



**Loss of Rights in the Name of Choice:**  
*The Dangers of Special Education Vouchers*



Policy Brief

April 2017



## Loss of Rights in the Name of Choice:

### *The Dangers of Special Education Vouchers*

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Texas public schools serve more than 460,000 students with disabilities, nearly nine percent of the total student population.<sup>1</sup> Public schools are required to admit and serve students of all abilities and unique needs. State law defines who is eligible to receive services (TEC §29.003(b)(2)), and local districts work with families to develop individualized education programs (IEP).

Public schools are held accountable for the education of students with disabilities, both through public reporting of state assessments and compliance with relevant state and federal laws. Additionally, parents or guardians of students with disabilities have methods of legal recourse if public schools are not adequately serving their children.

There exists a national political effort to promote traditional vouchers, Education Savings Account (ESA) vouchers, and tax credit scholarship vouchers in the name of assisting students with disabilities. While promoted as a solution for families dissatisfied with services in the public school system, in reality, special education vouchers are employed as a political gateway to universal vouchers.

While students with disabilities and their families can experience challenges in a public setting, voucher programs often feature similar problems, but lack the legal protections, transparency, and quality controls available to students in the public system. Vouchers for students with special needs represent a dangerous proposition that can lead to a loss of rights and quality educational opportunities.

## Loss of Rights in a Private Setting

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In 2016, The Council of Parent Attorneys and Advocates, Inc. (COPAA), a nonprofit network dedicated to protecting and enforcing the legal and civil rights of students with disabilities, conducted a review of special education voucher laws across the country. The organization found many states with this type of voucher program require families to waive their rights under the federal Individuals with Disabilities Education Act (IDEA). IDEA requires all federally funded schools to provide eligible students a free and appropriate public education (FAPE), including an IEP. IDEA also provides families with a method of recourse if the student's needs are not being adequately met.<sup>2</sup>

One of the voucher programs requiring students to forego federal rights is Ohio's Jon Peterson Special Needs Scholarship Program. Once the voucher is accepted, "parents are responsible for ensuring the child receives those services to which he is entitled under an IEP" and "no complaint may... allege a violation of requirements involving the implementation of the IEP and whether the child has received FAPE."<sup>3</sup>

According to the Texas Council for Developmental Disabilities (TCDD), under current Texas law, the Texas Education Agency (TEA) "has no responsibility to provide oversight or respond to complaints about access to special education in private schools." Therefore, no state authority would be responsible for upholding the rights of students with disabilities under a voucher plan. In other words, if a student does not receive individualized instruction or education in the least restrictive environment, the state would have no standing to intervene on behalf of the student.<sup>4</sup>

In addition to potential loss of rights in a voucher program, the COPAA report also warns of other losses, such as access to programs and transparency of student performance data. The report describes voucher programs that initially accept students, but later expel them for behavioral or other problems. Other voucher programs may accept some students with disabilities, but not all, especially those who may be "twice exceptional." The report concludes, "too little data exists to compare the academic outcomes of students with disabilities... participating in voucher programs to public school students."<sup>5</sup>

**The 2016 report released by the Council of Parent Attorneys and Advocates (COPAA) contained the following state policy recommendations intended to protect the rights of students with disabilities.<sup>6</sup> It is important to note no special education voucher programs authorized nationwide to date have included all of these features.**

- ✓ Conduct studies to evaluate test scores, graduation and retention rates, harassment reports, and similar measures, both for students accepting vouchers and for those who remain in public schools.
- ✓ Protect the legal rights of children; including full alignment with the purpose and provisions of the IDEA, Section 504, the ADA and all other civil rights laws.
- ✓ Include reasonable costs for transportation or other services necessary to make the choice equitably available to all families.
- ✓ Retain the requirement that all schools accepting vouchers must ensure all students participate in statewide assessments, making all test results publicly available.
- ✓ Retain high standards for teacher qualifications as required by the State.
- ✓ Provide oversight and monitoring of participating private schools.
- ✓ Assure the same level of accountability of participating private schools as any other school.
- ✓ Provide tools and supports to parents and children for navigating the often complicated nuances of school choice and give special attention to 1) a student's role in the school choice decision-making process, and 2) how best to educate families about their school choice options.

## No Guarantee of an Inclusive Environment

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Students with disabilities benefit from being included (mainstreamed) in the regular classroom, which is also mandated by federal law to the extent possible. The 2012 Council on Disability Progress Report began its chapter on learning by stating that “[s]chools in which students with and without disabilities learn side by side are essential to quality educational outcomes for all students,” emphasizing that,

**“ education must move forward, and not return to the failed segregation practices of decades past.”<sup>7</sup>**

In private settings, it is possible for students with disabilities to lose the opportunity of learning in an integrated, mainstreamed environment. One concern of the TCDD is that existing voucher models in other states limit students to “placement in private schools that focus exclusively on students with disabilities, in which case the educational experience offered would not be considered ‘inclusive’ in the community at large.”<sup>8</sup>

### Special Education Vouchers are a Political Gateway for Universal Vouchers

Special education voucher schemes have come to represent the camel’s nose under the tent of the national pro-voucher political strategy. Rather than providing sustainable and accountable solutions, special education vouchers are often the means to an end goal of universal vouchers.

State legislatures often first introduce a special education voucher pilot program or an ESA or tax credit scholarship voucher that is limited in scope and cost.

Then legislators expand the limited special education voucher in subsequent years or pass additional voucher programs with new names and expanded eligibility.

This phenomenon is, by design, carefully crafted by national pro-voucher groups. In a 2015 memo to the pro-voucher Friedman Foundation for Educational Choice, Bellweather Research & Consulting explicitly advised the foundation to continue advocating for small voucher programs focused on special education students as an entry point for pro-voucher state policy:

*ESA legislation that starts small, focused on special needs students, is a model that seems to work as it minimizes resistance. Legislators in states that don’t have ESAs think opening up the option to special needs students is the way to start. Those who have already done this are now looking for ways to widen the pool of eligible students.<sup>9</sup>*

## Only Public Schools Require Certified Teachers

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While it is crucial for teachers of special education classrooms to be well trained, for high-quality inclusion to occur, all educational providers must be adequately trained and continuously developed. According to the TCDD, “successful inclusion requires teacher education programs to prepare all educators and administrators, not only those providing special education services, to work with the full range of students in inclusive settings with access to ongoing professional development.”<sup>10</sup>

Many states offering vouchers for students with special needs do not require specific educator certification for private providers, either for teachers of special education classrooms or for general education teachers who instruct mainstreamed students. This is also the case in Texas, where requirements for teachers in accredited private schools are set by state-authorized accreditation organizations. The accreditation organizations may or may not require teachers to hold a teaching certificate, or to have taken any coursework on teaching students with special needs.

Oklahoma’s special education voucher program is an example of students losing guaranteed access to highly qualified teachers when they leave the public system. While Oklahoma state statute requires a bachelor’s degree for any private special education teacher in a voucher program, teachers who have taught for at least three years are exempted from the requirement, as are those who have “special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught,” even though these special skills are not described in statute or by the agency. One Oklahoma legislator noted during consideration of the voucher bill that once a child enters private school, “we take our hands off the wheel.”<sup>11</sup>

**The Texas Council for Developmental Disabilities, in their *School Choice in Texas Issue Brief*, warns that the current options related to vouchers and some ESAs are limited to:**

- 1) placement in private schools that may be ill-prepared to serve students with disabilities, or
- 2) placement in private schools that focus exclusively on students with disabilities, in which case the educational experience offered would not be considered “inclusive” in the community at large.<sup>12</sup>



# Voucher Disparities Especially Costly for Families of Students with Disabilities

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Vouchers are not likely to cover the costs of high-quality services for students with disabilities in a private setting. Due to the customized nature of these services, costs for services can vary widely. Some estimate the cost of educating a student is more than doubled if the student has a disability.<sup>13</sup>

School districts typically supplement with local dollars above and beyond state formula funds and federal dollars they receive to serve the needs of students with disabilities. Many voucher programs provide only the amount the state pays per student, or a portion of this amount. These vouchers alone are likely to be insufficient to cover the full cost of services for a student with disabilities in a private setting, and the voucher amount is likely to be far less than school districts actually spend for each student with disabilities.

The COPAA study confirmed voucher funding is rarely sufficient and generally does not cover the full cost of a child's education, so only families with adequate resources can choose to use a voucher. The study reported voucher values range from \$2,000 in Mississippi to \$27,000 for students with autism in Ohio. The median range is \$5,000-\$7,000, which in many states is not enough to cover the full cost of tuition, leaving families to make up the difference.<sup>14</sup>

A 2016 study of the Florida McKay scholarship program found the average scholarship payment is approximately \$7,000; the highest amount awarded is about \$13,000; and most private school tuitions for students with disabilities are \$40,000-\$100,000 per year.<sup>15</sup>

As a result, only families who can afford to supplement the voucher amount with their own funds are likely to benefit. An analysis by the *Arizona Republic* of Arizona's ESA program, which is open to students with disabilities as well as other students, found:

**“ It's largely the parents of disabled and special-needs children from wealthy and high-performing schools using the ESAs to put their children into private schools, while parents of disabled children from poorer districts are not. ”**<sup>16</sup>

This raises serious fairness concerns both because economically disadvantaged students with disabilities will not benefit from the voucher, and because economically disadvantaged students will remain in a public school that now has fewer resources to meet their needs.

## Conclusion

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Some parents of students with disabilities are legitimately frustrated trying to obtain adequate and appropriate services for their children in public schools. The solution, however, is not to deny the rights of these children, forego transparency and accountability for their educational program, and remove them from an inclusive setting.

Special education vouchers are a political gateway to broader vouchers, ESAs, and tax credit scholarship schemes that are unaccountable to taxpayers and weak on results. Vouchers for students with disabilities ask families to sacrifice too much, with no guarantee of transparency or positive results. Instead, parents, public schools, and the legislature must continue to work together to improve services through the public school system for this important population of students.

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