

The Continuing Struggle for Equality in the Funding of Special Education: A Historical Overview

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Developments in the special education system up to the appointment of the Dorner Committee

It is a fact of human existence that human beings differ in their skills and abilities. The aspiration to safeguard human dignity and to ensure equal opportunity underscores the right of every person to education and learning, and obliges the creation of adaptive and supportive mechanisms that can allow children with special needs to develop optimally. During the second half of the twentieth century, many countries, including Israel, saw dramatic developments in the special education field. One was the large increase in the population of students diagnosed as having special needs — both in absolute numbers and in their share of the total student population.¹ The other was a rising awareness of the educational and social importance of students with special needs being integrated into the regular education system, and the need to move them there from the separate systems where, in the past, they had commonly been isolated.²

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1 In the United States, for example, the share of students with special needs within the general student population grew from 8.3% in 1976 to 14.1% in 2018 (see the website of the National Center for Education Statistics, NCES).

2 It should be noted that many have called into question the use of the term “regular” in relation to the individual student. Who is the “regular” student, and what distinguishes him or her from the “different” student? Would it not be correct to say that every student has “special needs?” These arguments notwithstanding, we will continue to use the terms “regular education,” “regular school,” and “regular class” to denote educational institutional settings for children without disabilities that warrant separate educational institutional settings or that require additional budgets or other benefits.

Alongside these two developments, in Israel, at least, inequality of budgeting has emerged between students with special needs integrated in regular education, and special needs students studying in separate special educational institutional settings. The current work looks at this difficult and complex issue, and at the struggle to end the continuous discrimination that exists between funding of special education students in the various settings.

In order to realize the desire to give every child the opportunity to fulfill their potential, the State of Israel has established, in an array of laws and regulations, the right of students with special needs to exercise their academic and other rights to the fullest, whether separately or integrated with “regular” students.³ This legislation has been accompanied by a protracted struggle on the part of parents of special needs students mainstreamed in regular educational institutional settings, and of parents wishing their children to study in such settings, to ensure that the budgets allocated to them will be equal to the budgets allocated to students with similar difficulties enrolled in separate special educational institutional settings.

This paper describes the long and convoluted chain of governmental and administrative decisions, some of them made in the wake of public committee reports or court rulings, that have affected the way in which Israeli society chooses to educate students with special needs (for a list of the measures taken and their timeline, see the Appendix).⁴

3 “Integration” refers to a wide range of options — from limited integration, with accommodations made for students with special needs in separate educational institutional settings operating within regular educational settings, to partial mainstreaming of students in several study subjects with students pulled out of class for assistance and special instruction according to their needs, and full mainstreaming in which students study throughout the day in regular classes and receive special assistance in those classes.

4 We focused on the budgetary aspects of developments in the special education system between 2005 and 2019 in another article. See Blass, 2022.

Special education organizational frameworks and budgeting methods

In Israel, special education operates in three different organizational frameworks: special education schools; separate special education classes in regular schools; and the mainstreaming of students with special needs in regular classes. Each of these organizational frameworks has its own budgeting method: students in special education schools and in separate classes in regular schools are budgeted by class, students with severe disabilities mainstreamed in regular classes are budgeted on a per student basis, while for students with mild disabilities integrated into regular schools, the schools receive a global budget increase (for more on this topic, see Blass, 2022).

Students are assigned to the various frameworks based on their type of disability and level of functioning:⁵ the lower the student's level of functioning and the more severe the disability, the more likely is placement in a separate framework. Thus, students with severe disabilities and low and low-moderate levels of functioning will study in special education schools; students with other severe disabilities and low-moderate or moderate-high levels of functioning will study in separate classes in regular education, while most students with moderate-high and high levels of functioning will be mainstreamed in regular classes. This breakdown is also supposed to justify different budgeting levels for students with different disabilities and functional levels attending different educational frameworks. The problem is that this principle does not always hold, so that in reality students with similar disabilities and levels of functioning are budgeted at different levels, while students with different disabilities and levels of functioning receive the same budgets. For example, situations can arise in which a student with autism or moderate intellectual disability enrolled in a special education school is budgeted more generously than a student with the same disability who studies in a special education class in a regular school, or budgeted even more than a student who is mainstreamed in a regular class.

The reasons for these differences in budgeting across the educational institutional settings are varied: teachers in special education schools earn higher wages than teachers in special education classes in regular schools and teachers in regular classes; transportation costs differ (due to the varying distances involved); construction costs for special education institutions are

5 The term "level of functioning" refers to the student's ability to be integrated in the school's academic and social activities.

20% higher (due to the accommodations necessary for students with special needs); and a greater number of services are provided in the special education schools (longer school day, longer school year, hot lunches, and more). Ultimately, students in special education schools are more highly budgeted than students in separate classes in regular schools, and definitely more highly budgeted than students mainstreamed in regular classes.⁶ Beyond the apparently objective reasons for the lower budgeting of students with special needs attending integrated frameworks, issues also arise with regard to the budgeting level of integrated students, and the formula by which this budget is calculated. The question here is a dual one:

1. Does the budgeting formula accurately represent the number of students with special needs whose problems have to be addressed by the regular school, or should it be changed so that the number of students and, accordingly, the integration budget, will be better suited to the needs in question? (By, for instance, looking at the school's Nurture Index, its share of students from families that receive income support, and the like).
2. Does the budget allocated for the integration of students with special needs in regular education of 1.55 weekly hours per student⁷ meet the needs?

A partial answer to these two questions can be found in a State Comptroller report (2013). In a chapter on the integration of students with special needs in regular education, the State Comptroller determined (based on a 2006 Ministry of Education assessment) that about 8% of all students studying in regular education institutions require integrated special education services according to a *statistical allocation*. However, the Ministry of Education decided that funding for this form of integration would be given to regular education institutions in amounts that make it possible to support only 6% of students. During the 2005/2006 school year, the Ministry lowered the quota of students eligible for integration through statistical allocation, and since then institutions are entitled to receive funding for only 5.4% of their students, and no more. In the report, the State Comptroller quotes the response of Ministry of Education from November, 2012:

6 The budgeting differences will probably not change in the wake of the 2018 Amendment 11 to the Special Education Law, which recognizes the need for *differential budgeting* for students attending different organizational frameworks.

7 Weekly hours is a budgetary term that expresses the cost of the average annual hourly wage of a teacher. Currently, this is around NIS 8,000.

“Formerly, special education also handled students with mild disabilities. However, now that students with more complex special needs are being integrated within the system, the special education budgets have been channeled toward students with more complex disabilities;” because no budget increase was received to “enable the allocations to remain as they were and, in addition, to provide a specific budget to students through differential allocation, the Ministry was forced to reduce the statistical allocation” (State Comptroller, 2013, p. 1021).

The Ministry of Education’s response indicates an expectation that regular education staff will act to narrow this gap via the resources available to them, including one-on-one hours in the framework of the Ofek Hadash reform. It appears, however, that the Ministry is under-budgeting the integration of students with special needs whose disabilities are considered prevalent within the population at large (integration through statistical allocation), meaning that the schools are unable to provide needed services to all of these students. And the State Comptroller continues:

The under-budgeting of the integration of students with prevalent disabilities can also be discerned in a statement by the then-director of the Special Education Division at a Dorner Committee meeting in November 2007: the Ministry “is now obligated to handle the more difficult children, it can’t, as it once did, handle a lot of children [...] with milder disabilities” (State Comptroller, 2013, p. 1022).

A situation in which the Ministry under-budgets integrated students could potentially incentivize the placement of students with disabilities in special educational institutional settings, rather than their integration in regular education.

Milestones in the history of special education in Israel

Before the founding of the State, special education institutions operated out of a sense of social responsibility and on a voluntary basis. With Israeli statehood, came the opening of the first special education schools,⁸ and, in 1950, the Department of Special Education was created in the Ministry of Education, and special education frameworks of various kinds began to appear. Over time, special schools were founded for students with intellectual disability and for students with sensory impairments (blindness and deafness) or motor disabilities (e.g., paralysis). In addition to the special education schools, special education frameworks (self-contained classrooms) gradually developed within the regular schools, as well as tools for mainstreaming students with special needs in regular classes. The integration of special needs students — and, in particular, the budgeting of these students — has remained on the Ministry of Education agenda for over 25 years.

The Special Education Law, 1988. The first law to explicitly and specifically deal with students with special needs was the Special Education Law enacted in 1988 to safeguard these students' rights and to enshrine them in law. The Law stipulated the provision of systematic instruction, study, and therapy to children with special needs, in accordance with their needs. It defined the "irregular child"⁹ as a person aged 3–21 "who due to their physical, mental, emotional, or behavioral development has a limited capacity for adaptive behavior, and is in need of special education." According to the Law, "the goal of special education is to advance and develop the skills and abilities of the irregular child, to correct and enhance their physical, mental, emotional, and behavioral functioning, to impart knowledge, skills, and habits, and to help the child learn acceptable social behavior with the aim of facilitating integration into society and in the employment sphere." The Law also stated that every child with physical, mental, emotional, or behavioral disability is entitled to receive special education in their area of residence, or as near to their home as possible.

8 Such schools had already appeared in Western countries in the late 19th century.

9 This was the original wording of the Law. Amendments added over the years replaced several of the terms used in the Law. For example, "irregular child" was replaced by "child with special needs," which itself later gave way to "student with special needs." The Hebrew term *lakut* (impairment or deficiency) was replaced by *mugbalut* (disability), and so on.

The Special Education Law brought about four major changes vis-à-vis the situation prior to its enactment: it expanded the rights of students from learning services to accompanying support services; it widened the range of coverage to ages 3–21; it emphasized the importance of integrating students with special needs into regular educational institutional settings; and it increased parental participation in decision making about their children.

Master Plan for Implementation of the Special Education Law (Ministry of Education, 1994). This plan, which was drafted in 1994, required the actual implementation of the policy of integrating students with special needs in regular education, that is, of emphasizing the receipt of services within the regular classroom, and reducing the referral of students suitable for integration to the placement committees.

The Master Plan defined several “baskets” of services, including an “integration basket” intended for students with special needs studying in regular education frameworks, and an “enrichment basket” intended for all students with special needs, in both regular and special education. Both of these service baskets were differential, and were given in accordance with the child’s age and the type and severity of their disability, based on variables detailed in the Master Plan. The plan called for the integration of students with special needs, and for incentives to be given to general educational institutions that integrate these students. However, in the absence of a suitable budgetary arrangement, integration was not actually implemented to an appropriate extent or at a reasonable pace (Blass & Lior, 2002).

Report of the Committee to Examine the Implementation of the Special Education Law (the Margalit Committee, 2000). According to the Ministry of Education’s interpretation of the Special Education Law, 1988, throughout the 1990s, the rights of special education students were determined depending upon the frameworks in which they studied, and not on the basis of the individual child’s abilities. When a student with special needs moved to a regular educational institutional setting, this led to a substantial reduction in their entitlement to special education resources. The Margalit Committee determined that this interpretation contradicted the spirit of the law, and therefore recommended that every child with special needs be eligible for special education resources, regardless of the framework in which they study. The Committee found that the way in which the integration budgets were being allocated did not ensure that students with special needs who had formerly been in separate frameworks

and had integrated into regular education would continue to enjoy the funding that they had customarily received. The Committee report also noted that the idea that “special education” does not refer to the place where such education is provided, but rather to the educational process, had yet to gain currency within the system. Additionally, the Committee found that oversight of the special education budgets intended for the integration of students with special needs was inadequate, raising concerns that children who were not special education students were benefiting from special education budgets, while students entitled to those budgets were not. The Committee recommended avoiding the over-identification of students with difficulties as students who belong in special education, and the provision of special education-based services to students who do not need them.

After the Special Education Law was enacted and the Master Plan for special education formulated, the debate should have moved from the question of *whether* the aim should be to integrate children with disabilities into regular education, to the question of *how* to optimally integrate them. However, it soon turned out that, despite the provisions of the Law and the intentions of those who drafted the Master Plan, the share of students being sent to separate special education frameworks remained stable, and large gaps persisted in the budgeting of students with the same disability and the same level of functioning enrolled in different educational frameworks. These gaps sparked discontent among parents of students with special needs, and led them to petition the Supreme Court.

The struggle to eliminate inequality

*The Yated Supreme Court petition (2000).*¹⁰ The Supreme Court entered the fray in 2000, in the context of a petition by Yated — the Association of Parents of Children with Down’s Syndrome. The Supreme Court ruled that children with special needs are entitled to free special education, whether they study in separate institutions and classrooms, or are integrated into regular educational institutional settings. This ruling was based on the recognition that there are children who need to be educated primarily within special frameworks, while others will more fully realize their potential in regular frameworks, with special assistance. The Court thus mandated that the state allocate its budget in such a way that children with special needs would be able to exercise their rights

10 HCJ 2599/00, Yated — Association of Parents of Children with Down’s Syndrome v. Ministry of Education, PD 56(5).

both in special education institutions and in regular schools. The Court also ruled that the state's position, which forces parents of children with special needs to forgo their children's integration in regular educational institutional settings solely for economic reasons, strikes at "the very heart of essential equality," inasmuch as it withholds the opportunity to realize the potential embodied in each and every one of these children.

Amendment 7 to the Special Education Law (2002). On November 13, 2002, a short time after the Supreme Court's Yated ruling, Amendment 7 (the "integration section") was added to the Special Education Law. The Amendment stated, among other things, that the Minister of Education "will formulate a plan for the integration of children with special needs into regular education institutions; the plan will also include the manner of allocating resources to the special education institutions." The amendment was supposed to enter into force in the 2003/2004 school year, but the Ministry of Education did not fully comply with the Law, on the pretext that compliance would entail very extensive funding, and that in any case implementation depended on "the consent of the Minister of Finance." The Ministry of Education proposed that the Law be implemented gradually.

*Marziano Supreme Court ruling (2003).*¹¹ In 2003, parents of children with special needs again petitioned the Supreme Court. They argued that, despite the Court's Yated ruling, the state was refusing to finance the integration of students with special needs in a way that would ensure free education for students with special needs who had been integrated in regular education frameworks.¹² After hearing the arguments of both sides, and after numerous delays, the Supreme Court ruled *invalid the state's interpretation of the law's provisions* — according to which "the Minister of Finance has the authority to decide that one group of children with special needs — the group of children in need of education in regular frameworks — will not receive the assistance it requires, and will not, accordingly, receive education." On May 10, 2004, the state's request for further deliberations on the Marziano case was denied.¹³

11 HCJ 6973/03, Marziano v. Minister of Finance, PD 58(2) 270, 276 (2003). Also known as "the first Marziano Supreme Court case."

12 The panel of justices was headed by Justice Dalia Dorner (the others were Justice Eliezer Rivlin and the Justice Ayala Procaccia).

13 Although this lies beyond the scope of our current discussion, it is worthwhile and important to read Justice Dorner's reasons for the ruling.

The Dovrat Committee (2005). The Dovrat Committee was appointed in 2003 and submitted its recommendations in January 2005. Although special education was not the main issue addressed by the Committee, it was one of the most important topics that the Committee examined. The issues of integration and the budgeting of special education students were included in the Committee's final report and recommendations.¹⁴

The Committee noted the need to develop "standardized tools for assessing the level of functioning of students with special needs in different functional areas, taking into consideration the types of disability and the ages of the students. The functional profile will serve as a tool for determining the student's entitlement to integration with accommodations, the amount of support needed, and the nature of the support." The "functional profile" was also meant for use in distinguishing between two groups of students with special needs: "students with accompanying special needs [...] who study in regular classes [...] and need extensive educational support or accompanying physical or technical support," and "students with complex special needs [...] who require intensive and multidimensional educational support, including comprehensive special education services and significant accommodations in the learning environment" (Dovrat Committee, 2005, p. 108).

The Committee felt that students with accompanying special needs should be viewed as "part of the natural normative variance of students in the regular class," and, therefore, also felt that identifying them, evaluating their level of functioning, and supporting them should be an inseparable part of the school's instructional mission, based on the resources available to it. "All types of support," the Committee added, "whether in the sphere of regular education or in the sphere of special education, should be available to them." Regarding students with complex special needs, the Committee recommended that they "be entitled to integration with accommodations." Eligibility would depend on admissible evaluation documents. Every student would be eligible for a differential "personal basket" of services, based on their "functional profile."

The Dovrat Committee also recommended creating "eligibility committees for integrated education with accommodations," instead of the placement committees that were prevailed, and called for the "personal basket" to be instituted "only once the preconditions for it had been fulfilled, including

14 The team assigned to the topic was headed by Rabbi Shai Piron, who later became the Minister of Education, and was coordinated by Esther Reshef-Alon, who played a major role in drafting the Master Plan for Special Education in 1994.

legislative amendments, development of the functional profile, and an examination of the budgetary implications.”

The Committee further recommended that the parents of students entitled to integration with accommodations, or the students themselves, be able to choose regular educational institutional settings in their areas of residence, or special education, “as long as the framework selected is capable of advancing the student academically, educationally, and socially, and meets their needs in an appropriate manner” — all on condition that any regular education framework chosen provide a safe and protected space and not undermine the welfare of the student or of their educational environment (Dovrat Committee, 2005, pp. 108–109).

In general, one may say that the Dovrat Committee recommendations found some degree of expression in Amendment 11 to the Special Education Law.

The Dorner Committee

On September 25, 2007, then-Minister of Education Yuli Tamir appointed a committee, headed by Supreme Court Justice (ret.) Dalia Dorner, with the following goals, as defined in the letter of appointment:

To examine Ministry of Education policy pertaining to the care of children with special needs, to examine the Ministry of Education’s budget allocation method for these children, to outline a plan of action for their care, and to set priorities for action in this sphere. All of these things should be done while taking the Ministry’s present budget limitations into consideration (Dorner Committee, 2009, p. 3).

In January 2009, the Committee published a comprehensive report examining the special education system. Its three main recommendations were:

1. To allow the parents of children with special needs to choose the educational institutional settings in which their children will study;
2. To create a link between the size of the budget allocated to students with special needs and their level of academic functioning, in addition to their disability (physical, emotional, or intellectual);
3. To sever the link between budget size and the educational setting to which the student with special needs is referred, and to establish the principle that “the budget follows the child.”

As noted in the Committee report, adopting these recommendations “obligates the Ministry of Education to a real revolution in the framework in which it provides educational services to children with special needs in Israel” (Dorner Committee, 2009, p. 66).

Given the innovative character of its recommendations, the Committee proposed conducting a preliminary pilot program to test them and draw conclusions before they were implemented with regard to all special needs children in Israel.

In the wake of the Dorner Committee

The Amichai Committee

In July 2009, six months after the Dorner Committee submitted its recommendations, Minister of Education Gideon Sa’ar (who had succeeded Minister Tamir) appointed a committee to examine its implementation. The committee was headed by Shlomit Amichai, the Ministry of Education’s outgoing director general. The Amichai Committee’s letter of appointment stated that the Committee’s objective was “to examine the principles of the Dorner Committee Report in terms of their pedagogical, professional, organizational, and budgetary implications [...] in consultation with the relevant professional entities within the Ministry of Education and outside it, as needed” (Amichai Committee, 2009). The Committee itself started its work in late 2009, creating four subcommittees on the following topics: parental choice, budgeting model, assessment methods to determine entitlement to special education, and the training of teachers, aides, and other professionals for work with special needs students. We will focus on the subcommittees whose task was to establish a budgetary model and the assessment/eligibility rules and procedures.

The budgeting method subcommittee looked at various models; the one it ultimately recommended related solely to integrated students (that is, it did not address students studying in separate frameworks).¹⁵ The subcommittee members (personnel from the Budgets Division, the Special Education Division, and the Chief Scientist’s Office) assumed that, once equalization of the budgets allocated to students in separate frameworks to the budgets allocated to integrated students is implemented, the following changes would occur:

15 This decision is puzzling, as the Dorner Committee recommendations were meant to equalize the budgets allocated to students with similar disabilities and levels of functioning enrolled in different academic-educational settings.

- All differentially budgeted students would be switched to personal budgets;¹⁶
- 10% of students in special education classes in regular schools would choose to transfer to integrated frameworks;
- 3% of students in special education schools would choose to transfer to integrated frameworks;
- 10% of statistically budgeted integrated students would be assigned to placement committees and receive personal special education budgets.

Based on these assumptions, the estimated budget increase reached NIS 350 million. Because the cost of integrated students is included in the cost of a regular class, the cost of 1.7 weekly teaching hours was deducted from each personal budget. After this deduction, the estimated budget addition was NIS 220 million — an important point that we will address in the conclusion.

As part of the assessment subcommittee effort, the Chief Scientist's Office conducted a comprehensive survey of special education students and their level of functioning in Grades 1–6, in the official and recognized unofficial education systems. Data were collected on the functional abilities of students attending regular classes (students entitled to differential allocation), of students with special needs studying in separate classes in regular schools, and of students attending special education schools. Students who are in integrated settings and who are budgeted by a statistical allocation were not included (Cohen, 2015). Based on the survey, four levels of functioning (low, low-moderate, moderate-high, and high) were defined, as well as three additional levels of severity for three physical disabilities: deafness/hearing impairment, blindness/visual impairment, paralysis/severe physical disability. Based on the survey findings and the judgment of the special education supervisors, the entire special education population (except for integrated students with prevalent disabilities), can be divided as follows: about 40% designated as low and low-moderate functioning, and about 60% designated as moderate-high and high functioning.¹⁷

16 Differentially budgeted students are students studying in integrated frameworks who have severe special needs and disabilities specifically mentioned in the regulations.

17 See Cohen, 2015, Appendix 11. Clearly, there can be situations where students with different disabilities have similar levels of functioning but for various reasons the cost of the services provided to them differs, and rightly so. However, it can also obviously be argued — in the name of equality — that the budgeting for the assistance these students receive should be the same. This argument is problematic, though, as there can be differences in the prices of aids and therapies necessary for the proper functioning of students with various disabilities.

The Amichai Committee proposed a framework for implementing the Dorner Committee report, taking into account potential difficulties and obstacles arising from parental choice of the type of framework in which their children will study. The Amichai Committee directly addressed the problems anticipated within the organizational array of the special and regular education schools, the pedagogical consequences of school efforts to optimally integrate the students, and the budgetary implications of parental choice at the level of the individual student, and at the general systemic level. The Committee also discussed the lack of appropriate professional tools for determining function level, noting that the instrument available at the time did not provide a comprehensive and complete means of assessing functional ability. Ultimately, the Amichai Committee recommended:

1. Conducting a pilot program with four main phases: organizing and preparing organizational infrastructures for the pilot; conducting a pilot in a selected local authority (a large city); considering the pilot's expansion to several local authorities or to a district (after a systematic process of evaluation and control); and completion of necessary updates and adjustments. At the end of each phase, an in-depth discussion would be conducted regarding the mode of implementation and ways of continuing the required activity. The discussion would be held with the participation of professional agencies and, as needed, external parties and local government personnel. At the end of the pilot program, and after conclusions were drawn, it would be determined whether, and under what conditions, to expand implementation of the recommendations;
2. Immediately undertaking the development of an instrument for assessing functional abilities: the National Authority for Measurement and Evaluation in Education (known by the Hebrew acronym RAMA) was tasked with completing the initial development of a diagnostic tool for use by the assessment committees within a year. It was determined that the instrument would be employed by the eligibility and assessment committees starting in January 2011, and validated as part of the pilot;
3. Switching the budgeting method to one based on the principle that "the budget follows the child," i.e., linking the student's basket of services to their classification group. The change would be implemented during the course of the pilot, in whose framework parents would be given the

opportunity to choose the educational institutional setting in which their children study,¹⁸

4. Unifying the placement and the integration committees to form a single committee — the eligibility and assessment committee;
5. Training regular education staff for work with special needs students; this would include improving transportation services for these students.

In January 2010, the Minister of Education adopted the Amichai Committee recommendations, and on March 23 of that year the Ministry of Education announced its intention to conduct a pilot program to determine the viability of several of the Dorner Committee recommendations.

From the Amichai Committee recommendations to Amendment 11 to the Special Education Law

The publication of the Dorner Committee and the Amichai Committee recommendations did not bring an end to the struggle of parents of children in integrated frameworks to equalize their children's budgeting with that of children studying in separate special education frameworks. Petitions to the Supreme Court resumed.

*The Marziano Supreme Court ruling (2011).*¹⁹ This petition was filed when it emerged that, despite the first Marziano Supreme Court ruling (2003), no real change had been made to the budgeting arrangements, and the discrimination against children with special needs mainstreamed in regular classes continued.²⁰ The petitioners argued that the state had violated the

18 However, the framework would not give parents the final say. Should the parents' choice have potential safety consequences (concerns that the child might injure themselves or others), or be impossible for organizational reasons (registration area, locality size, service variety, and viability within a given budget framework), the Ministry of Education would be authorized to place the child at its discretion.

19 HCJ 5989/07, ALUT, Bizchut, Yated et al. v. the Minister of Education et al. (2011).

20 In HCJ 7443/03, 7448/03, Yated et al. v. the Ministry of Education et al. (June 2, 2004, unpublished) the Supreme Court ruled — with the state's concurrence — that eligibility for assistance would be determined by the school integration committee. In 2007, another petition was filed against the Minister of Education, consisting mainly of a demand that the provisions of the law pertaining to the integration of children with special needs in regular education frameworks be made applicable to all children in Israel ages 3–4. The petition was rejected (HCJ 5597/07, ALUT, Bizchut, Yated et al. v. the Minister of Education et al., 21.8.2007, unpublished).

earlier Supreme Court rulings in the matters of Yated and Marziano (2003). According to them, the budget increases needed to comply with the law and the rulings had not been allocated and, because the state had failed to provide integration budgeting in accordance with the principles laid out in the rulings, many of the special needs students who could have been integrated in regular education frameworks were being forced to study in separate frameworks. The Supreme Court deliberations were periodically postponed due to Ministry of Education announcements — first about the appointment of the Dorner Committee, and then about the appointment of the Amichai Committee, and finally about the launch of pilot studies on the implementation of these committees' recommendations. Ultimately, the Supreme Court decided that the measures taken by the state were consistent with its earlier rulings.

The Court broke the petitioners' arguments down into two categories (a) the under-budgeting of the integration of students with special needs in regular frameworks, contrary to the law and to earlier rulings; (b) "improper budgetary discrimination" against these students, compared with students in special education frameworks.

Regarding the under-budgeting claim, the justices cited earlier rulings, according to which, when implementing a law that entails budgetary allocation, one cannot ignore budgetary considerations, even when there can be no doubt regarding the importance of the services whose provision the law is meant to ensure. Although, in Marziano 2003, the Court found that the non-allocation of a specific budgetary increase for purposes of implementing the integration section (Amendment 7 to the Special Education Law) justified the issuing of an absolute order instructing the allocation of a specific budget increase, in 2011 the situation did not justify taking a similar measure, inasmuch as:

The obligation imposed by the Amendment on the state, as interpreted in the Marziano case, is that of implementing the integration section "at the minimum threshold level," with no determination as to scope or level. Although the Minister of Education estimated, in her letter of 2003, that a minimal implementation of the integration section would require a budget increase of NIS 600 million [...] nevertheless, the absolute order issued in the Marziano ruling [...] did not specify that the state must allocate a concrete sum of money as an increase to the integration budget, but rather that it allocate a sum for the 2003/2004 school year that would be sufficient to implement the law, if only at the minimum level."²¹

21 The second Marziano ruling (2011).

In the wake of the Marziano ruling (2003), the state indeed immediately allocated a NIS 100 million increase to the integration budget for the 2003/2004 school year, and later allocated a gradual budget increase of NIS 30 million per year for implementation of the integration section. According to data provided by the state, as of the 2010/2011 school year, the budget allocated for implementation of the integration section amounted to NIS 730 million.

Regarding the claim of discrimination against integrated students vis-à-vis students in special education settings, the petitioners stated in a November 14, 2011 notice of clarification that they were focusing on the issue of budgetary increase, and were not interested in rectifying the damage caused to the integrated students by reducing the budget allocated to students in special education settings; the Court therefore refrained from addressing this. The petitioners also clarified that, on this matter, they relied on the budget distribution criteria proposed by the Dorner Committee, and asked the Court to instruct that a timetable be set for a decision on the adoption of its recommendations. Here the Court found that they were bursting through an open door, as a pilot had already been conducted to determine the viability of the Dorner Committee recommendations, alongside development of the tools it had recommended. Since the petitioners, whose representatives had participated in the formulation of the framework proposed in the report, had not disagreed with the committee's recommendations and had called for the Ministry of Education to adopt them in full, the controversy of that period appeared relevant to the interim period lasting until examination of the Dorner Committee recommendations was completed, and the government decided whether to adopt them. Therefore, the Supreme Court felt that "it would be appropriate [...] to allow the state to complete the process it undertook of examining the viability of the Dorner Committee recommendations." Since the data presented by the state to the Court indicated, in their view, that "[t]he Amichai Committee and its subcommittees are engaging in an appropriate and orderly administrative process," they felt that there was no justification for judicial intervention in terms of time limitations for decision making on the adoption or rejection of the Dorner Committee recommendations. Rather, it would be better to let the state make an informed decision on this matter after examining all of the relevant information obtained from the pilot that was then underway.

Due to the aforementioned reasons, and on the assumption that the state would continue implementing the gradual budget increase framework to expand service eligibility and the scope of the services provided to those eligible, the Court did not find cause for a court order instructing that an additional specific budget be allocated for implementation of the integration section, but did express hope that “some of the problems raised in the petition regarding under-budgeting of the integration program will be resolved as part of the process of reexamining the budgeting method for the special education system as a whole.”

In response, the petitioners announced that they would stand by their petition, as the state had not committed to adopting the Dorner Committee recommendations and, according to them, was still discriminating against the integrated/mainstreamed students. To illustrate the alleged budgetary discrimination, the petitioners presented data from a report prepared on their initiative in 2003 (Blass, 2003), according to which the amount budgeted for a special education student was more than twice the sum allocated for an integrated student. The petitioners also maintained that, given the failure to implement earlier reports, they could not rely on the state’s declaration regarding continued examination of the Dorner Report. Although the Dorner Committee recommendations had provided a response to their claims regarding equal budgetary distribution, they demanded a broad, comprehensive reform that would go beyond the remedies specified in the petition. The petitioners added that their claims regarding the budget increase required for implementation of the amendment to the law merited deliberation based on the principles outlined by the Court in the Marziano case (2003). In their view, this was an issue that was not dependent on implementation of the Dorner Report; thus, there was no reason to wait for a ruling on these claims. The remedy requested in this context was that the state be instructed to immediately allocate an addition to the annual base budget, in the sum of NIS 310 million, for implementation of the integration section.

On August 16, 2010, the state submitted an update in which it addressed the question of the integration budget. The state maintained that, since 2002, a sum of NIS 400 million had been allocated annually for integration as part of the Ministry of Education’s special education budget, while in the 2010/2011 school year a sum of NIS 730 million had been allocated in the Ministry’s base budget. According to the state, the lion’s share of this budget increase was intended to expand and upgrade the service provided to integrated students,

while only a small portion was meant to address the population's natural increase. Accordingly, the state added, the Ministry of Education had also been budgeting, since 2004/2005, the integration of special needs children in recognized unofficial educational institutions (constituting a third of all educational institutions in Israel), as well as the integration of pre-kindergarten children in 480 municipalities around the country. Although the state detailed the way in which the study hours were allocated to the integrated students, on a general and individual basis, the disagreements with the petitioners remained.

Pilot programs for implementation of the Dorner Committee recommendations

As noted, both the Dorner Committee and the Amichai Committee attached very great importance to revising the budgeting method *only after* a pilot to assess the major change involved in linking the budget to the child, determining levels of functioning based on RAMA, and giving parents the right to choose their children's study settings. Both committees also determined that any future systemic change must be based on meticulous follow-up research on the pilot, and on comprehensive, in-depth discussion of its outcomes. However, the Ministry of Education took no consistent and resolute action on this matter, and the aforementioned conditions were not met in any way.

The Holon pilot program. Although the Minister of Education had decided on the pilot in early 2010, the Ministry made preparations for conducting the first pilot in Holon only in 2012; the pilot itself started in 2013.²² The pilot program included 2,044 third-graders in Holon, 74 of them students with special needs. During the first year, and as part of the pilot, *all of the frameworks* switched to personal budgeting, in accordance with the Dorner Committee recommendations. At the end of the first year, the external evaluation was halted and the pilot was continued without accompanying research.²³

The continuation of the pilot program. After the pilot program's first year, it was expanded to Tirat HaCarmel, Ma'ale Adumim, and Jerusalem. However, the budgeting rules changed each year of the three-year pilot, and there was

22 In my discussion of how matters unfolded, I rely on a letter from March 19, 2019 in response to a query I sent to a Ministry of Education employee who had been involved in the pilots.

23 According to the staff at Ofek, which had started the evaluation research for the pilot, the research was halted for lack of a budget. See Ofek, 2012.

no orderly and reliable follow-up study regarding outcomes — neither in terms of academic and education impact, nor in terms of budgetary implications.

In 2014, a major turning point was reached in the pilot program, when a switch was made to per student budgeting *solely in the framework of integration* in regular education, after it proved difficult to maintain the separate special education settings with students budgeted on the basis of each individual's disability and level of functioning.²⁴ Students with special needs who were already integrated as differentially budgeted students in regular classes were changed to budgeting by the rules proposed by the Dorner Committee and received personal budgets per the model developed by the subcommittee for examining the budgeting method. Special needs students who were already studying in special education classes and chose to move to integrated settings, as well as new students who chose that option, also received personal budgets (Cohen, 2015). In 2015, while the pilot was being conducted in the four localities, a very large number of students with highly-prevalent disabilities (statistically budgeted students) requested personal budgets, and it was decided to switch only students with low-prevalence disabilities (differentially budgeted students) to personal budgeting. Neither an external nor an internal evaluation was conducted this year. This budgeting system continued in the pilot between 2016 and 2018.

The reasons behind the frequent changes in the most central aspects of the pilot program can be seen in the following remarks made before the Knesset Education Committee by Ariel Levy, Director of the Pedagogical Administration:

I want to show something that happened this year but didn't in previous years. [...] What was found during the past two months, that the number of children being referred to the committees is huge. [...] *One of the problematic things about implementing the report is that there is over-referral of students from regular education to the committees.* We're seeing something that we couldn't have anticipated, and maybe some did anticipate it but I can say that there are children who once wouldn't have been referred to the eligibility and assessment committee but who are now being referred — and I'm telling you, out of a real sense of responsibility — with very high inflation. [...] We now realize that, along

24 It should be emphasized that this decision was made at the end of just one year of the pilot program, when the instrument for assessing level of functioning had not yet been fully validated.

with the advantages, we have to change something intrinsic to the model. We also need to do some kind of work with the placement committee chairs or the assessment committee chairs, as we call them. With the principals of regular and special education schools. After all, part of the goal was to move special education students into inclusion, and not from regular education into special education. There's a balance that needs to be struck.²⁵ (Emphasis mine.)

The Director of the Pedagogical Administration's surprise at the "over-referral of students from regular education to the committees" is difficult to understand. It was only natural that, once the parents of children with special needs already studying in integrated regular education frameworks were able to obtain larger budgets — comparable to those received by children with similar disabilities and levels of functioning in separate frameworks — budgets that made better care possible for their children — they would inundate the committees. The question that should have been asked is that of why parents of special needs students attending separate frameworks weren't flooding the system with requests to transfer to integrated frameworks. The answer to this is, apparently, that despite the substantial budget increases for integrated students within the pilot framework, these increases were insufficient to close the existing budget gap. However, this was not examined in depth, certainly not in the framework of a serious and independent follow-up study, and the pilot was not expanded to the system as a whole.

Follow-up and accompanying research for the pilot programs (2015). At the end of 2015, nearly four years after the pilot was launched in Holon, the Chief Scientist's Office issued a request for proposal for a new follow-up study:

In 2010 [again, the pilot actually began in 2012], it was decided to conduct a pilot to include 70 third-graders in the city of Holon. Since then, the pilot has been expanded to other areas, and implementation has started with 1,200 students in primary and middle schools in Holon, Tirat HaCarmel, Ma'ale Adumim, and Jerusalem (RFP 34/12.15 for a Study to Assess Implementation of the Dorner Report).

The follow-up study was meant to assess the implementation of the Dorner Committee recommendations by looking at the stakeholders, various implementation models, and issues pertaining to resources, pedagogy, organization, and management.

25 Protocol No. 32 of the Education, Culture, and Sports Committee meeting of July 21, 2015.

The main research questions were:

- How are the principles of the Dorner Committee being implemented, and how is implementation affecting the satisfaction of the various stakeholders, compared with integrated groups not operating on the Dorner model (the control group)?
- How are the available resources (budgetary, personnel, and other) affecting progress on the integration of students with special needs per the Dorner model and per the control group, with reference to academic, social, and behavioral/emotional functioning?
- How are educational attitudes at the level of school organization being affected by the integration of students per the Dorner Committee principles, compared with the existing integration program?
- How are learning and instruction affected in the classes where students are mainstreamed in accordance with the Dorner Committee principles?

The organization chosen to conduct the study was the Hebrew University of Jerusalem; due to various delays, the study got underway only in 2017. Early in the process it was decided — mainly because reasonable documentation on the pilot program’s budgeting at all stages was unavailable — not to assess the impact of the budgeting method changes between 2013 and 2016. In 2018, Amendment 11 to the Special Education Law was passed; the Amendment included a paragraph that effectively canceled the main Dorner Committee recommendations on budgeting, as it states that different budgets can be allocated to different settings for special education students. This decision obviated the need to examine the budgetary issue in the pilot’s early years, and the budget section was therefore omitted from the follow-up study, which confined itself to questions aimed at determining the principals’, teachers’, and parents’ knowledge of the budgeting principles of the Dorner Report and of the pilot conducted to implement them, and what they thought of those principles. The final study report was submitted on September 18, 2020, ten years after Minister Sa’ar authorized the pilot.²⁶

26 See the concluding report on the implementation of the Dorner Committee recommendations (Gumpel et al., not yet published). The author of this document served for a time as economic advisor to the team that prepared the report, but refrained from participation when there proved to be no way to assess the impact of the budgeting method changes as included in the various trials.

Summing up, the pilot program to implement the Dorner Committee report continued for several years, but due to the frequent changes in budgeting approach at different stages of the program, the Ministry of Education had no solid information on the effects of the proposed changes in the Dorner Committee report. Furthermore, Amendment 11 of the Special Education Law *did not in any way rely on the research-based knowledge amassed during the pilots*, but rather on the impression — and not on any research or empirical findings — that the switch to the “budget follows the child” approach would result in many integrated students being entitled to budgets similar to those received by students attending separate frameworks.

Amendment 11 to the Special Education Law

The approval process for Amendment 11 to the Special Education Law

As noted, while pilots in Holon, Tirat HaCarmel, Jerusalem, and Ma’ale Adumim were being conducted and a follow-up study commissioned, the Ministry of Education was preparing (without notifying the follow-up study team from Hebrew University) to make major changes to the provisions of the Special Education Law.

Why did the Ministry choose to have Amendment 11 to the Special Education Law enacted via primary legislation, a measure that it takes infrequently, rather than through secondary legislation (instituting regulations pertaining to the law)? The reason is probably the large scale of the changes in the proposed amendment. Some of the reasons for the envisioned changes were enumerated in a document published by the Ministry of Education in response to criticism of the Amendment (Cohen, 2018):

1. Many students are unjustifiably tracked for special education;
2. Many special education students live far from the schools and preschools intended for them, and have to spend many hours traveling each day;
3. Supervision of the students’ status is very limited: there are only 35 supervisors for the entire country;
4. Resources are not efficiently managed, and the educational services provided are often incompatible with the students’ personal needs;

5. In the absence of resources and of teacher training and guidance, the schools have trouble integrating students with special needs;
6. Placement processes are insufficiently transparent vis-à-vis parents;
7. The past decade has witnessed a major upward trend in the number of students, making it necessary to adjust the system and to improve resource management, first and foremost for students and parents;
8. Many students are being referred to private frameworks due to a shortage of public educational institutional settings.

We can hardly avoid the impression that, in its response to those opposed to the Amendment, the Ministry listed flaws for which it was actually responsible, and whose correction the parents of children with special needs and the organizations that care for them had been demanding for years.

This being the case, what does Amendment 11 say, and what are the major changes embodied in it? The Amendment relates to various aspects of the Special Education Law — definitions, the assessment and placement of students with special needs, and the budgeting issue on which we are focused here. Clause 4 of the Amendment defines “the goals of special education services” as follows:

1. To advance and develop the learning, skills, and abilities of students with special needs, and their physical, intellectual, emotional, social, and behavioral functioning, and to provide them with knowledge, abilities, life skills, and social skills;
2. To establish the right of students with special needs to equal and active participation in society, in all areas of life, as well as to appropriately meet their special needs in a way that will enable them to live their lives with maximum independence, privacy, and dignity, while fulfilling their potential;
3. To advance the integration of students with special needs in regular educational institutions.²⁷

The first two goals are declarative and general. The third goal is operative.²⁸ Indeed, the heart of the Amendment (at least with regard to budgeting) lies in the clauses that effectively enable students to be transferred from separate

27 From [Amendment 11 to the Special Education Law](#).

28 Although this is not stated explicitly, the Amendment’s main goal was likely that of reducing special education expenditures, which are growing rapidly and uncontrollably.

educational institutional settings to integration in regular schools *without giving them budgets equal* to those received by students with similar disabilities and levels of functioning who study in separate frameworks (primarily clauses 6 and 7 of the Law).²⁹ This goal was achieved through several means:

1. Achieving effective control of the eligibility and assessment committees (which replaced the placement committees) through the appointment of Ministry of Education personnel to chair them, giving the chair an additional vote when the committee votes are tied, and activating a multidisciplinary team in the regular school rather than the integration committee;
2. Determining level of functioning via a tool developed by RAMA, which is effectively (if not officially) subordinate to the Ministry of Education;
3. Channeling high-functioning students with special needs to regular schools without giving their parents the right to choose the framework they prefer;
4. Authorizing the eligibility and assessment committee to decide on the settings to which students will be sent — and prioritizing study in regular-education institutions — if the parents do not appeal these decisions within 14 days;³⁰
5. The provision of Clause 7(h) of the Law that the Minister of Education, “with *the agreement of the Minister of Finance*, will determine for each school year the budget for increasing the number of those eligible for special education [...] [and] the number of those eligible [whom each eligibility and assessment committee] is authorized to approve for each school year, in accordance with rules ensuring that the total cost of special education for all those newly eligible will not exceed the budget determined, as noted, for that year.”³¹ (Emphasis mine.)

29 See Clause 18 in Amendment 11 to the Law, that determines that “the basket of services given to the special needs students determined by the eligibility and assessment committee to be eligible for special education services by level of functioning and need of the student, as well as the systemic characteristics of their educational setting. In this clause, ‘systemic characteristics’ are such things as long school day, the length of the school year, the number of students per class, hot lunches, special facilities of the special education institution.” This clause allows differential budgeting according to the student’s educational setting.

30 Per this Amendment, if the budgeting for a child with special needs integrated in regular education is much lower, the committee can place him or her in regular education even if the parents prefer special education, and here the eligibility and assessment committee essentially has the right to veto the parents’ decision.

31 This clause effectively perpetuates the situation in which the Minister of Education needs the consent of the Minister of Finance to determine the number of students who will be eligible for special education in accordance with the size of the available budget, with no room for flexibility in the budget distribution. Worse, the clause does not require the Ministry to state the budgeting rules for each disability and each framework.

In contrast to all of these clauses, which make it easy for the Ministry of Education to switch students to regular schools, a clause was introduced into the Law that makes such transfers more difficult: Clause 7(b) specifies that, in cases where *parents are allowed to choose the setting*, they can choose the one they prefer for any reason. This clause gives parents the option of choosing for their children a specific and separate educational institutional setting that provides budgetary advantages — thereby limiting the Ministry of Education’s power and authority to increase the share of students with special needs enrolled in integrated frameworks.

On the face of it, Amendment 11 implements the Dorner Committee recommendations in full. However, because the budgeting of students with special needs in separate frameworks usually exceeds that of students similar to them in terms of disability and level of functioning in regular educational settings, the Amendment actually contradicts the Dorner Committee recommendations, which explicitly state that budgeting should not be determined by the type of educational institutional setting, but should, rather, “follow the child.”

The outcome of Amendment 11 to the Special Education Law is the concern shared by many parents that the measure is intended as a means of saving money and economizing on service provision. The Ministry of Education, for its part, maintains that the opposite is the case. The Ministry committed itself to continued investment in special education, in its advanced services, and in personal increases for each and every student. Nevertheless — though there is no written support for this idea — it is likely that the relevant Ministry of Education and Ministry of Finance staff felt that, because each new authorization or change in the eligibility and assessment decisions is subject to committee approval, within three to four years a situation would naturally emerge where only the lower-functioning students would be referred to separate frameworks, while high-functioning students would be referred to integrated settings, without their parents being able to object — which would lead to substantial savings. The savings would be achieved when most of the new applicants to the eligibility and assessment committees were designated high or moderate-high functioning, and most of those students already studying in separate frameworks and needing, for whatever reason, to have their level of functioning re-assessed, would be designated high or moderate-high functioning and sent to regular education.

It should be stated from the outset: There is nothing wrong with wanting to streamline and economize on special education services, so long as this does not negatively affect their scope and quality, and so long as it is done with transparency, in coordination with all of the relevant parties, and with their consent. Thus, should it emerge that there was a budget increase in the early stages, but that the measure ultimately led to savings and streamlining, then the measure would be worthwhile. The desire to increase the share of special needs students studying in regular frameworks is also laudable. But the short period of time since the Amendment was passed, and the initial data we possess on the changes taking place, do not yet allow us to draw firm conclusions on these issues. However, so long as the changes included in the Law require special education students to be placed in accordance with their functional abilities but do not also entail assessing the functional level of all students in separate frameworks, the sense of injustice and non-transparency experienced by parents throughout the years will not soon dissipate.

The pilot program in the Northern District³²

The enactment of Amendment 11 to the Special Education Law was accompanied by a decision that it would enter fully into force only after being implemented on a trial basis for a year in the Northern District.³³ The decision to condition such a major change solely on a one-year trial, with no opportunity to gather and process the data and present them for public discussion, was fundamentally defective: What reliable and well-founded information on the longitudinal and cross-sectional ramifications of such major changes could be obtained from a brief, one-year project? Anyone who has ever tried to generate change in the education system is well aware that so short a time frame cannot be enough to draw conclusions about the educational, budgetary, organizational, and professional consequences of the change. It might be sufficient to learn about the administrative problems

32 This section's discussion is based on a Knesset Research and Information Center report (Weissblau, 2020), and on a presentation by the Ministry of Education Director General at the annual conference of education department directors held in February 2020. It should be noted that the Ministry gave the Knesset Research and Information Center different data each time. For example, the most recent report referred to 47,000 students with special needs, while an earlier report mentioned 41,000. When there are two different reports, I use only the most recent.

33 It is unclear how the pilot follow-up was managed, or who conducted it. The Ministry of Education did not, in any case, publish an official report on the pilot program.

involved, but even in this sphere one might simply be gaining awareness of implementation “birth pangs.”

Regarding the issue we are engaged with here — the consequences of Amendment 11 for special education budgeting and the inequality that characterizes it — it is interesting to look at what happened in the Northern District during the first pilot year, and throughout the country during the subsequent year, with reference to the following questions:

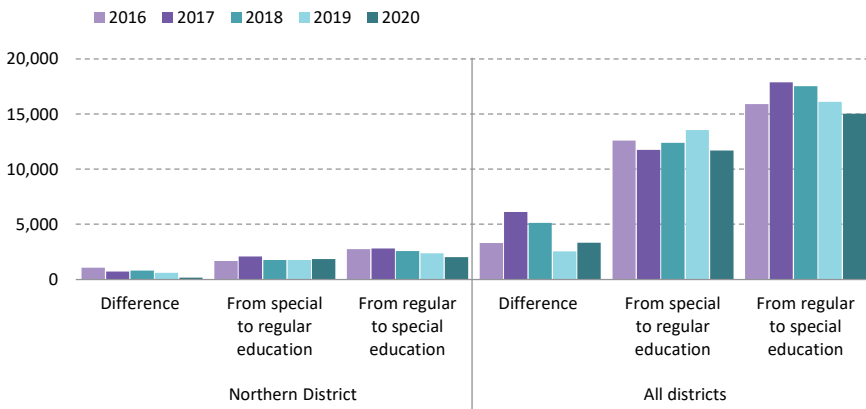
1. During the pilot year, was there a difference between the rate of transfer between the various educational institutional settings in the Northern District and the rate of transfer in the rest of the country? And if so, what was the nature of the difference?
2. Did special education students in integrated settings receive increased support?
3. Did the number of referrals to the eligibility and assessment committees rise? Who were the applicants, and what did they request?
4. Was the student distribution by level of functioning, as determined by the eligibility and assessment committees, consistent with the assessment questionnaire findings? Was the Northern District distribution in the trial year similar to that of the other districts?
5. How did the public react to the changes initiated by the pilot program?
6. How many of the students who transferred from regular schools to special education schools were students who had been previously assessed as having special needs, and how many were now assessed for the first time?
7. How many of the students who moved from separate special education to integrated classes were high-functioning or moderate-high functioning?
8. When students switched from separate special education to inclusive settings, was this done at the request of parents and students, or was the transfer imposed by the eligibility and assessment committees?
9. Did the number of students bused to school drop? Did the trips become shorter?

These are just a few of the questions that ought to have been asked in the wake of the Northern District pilot, before the Amendment became applicable nationwide, but we have answers to only some of them at present, and even those answers still need substantiation.

Has there been an increase in transfer rates between the various frameworks, and who are the students being transferred?

Based on data presented by the Ministry of Education Director General at the annual local education department directors’ conference in February 2020, the number of students who transferred from regular education to special education each year between 2016 and 2020 exceeded the number of students who switched from special to regular education. The officially desired trend is to reduce the disparity between the number of transfers from regular to special education and the number of transfers from special to regular education, in the hope that the direction will reverse — that is, that more students will move from special to regular education than the opposite. The data in Figure 1 show that, at the national level, there is no clear trend over the last five years toward change in the transfer-number disparity between the various frameworks. In the Northern District, there is a clear trend toward fewer transfers from regular to special education, a slight upward trend in the number of transfers from special to regular education, and a shrinking of the difference between the two.

Figure 1. Number of students who transferred from regular to special education and vice versa, 2016–2020



Source: Nachum Blass, Taub Center | Data: presentation of the Ministry of Education Director General at the [annual conference of education department directors](#), February 2020

Are students with special needs in integrated settings receiving increased support?

Between 2019 and 2020, the number of students receiving personal baskets in the Northern District climbed from 2,800 to 5,032. Of these, 1,770 received the personal basket subsequent to changes in the law that allowed the basket to be given to students with specific disabilities who, until the Amendment, were not entitled to it.³⁴ The remainder, some 500 students, were apparently ones who had studied in separate settings the previous year and had transferred to integrated settings, or students for whom it was the first year in special education settings.

These data indicate that, in terms of equalizing the status of integrated students with that of students in separate educational institutional settings, Amendment 11's main effect in the Northern District was seen in the entitlement to a personal basket of services, but the budgeting of these services was not fully equalized with that of students with the same disability and the same level of functioning who remained in separate educational institutional settings. Thus, at least in budgetary terms, so long as the addition of the personal basket is not accompanied by students' transfer from separate to integrated settings, the outcome is an increase without savings.

34 See the presentation of the Ministry of Education Director General at the [annual conference of education department directors](#), February 2020. Until Amendment 11 was passed, the recipients of a personal basket of 2.7 weekly hours were students with blindness, autism, paralysis, and severe physical disabilities, moderate intellectual disability, rare syndromes, and mental disorders. After the Amendment, those eligible for the basket also included students with suspected intellectual disability, and students with physical disability (not defined as severe).

Figure 2a. Number of integrated students receiving a personal basket and an institutional basket at the national level and in the Northern District

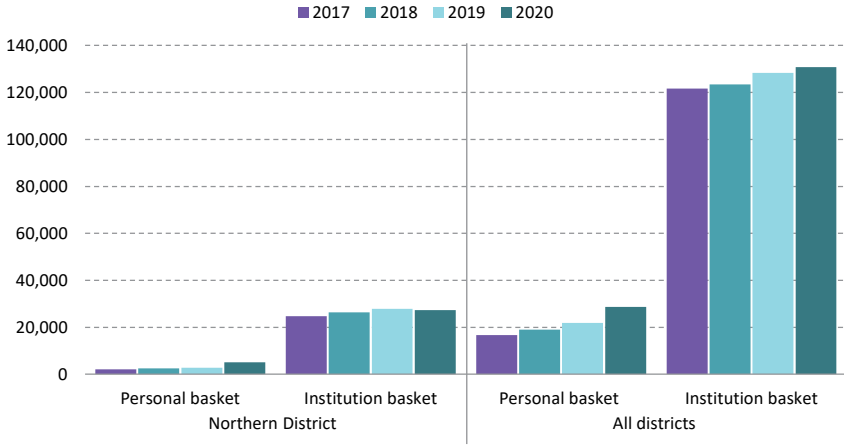
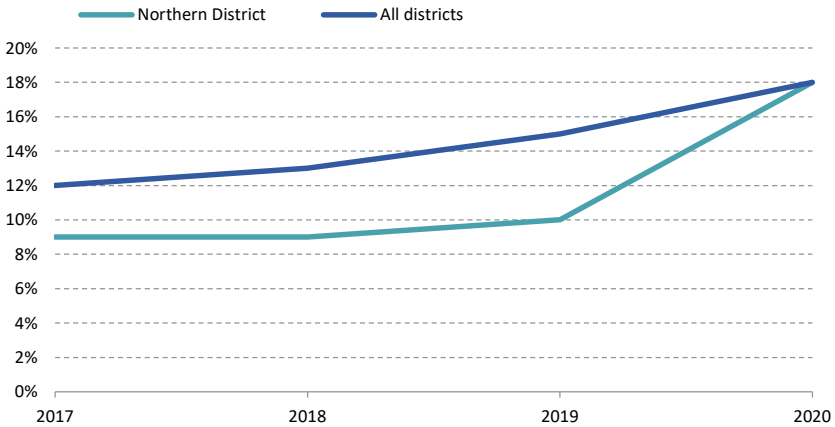


Figure 2b. Percent of integrated students who benefit from a personal and institutional basket



Source: Nachum Blass, Taub Center | Data: Weissblau, 2020

Did the number of applications to the eligibility and assessment committees increase, and what was their fate?

In the 2019/2020 school year, there were 47,500 students in the Northern District with special needs, most of them in integrated frameworks. Per the Ministry of Education, that year saw 10,405 discussions in the eligibility and assessment committees — a real increase compared with the previous year, which had seen 8,000 discussions. At the same time, however, the number of applications to the school interdisciplinary committees declined, meaning that the total number of applications to committees remained nearly unchanged. The reason for this change in the internal composition of the applications appears to have been that only the eligibility and assessment committees are authorized to allocate personal baskets to students attending regular schools. Following the eligibility and assessment committee discussions in the trial's first year, only 36% of applicants to the committees were placed in regular education, 34% were placed in special education classes in regular schools, and the rest in special education preschools and schools.

Reliability of the questionnaire used to assess level of functioning

The budgeting of special needs students based on their level of functioning is one of the three main pillars of the Dorner Committee Report. Without reliable and agreed-upon determinations of levels of functioning, it is impossible to ensure equal budgeting, and the idea of giving parents the right to choose the organizational setting in which their child will study is essentially meaningless. In the first pilot year of the new budgeting method in the Northern District (2018/2019), and in the first year of the method's implementation in all districts (2019/2020), those conducting the trial were supposed to determine whether the questionnaire prepared by RAMA to designate level of functioning met expectations, that is, whether the instrument enables the functional status of special needs students to be reliably assessed. It turns out that this question remains unanswered, at least for now. In a Knesset Education Committee discussion held on July 1, 2020, two months before the start of the 2020/2021 school year, the Ministry of Education's legal advisor said:

The main issue before the Appeals Committee is that of level of functioning, due to the weight that has to be accorded to the RAMA questionnaire [...]. We clarified that we currently have a technical problem producing the responses to the questionnaire, but we're working on this and hope that within just a few months there will be a solution to this technical problem.³⁵

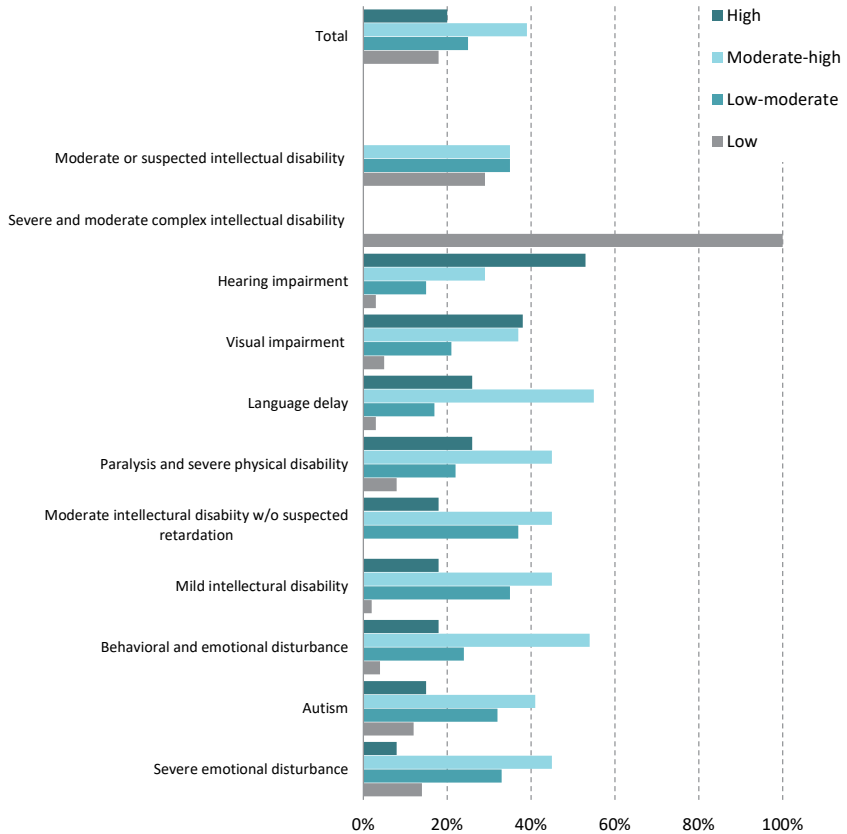
35 Protocol 18 of the Knesset Education, Culture, and Sports Committee meeting, July 1, 2020, p. 3.

Thus, even two years after the start of activity based on the Amendment, the matter of determining level of functioning had yet to be finalized in accordance with a RAMA-developed instrument.³⁶ Moreover, there is evidence that teachers view the questionnaire as yet another difficult task added to their challenging daily duties, and that parents do not see the questionnaire as an objective tool developed on the basis of scientific criteria for assessing functional abilities, but rather as a mechanism for reducing the number of high-functioning students in regular education institutions, so as to bring down the number of students receiving large scale assistance. However, the main proof that the questionnaire is not the tool that those in charge of the education system (and particularly those responsible for special education) were hoping for is the large gap between the scores received on the basis of the questionnaire, and those ultimately given by the eligibility and assessment committees.

As noted, the questionnaire, which is the main instrument used to determine the level of functioning of students with special needs, was based primarily on data from the survey conducted by the Chief Scientist's Office in 2012 (Cohen, 2015). Figure 3 shows the survey data, which show a major difference in the level of functioning of students with different disabilities. The critical point highlighted by the survey — which was administered solely to students with non-prevalent disabilities is that about 60% of the students included in it were designated high or moderate-high functioning. One may assume that, had the survey also included students with more prevalent disabilities, the share of high and moderate-high functioning students would have been even higher. This large share of students at the higher levels of functioning among the differentially budgeted students and the separate-settings students unquestionably justifies an effort to channel many of them, especially the high functioning ones, to the integrated settings. But is this what is actually happening?

36 To the best of our knowledge at the time of writing, no Director General's Memorandum has yet been published on this topic.

Figure 3. Distribution of special education students by type of disability and level of functioning (selected disabilities)



Source: Nahum Blass, Taub Center | Data: Cohen, 2015, Appendix 11, 22

When we look at the data gathered in the Northern District during the pilot in 2018/2019, we find completely different results. Only 1% of 10,309 students assessed, accounting for a quarter of all students with special needs in the Northern District, were designated high functioning, and just 7% were designated moderate-high functioning (Weissblau, 2020).

Another finding in the report that casts doubt on the RAMA questionnaire's efficacy is the large gap between the level of functioning determined by the questionnaire, and the level ultimately determined by the eligibility and assessment committees in the Northern District and the rest of the country in 2018/2019 and 2019/2020. About 41% of applicants to the eligibility and assessment committees in the Northern District were designated by the questionnaire as high or moderate-high functioning (the figure for all of the districts was 33%), but the committees designated only 13% as such (22% for all of the districts. See Weissblau, 2020).

In light of the data gaps, two questions arise: Which are the more accurate data? And on which data did the Ministry of Education and the Ministry of Finance staff rely when they discussed the Special Education Law and recommended the changes to it? At this point, we have no firm answers to these questions. We can only say that, if they relied on the 2012 survey data (as the 2020 data could not have been available to them), then the pilot results thus far prove that they were greatly mistaken if they felt they could move large numbers of special education students to integrated frameworks and thereby save money. It could be, of course, that the eligibility and assessment committees are much less diagnostically strict than the questionnaire, whether because they take additional variables into account that the questionnaire disregards or to which it does not assign appropriate weight, or because they yield to pressure from the parent representatives, the municipalities, and the experts. If this is the state of affairs, then the system is facing a serious problem.

Whatever the situation, in the absence of a reliable answer to these two questions, the results of the pilot program to implement the Dorner Committee recommendations in the Northern District, and even more so regarding all of the districts, omit, at least at this stage, one of the two pillars on which the recommendations rest — a reliable tool for the assessment of level of functioning. The other pillar — equal budgeting for students with similar disabilities and levels of functioning — was already omitted from Amendment 11 to the Special Education Law. Ultimately, we may concur with the Knesset Research and Information Center assessment that, following the pilot program in the Northern District and the first year of nationwide operation, criticism of the Amendment grew significantly. The criticism was centered on the following: the use of the level-of-functioning (RAMA) questionnaire in the eligibility determination process; the lack of sufficient resources for the integration of special education students in regular education, including training and

guidance for regular education teaching staff; and improprieties on the part of the committees and the presence of budgetary considerations as a factor in determining eligibility for special education services and in determining the functional ability of students with special needs (Weissblau, 2020, pp. 26–27). “Although this was the first stage of a gradual implementation of the Amendment, aimed at assessing its implementation, the Ministry of Education never published current, detailed, and consistent information on the Amendment’s implementation in the Northern District, or on the Amendment’s contribution to the integration of special education students in regular education,” the Knesset Research and Information Center document concludes (Weissblau, 2020, p. 3).

Insights and recommendations

For decades, education professionals, researchers, and Israeli public figures have been in agreement regarding the social and educational importance of integrating students with special needs in regular schools. The broad consensus on this issue is clear and expressed in declarations by those in charge of the education system, in legislation, and in media coverage. Despite this, the share of students with special needs who are integrated in regular schools has remained nearly unchanged over the years, amounting to less than two-thirds of all special needs students. The Israeli education system’s powerlessness to meet the challenge of equal budgeting in special education has also been underscored by the integration rates of special needs students in regular educational institutional settings elsewhere in the world — rates much higher than those of Israel. The figures from other countries show that very high rates are indeed possible — it is all a matter of determination, commitment to a policy of integrating special needs students in regular settings, adopting appropriate educational approaches and methods, and formulating procedures and budgeting rules that allow it to happen.

Despite the theoretical consensus on the importance of strengthening the principle that the budget follows the child, actual implementation — up to now, at least — has failed. A large share of the students enrolled in separate settings receive higher budgeting than do students with the same disabilities and levels of functioning who study in inclusive settings. This gap has remained the same in spite of Supreme Court rulings on the issue, the Dorner Committee recommendations, and Amendment 11 to the Special Education Law.

This is all the more surprising given the great economic advantage embodied, as we see it, in the integration of special needs students in regular schools, due to the expected savings on teaching, transportation, and construction costs (for more on this topic, see Blass, 2022).

In order to ensure the successful implementation of the Dorner Committee recommendations, and to increase the number of integrated students, there must be better oversight of the process by which students with special needs are referred to the educational institutional settings appropriate to them, with due consideration of parental preferences. For this to happen, two important conditions must be met. One is the adoption of a reliable diagnostic tool, accepted by the Ministry of Education, parents, and experts in the special education field for the determination of level of functioning, to serve as the primary, if not the only, tool for student placement. The second condition is the assessment of *all students in special education* — those in separate settings and those in integrated settings — and their budgeting based on the disability designations and functional evaluations of the students in the class, rather than class designations based on the classification of the majority of its students.

We may assume that all of the foregoing is well-known and clear to Ministry of Education staff, who are well versed in the topic of special education budgeting. We therefore feel that the assumed high financial cost of implementation is not the true explanation for the failure, thus far, to implement the Dorner Committee recommendations; the reasons for the delay should be sought elsewhere. One reason which may not, perhaps, be openly stated but is doubtless central to the opposition to implementation, and which came to the fore subsequent to the first stage of the Holon pilot program, is the fear of professional confrontation with special education personnel employed in the separate settings. The budgeting of those settings would suffer from the re-designation of the students enrolled in them, and a switch from per-class to per-student budgeting could also be expected to cause difficulties. Other reasons that tend not to be openly discussed are conservatism and fear of change.

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Appendix

Major points along the timeline

1950	Establishment of the Special Education Department in the Ministry of Education, and of the first special education school
1988	Special Education Law enacted
1994	Master Plan for Implementation of the Special Education Law
2000	Report of the Margalit Committee to Examine the Implementation of the Special Education Law
2000	Yated Supreme Court decision
2002	Amendment 7 to the Special Education Law (the “integration section”)
2003	Marziano Supreme Court decision (first)
2005	Report of the Dovrat Committee on reform in Israel’s education system (the National Task Force for the Advancement of Education in Israel)
2007	Appointment of the Dorner Committee for the Examination of the Special Education System in Israel
2009	Report of the Dorner Committee
2009	Report of the Amichai Committee to Follow Up on Implementation of the Dorner Committee Recommendations
2011	Marziano Supreme Court Case (second)
2013	Holon pilot program — first implementation of the Dorner Committee recommendations on a trial basis
2014–2018	Continuation of the pilot programs
2014	Report of the Margalit Committee for the Formulation of Policy Principles for the Care of Students with Learning Disabilities
2015	Decision to conduct evaluation research for the various pilot programs, by a team from the Hebrew University of Jerusalem
2017	Start of the research effort (the work was completed in 2020, after Amendment 11 to the Special Education Law made it irrelevant)
2018	Amendment 11 to the Special Education Law
2019	Start of pilot program in the Northern District