unanimous support, we are pleased to submit the following comments to the President's Commission on Excellence in Special Education.

In offering these comments we rely on some fundamental principles that govern CAPE's public policy positions. The first is that students in private schools should have the opportunity to participate equitably in federal education programs. This principle is not unique to CAPE. Indeed, this principle has permeated significant sections of federal education policy, including Title I and other major parts of the Elementary and Secondary Education Act, and it has done so from the inception of ESEA up to and including its most recent reauthorization by the No Child Left Behind Act. Congress has long recognized that when it comes to many programs of federal assistance, children in private schools should be treated equitably. From the standpoint of simple fairness, such an approach makes sense. After all, children in private schools are as much members of the American family, as much a part of the American public, as children in public schools. And their parents are taxpayers who, by educating their children in private schools, relieve the government, the public school system, and other taxpayers of a significant burden.

Unfortunately, children with special needs placed by their parents in private schools¹ do not have the opportunity to participate equitably in the Individuals with Disabilities Education Act. Although IDEA provides significant assistance to public school children in need of special education, it does not provide the same scope of service to children in private schools. Currently, no individual child in a private school is entitled to any services under IDEA, and collectively, children with special needs in private schools receive services that amount to only a small fraction of the level of special education services available to public school counterparts with comparable needs.

IDEA Amendments of 1997

The Individuals with Disabilities Education Act Amendments of 1997 replaced somewhat vague language governing services to children in private schools with a quantitative formula. Specifically, the formula prescribed that amounts expended by a school district

¹ Subsequent references in these comments to children in private schools denote the class of children placed by their parents in private schools, not placed by a school district.

for the provision of IDEA-related services to children in private schools should be “equal to a proportionate amount of federal funds” made available under Part B (20 U.S.C. 1412(a)(10)(A)(i)(I)). Because IDEA funds cover only a small share of the total cost of special education services in a school district (currently about 12 percent), the net effect of the new formula was that children with special needs in religious and independent schools would receive only a minimal portion of the services they would have received under an “equitability” standard. Subsequent regulations made clear that no private school child with a disability had “an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school” (34 C.F.R. 300.454(a)(1)). And the regulations went on to say that although a school district would have to consult with representatives of private school children in determining which children in private schools would be served, which services they would be provided, and how and where those services would be provided, the final decision regarding such matters rested entirely with the district (34 C.F.R. 300.454(b)).

Equity for Students with Special Needs in Private Schools

The fact that IDEA does not provide equitable services to private school students is reflected in the data gathered by the U.S. Department of Education. In the 1999-00 school year, 11.26 percent of the nation's students ages 6 through 17 received services under IDEA Part B,² but in private schools only 1.52 percent of students received services (see accompanying chart). What's more, there is no reason to assume that any individual private school student received all necessary services. For although the law requires services commensurate with the needs of students in public schools, it does not do so for students in private schools. Again, decisions as to what students are served and what services they receive are entirely matters of district discretion.

The member organizations represented by CAPE have as their principal goal with respect to the upcoming reauthorization of IDEA the inclusion of language that recognizes the right of special needs children in private schools to services that are equitable to those provided to comparable students in public schools. In 1925, the U.S. Supreme Court recognized the fundamental right of parents to choose a private school by ruling that the state has no right to force a child to attend a public school.³ Children with special needs should not be forced to attend public schools in order to receive services that address those needs under IDEA. The issue of equity in IDEA services is a simple matter of social justice.

Equity for students with special needs in private schools could be achieved through a variety of means, including a requirement that public schools provide the maximum

² U.S. Department of Education, Office of Special Education Programs, Data Analysis System (DANS). *IDEA Child Count 1999, Part B, Table AA8: Percentage (Based on Estimated Resident Population) of Children Served under IDEA, Part B by Age Group, During the 1999-2000 School Year*. (Data based on the December 1, 1999 count, updated as of September 25, 2000.) Available at http://www.ideadata.org/tables/ar_aa8.htm.

³ *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed.2d 1070 (1925).

amount of services to special needs private school students seeking such services. There are also other ways of approaching the goal, including the following:

- a variation of Florida's John M. McKay Scholarships for Students With Disabilities that would cover students already enrolled in private schools,
- a child-service certificate for students with disabilities similar to what is in the Child Care and Development Block Grant,
- a tax credit for educational expenses incurred by parents of special needs children.

The Bush administration's core belief is that no child be left behind. Our plea is that that belief be extended to children with disabilities whose parents have placed them in private schools.

Obstacles to Equity for Private School Students

Current child-find practices and the proportionate share formula provide serious obstacles to equity for private school children and deserve special comment.

Regulations require school districts to "locate, identify, and evaluate all private school children with disabilities" who reside within the district (34 C.F.R. 300.451(a)). An accurate and transparent child-find process is essential because the count of students with disabilities in private schools determines the proportionate share of funds available for services to those students. But the U.S. Department of Education does not require school districts or states to report the number of private school children with disabilities who have been located. (The Department does collect data on the number of children in private schools actually served under IDEA (see accompanying chart) but not on the number of children in need of services, i.e., the number of children located.) Thus, it is impossible for the Department, or anyone else for that matter, to determine whether a district is expending the required share of federal dollars on services to private school children.

But a more basic problem is the proportionate share formula itself. Because the share of federal dollars a district must spend on private school students is contingent on the number of private school students with disabilities that the district actually locates, the law in effect provides school districts with a built-in disincentive to find private school children with special needs. The stark reality of the current formula is this: the more students with disabilities that a district finds in private schools, the less federal dollars available for services to students in public schools. A straightforward solution to this problem would be to require school districts to set aside a share of Part B funds equal to the share of resident students enrolled in private schools, and to reserve those funds strictly for services to private school students. Because data on the number of students in a district who attend private schools are readily accessible, private school parents and officials would know the share of federal funds available for services to private school students with special needs.

Other Changes in IDEA

Although equity is the principal standard by which CAPE will measure the reauthorization of IDEA, we have also identified additional ways in which the law should be amended.

Services

- Require that private school special needs students receive appropriate services.
- Require on-site services, including assessments, for children in private schools.
- Require districts to consider a child's cultural and linguistic background in determining appropriate IDEA services.
- Strengthen the current child-find language to identify and evaluate eligible children in private schools and to include the use and payment of private evaluators.

Funding

- Increase significantly the share of federal funds for IDEA. (A significant increase in federal IDEA support from the current 12 percent would help districts meet the needs of all students with disabilities and would ensure a more equitable level of service and participation for students in private schools.)
- Require districts to spend the full proportionate share of IDEA funds on students in private schools, regardless of any separate state and local funds used to serve those children.
- Change the law so there is no fiscal disincentive for school districts to serve children in private schools.

Accountability

- Strengthen the bypass language to provide a recourse to students whose LEAs do not provide equitable services.
- Require districts to report annually on all private school children located, referred, identified, evaluated, and served.
- Require districts to provide equitable due process procedures for parents of eligible students in public, private, and religious schools.
- Require federal monitors who evaluate the implementation of IDEA programs to include representatives of private and religious schools in this process.
- Require the full disclosure of the number of private school students identified, the number served, and the dollars expended on those services.

Conclusion

The reauthorization of IDEA provides Congress a unique opportunity to recraft an act that will truly provide enhanced opportunities for special education students. Our hope is that the reauthorized legislation will leave no child behind and will offer all children an equal opportunity to receive the special services required by IDEA. No parent should have to forfeit the right to choose a child's school in order to ensure that the child's special needs are met. The above proposals would go a long way toward realizing the equity that IDEA has always sought.

**Parentally Placed Private School Students
Served Under IDEA, Part B
1999-00**

State	Private School K-12 Enrollment	# Served Under IDEA, Part B	% Served Under IDEA, Part B
Alabama	73,352	110	0.15%
Alaska	6,172	78	1.26%
Arizona	44,060	512	1.16%
Arkansas	26,424	70	0.26%
California	619,067	1,032	0.17%
Colorado	52,142	0	0.00%
Connecticut	70,058	1,146	1.64%
Delaware	22,779	116	0.51%
District of Columbia	16,690	175	1.05%
Florida	290,872	NA	
Georgia	116,407	907	0.78%
Hawaii	32,193	182	0.57%
Idaho	10,209	99	0.97%
Illinois	299,871	3,065	1.02%
Indiana	105,533	3,966	3.76%
Iowa	49,565	967	1.95%
Kansas	43,113	862	2.00%
Kentucky	75,084	931	1.24%
Louisiana	138,135	2,065	1.49%
Maine	18,287	NA	
Maryland	144,131	219	0.15%
Massachusetts	132,154	NA	
Michigan	179,579	2,890	1.61%
Minnesota	92,795	1,823	1.96%
Mississippi	51,369	376	0.73%
Missouri	122,387	996	0.81%
Montana	8,711	0	0.00%
Nebraska	42,141	1,134	2.69%
Nevada	13,926	93	0.67%
New Hampshire	23,383	702	3.00%
New Jersey	198,631	14,062	7.08%
New Mexico	23,055	140	0.61%
New York	475,942	16,193	3.40%
North Carolina	96,262	1,289	1.34%
North Dakota	7,148	320	4.48%
Ohio	254,494	10,215	4.01%

Oklahoma	31,276	107	0.34%
Oregon	45,352	NA	
Pennsylvania	339,484	962	0.28%
Rhode Island	24,738	568	2.30%
South Carolina	55,612	310	0.56%
South Dakota	9,364	176	1.88%
Tennessee	93,680	832	0.89%
Texas	227,645	4,362	1.92%
Utah	12,614	22	0.17%
Vermont	12,170	48	0.39%
Virginia	100,171	475	0.47%
Washington	76,885	848	1.10%
West Virginia	15,895	430	2.71%
Wisconsin	139,455	1,238	0.89%
Wyoming	2,221	16	0.72%
50 States & D.C.	5,067,422	77,129	1.52%

Notes: Total enrollment figures (first column of figures) are for grades K-12; enrollment figures for students served under IDEA, Part B (second column of figures) are for children ages 3 through 21. Total enrollment figure of 5,067,422 does not include 95,261 students enrolled in private schools that primarily serve students with disabilities. Those 95,261 students, however, are included in the state counts (first column of figures) because NCES reports do not disaggregate such data at the state level.

Source for private school enrollment figures (first column of figures):

U.S. Department of Education, National Center for Education Statistics. *Private School Universe Survey: 1999-2000*, NCES 2001-330, by Stephen P. Broughman and Lenore A. Colaciello (Washington, D.C., 2001), tables 1 and 22.

Source for figures on students served under IDEA, Part B (second column of figures):

U.S. Department of Education, Office of Special Education Programs, Data Analysis System (DANS). *IDEA Part B Educational Environment (1999-2000)*, Table AB6: *Number of Children Ages 3-21 Served in Correctional Facilities and Parent Initiated Private Schools Under IDEA, Part B, During the 1999-2000 School Year*. (Data based on the December 1, 1999 count, updated as of August 30, 2001.) Available at http://www.ideadata.org/tables24th\ar_ab6.htm.