

**Ensuring Adequate Teachers for Students with Disabilities:
Rights and Resources are Crucial, School Privatization Undermines Both**

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My name is Jessica Levin and I am the Litigation Director at [Education Law Center](#) (ELC). ELC is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations.

For decades, ELC has advocated for the rights of students with disabilities. As an attorney, I have personally represented many students with disabilities, both in individual families' cases in which I saw up close the impact of insufficient resources on students' receipt of the free appropriate public education guaranteed by state and federal law, and in class action lawsuits that vindicated the rights of students with disabilities in entire school districts or statewide. Fulfilling the educational rights of students with disabilities is complex, requiring the dedication and expertise of many different types of educators and other school staff working in partnership with parents and families. But this work is not possible without sufficient funding and resources. As discussed below, many public school districts across the country unfortunately

lack adequate funding, and Congress has repeatedly failed to meet its funding target for special education services.

At ELC, I also direct [Public Funds Public Schools](#) (PFPS). PFPS is ELC's national campaign to ensure public funds for education are used to support and strengthen public schools. PFPS uses policy advocacy, research, and litigation to oppose the diversion of public funds to private educational uses, including all forms of private school vouchers.

My decade of experience as a special education attorney informs my understanding of the effects of school privatization (so-called "school choice") on students with disabilities. In order to give students with disabilities the high-quality education they deserve and are legally entitled to receive, it is essential to do two things: 1) vigorously protect the legal rights of these students to receive a free appropriate public education that meets their individual needs, and 2) ensure schools have sufficient resources to fulfill those legal rights. Private school vouchers do not help, and only harm, students with disabilities by actively working against both these goals. Vouchers rob students with disabilities of their legal rights and fund private schools that often actively discriminate against them. Vouchers do not provide sufficient funds for a private education that would meet students' needs, and they divert desperately needed resources away from the public schools that serve most students with disabilities and are the only schools in which their rights are legally guaranteed.

We Must Do More to Ensure Students with Disabilities Receive Needed Services and Supports, Including Qualified Teachers—To Do So, Adequate Funding is Key

The law requires public schools to meet the needs of students with disabilities, and that cannot happen without a sufficient workforce of qualified special education teachers. A recent research brief confirmed that teacher shortages in special education are a longstanding and urgent problem:

In March 2024, 51% of public schools nationwide reported that they would need to fill positions in Special Education before the start of the next school year, the most of any teacher specialty. This shortage has been consistent over decades, indicating deep-rooted and persistent challenges.¹

Moreover, special education teacher shortages present issues of racial justice, in addition to disability rights. Lack of certified special education teachers causes many schools to hire “uncertified or emergency credentialed teachers, despite federal regulations requiring fully certified staff. Because low-income, high-minority schools are the most likely to have uncertified teachers, the most vulnerable students are frequently taught by the least qualified teachers.”²

A number of strategies are necessary to ensure a diverse, qualified workforce of special educators. I am confident the other experts testifying before the Commission will discuss important strategies such as “Grow Your Own” programs. I want to focus on the role of adequate funding, without which it is impossible to meet the educational needs and legal rights of students with disabilities, including ensuring there are sufficient numbers of qualified teachers. Unfortunately, many school districts across the country face chronic and severe funding shortages, and special education has long been underfunded. The federal government and the states must work to change that.

Federal and State Laws Require Public Schools to Meet the Needs of Students with Disabilities

Several federal laws protect the rights of students with disabilities. The central federal special education statute is the Individuals with Disabilities Education Act (IDEA), with additional rights provided by Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

¹ Elizabeth Bettini & Allison Gilmour, [*Addressing Special Education Staffing Shortages: Strategies for Schools*](#) 1, Ed Research for Action (Sept. 2024).

² *Ibid.*

States also have special education statutes and regulations, which frequently enhance the protections provided under IDEA.³

IDEA requires all states receiving federal education funding to provide every child with a disability with a “free appropriate public education” (FAPE).⁴ The law defines FAPE as “special education and related services” that are provided at public expense, meet the standards of the State educational agency, and conform with a student’s individualized education program, commonly known as an IEP.⁵ The U.S. Supreme Court has affirmed that an appropriate education “consists of educational instruction specially designed to meet the unique needs of the [student with a disability], supported by such services as are necessary to permit the child to benefit from the instruction.”⁶

A Sufficient Force of Qualified Teachers is Essential for Meeting the Needs of Students with Disabilities

The importance of teachers in providing a high-quality education cannot be overstated. The Center for Education Policy Research at Harvard University focuses on teacher effectiveness because “[r]esearch consistently shows that teaching is the single most important school-based factor in a student’s academic growth.”⁷ Special education teachers have particular training and skills that are essential to providing students with disabilities the individualized accommodations and supports they need to succeed.

³ See, e.g., N.J.A.C. 6A:14 (New Jersey’s special education administrative code).

⁴ 20 U.S.C. §1412(a)(1).

⁵ 20 U.S.C. § 1401(9).

⁶ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 188-89 (1982). See also *Endrew F. v. Douglas Cnty. Sch. Dist.*, 580 U.S. 386 (2017).

⁷ Center for Education Policy Research, Teacher Effectiveness, <https://cepr.harvard.edu/teacher-effectiveness> (last visited Nov. 7, 2024).

Congress recognized the importance of qualified teachers in fulfilling the rights of students with disabilities when it enacted the IDEA:

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible . . .⁸

Thus, IDEA requires states to establish and maintain standards to ensure that special education staff are “appropriately and adequately prepared and trained,” and have “the content knowledge and skills to serve children with disabilities.”⁹

Adequate Funding is Needed to Ensure Sufficient, Qualified Special Educators

Research shows that adequate and equitable school funding is essential to ensuring all students have access to a high-quality public education.¹⁰ Pronouncements that money is irrelevant in providing an adequate public education to all students are outdated and disproven: “New research finds that increased spending on public education improves student achievement, thereby debunking the notion that ‘money doesn’t matter’ and making the case for greater investment in preschool-12 public education.”¹¹

It is axiomatic that in order to ensure sufficient qualified teaching staff in public schools, school districts must have the funding necessary to hire those teachers. Research has confirmed that factors such as stagnant wages contribute to teacher shortages, with fewer choosing to enter

⁸ 20 U.S.C. 1400(c)(5)(e).

⁹ 20 U.S.C. 1412(a)(14)(A).

¹⁰ See, e.g., C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question*, National Bureau of Economic Research, Working Paper No 25368 (2018).

¹¹ Education Law Center, *Money Matters: Evidence Supporting Greater Investment in PK-12 Public Education* (Mar. 2023).

the profession, and that bonuses can help fill vacancies.¹² In addition to salaries, a lack of other basic school resources, without which special education teachers cannot do their jobs well, such as curricular resources, contributes to high turnover of these educators.¹³ Moreover, research has found that “[o]verwhelming workloads are a major factor contributing to special education teachers’ burnout and intent to leave their jobs,” exacerbating the shortage.¹⁴ We need more special education teachers in our public schools, with the funds to pay them an appropriate wage and to provide them with the basic resources and supports necessary for them to do their jobs well and remain satisfied in their demanding posts.

Yet far too many districts across the nation lack sufficient funding to meet the needs of their students, particularly those with elevated needs such as students in poverty and students with disabilities. The latest edition of Education Law Center’s national school funding report found “vast disparities in per-pupil funding levels persist” and “[m]any states lack the fiscal effort that is required to adequately fund schools: the worst funded states are often guilty of low effort, indicating a failure to prioritize public education.”¹⁵ Additionally, “[f]ar too few states progressively distribute funds to high-poverty districts: more than half of the states evaluated have either flat or regressive funding distributions that disadvantage high poverty districts.”¹⁶

The federal government is also falling short of its commitments to public school funding, particularly with regard to students with disabilities. Although the majority of school funding revenue comes from state and local sources, when Congress enacted the IDEA in 1975, it

¹² Bettini & Gilmour, *supra*, at 4, 6.

¹³ *Ibid.* at 2.

¹⁴ *Ibid.* at 9.

¹⁵ Danielle Farrie & Robert Kim, *Making the Grade: How Fair is School Funding in Your State?* 3, Education Law Center (2023).

¹⁶ *Ibid.*

promised to provide a significant portion of the funds needed to meet the law’s requirements: 40% of the average cost of special education.¹⁷ However, actual federal funding for IDEA has never come close to that and is usually well below half of this “full funding” amount.¹⁸

Lack of funding for special education expenses causes shortages in staff and other resources for students with disabilities, as well as cuts to resources for the general education population when funds are shifted to meet special education mandates. (Such cuts might even include the interventions that help prevent some students from being classified for special education in the first place.) In Wisconsin, for example, the state’s low reimbursement rate for special education costs “forces school districts to divert funds slated for the education of all students to cover the shortfall in special education funding.”¹⁹ This is a pattern repeated across the country. And again, it has intersectional effects, disproportionately impacting low-income students.²⁰

If we follow research rather than ideology, it is clear that investment in evidence-backed programs and resources in our public schools is the key to providing students with disabilities, and all students, the high-quality education that they deserve and that is their legal right. We must find the political will, at all levels, to finally make these investments across the country.²¹

¹⁷ National Council on Disability, *Broken Promises: The Underfunding of IDEA* 1 (Feb. 2018).

¹⁸ *Ibid.* See also National Association of Elementary School Principals, *Funding Falls Short for Students with Disabilities* (Nov. 20, 2023) (noting that since IDEA was enacted “the closest the federal government has come to reaching the 40 percent commitment was 18 percent in 2004-2006, and current funding is at less than 13 percent”).

¹⁹ Mary McKillip & Danielle Farrie, *Wisconsin’s Special Education Funding Crunch: How State Underfunding Disproportionately Harms Students in High-Poverty Districts* 1, Education Law Center (Oct. 2022).

²⁰ *Ibid.*

²¹ Of course, implementing radical and imprudent proposals such as significantly downsizing or eliminating the U.S. Department of Education, which enforces federal special education laws, or key federal funding programs, such as Title I or IDEA, would have devastating negative impacts

Private School Vouchers Won't Solve Teacher Shortages, and They Harm Students with Disabilities in Myriad Ways

School privatizers claim that voucher programs are intended to help the most vulnerable, highest-need students obtain a better education than they can receive in public schools. But that is not truly their goal, and that is not actually what happens. ELC is aware of no credible evidence that private school vouchers can help solve teacher shortages. There is, however, an ever-mounting body of evidence that vouchers harm students, particularly vulnerable students such as those with disabilities, in numerous ways.²²

In reality, students who use vouchers experience worse educational outcomes than their public school peers, in private schools that are subject to few if any quality and accountability standards. Voucher students lose most of their rights under special education laws, as well as other fundamental civil rights. And they experience discrimination by voucher-funded schools. At the same time, high-need students, who are frequently rejected by private schools, are concentrated in public schools that are often already underfunded. Due to the diversion of public funds to vouchers, those public schools have even fewer resources to meet the needs of students with disabilities.

But helping high-need students, including students with disabilities, is not really the goal of voucher programs. Although some of the earliest voucher programs were targeted to students with disabilities, it has become clear that the end game was universal expansion of voucher eligibility—the ostensible goal of helping students with disabilities was a foot in the door for much larger programs that would wreak havoc on state budgets and student wellbeing. Arizona

for high-need students, including students with disabilities, in nearly every school district in the country.

²² See the research collected by Public Funds Public Schools at <https://pfps.org/research/>.

and Florida are prime examples of that trajectory, starting off with limited voucher programs for students with disabilities that were continuously expanded despite evidence of their negative effects, today siphoning off billions of dollars to disastrous and unaccountable universal voucher programs.²³

A Brief Note on the Different Forms of Private School Vouchers

Private school vouchers come in many forms:

- Conventional vouchers pay for a student’s private school tuition with public funds.
- Education Savings Account vouchers, often called ESAs, are public funds deposited into a personal account that can be used to pay for a student’s private school tuition as well as a wide range of other private education expenses, such as tutoring, online coursework, transportation, and even homeschooling.
- Tax credit scholarship vouchers provide individuals or corporations with a tax credit, often 100% or close to it, to send money they would otherwise owe in state taxes to private organizations that hand out vouchers.
- Legislatures have recently begun to enact large-scale refundable tax credits for private education expenses, providing families that can afford to front the costs of private school with a tax credit reimbursement for those expenses.

Any of these types of vouchers can have specific eligibility criteria, such as a family income limit, or have “universal eligibility,” providing even the wealthiest families and those who have never sent their children to public school a subsidy of thousands of dollars in public funds for private education. They also have many different names, such as “hope scholarships” and “freedom accounts.”

The shape-shifting of voucher programs is a deliberate strategy by their promoters to obscure their true nature in order to avoid legal challenges, negative policy connotations, and community and stakeholder opposition. But each form of vouchers diverts public funds to private

²³ Samuel E. Abrams & Steven J. Koutsavlis, *The Fiscal Consequences of Private School Vouchers*, Public Funds Public Schools (2023); Shar Porier, “[ESA Vouchers Have Cost Arizona Taxpayers Nearly \\$1 Billion](#),” *Herald Review* (Jan. 31, 2024); Leslie Postal, “[Florida’s Voucher Plan Could Cost Public Schools Nearly \\$4 Billion, Report Says](#),” *Orlando Sentinel* (Jan. 24, 2023).

education uses, with all the attendant harms, and they must be recognized as such.

Vouchers Specifically Directed to Students with Disabilities Are Dangerous Policies

Some voucher programs are specifically targeted to students with disabilities. If limited evidence of positive effects is presented about such programs, it is important not to conflate them with general use vouchers, which are ostensibly open to students with disabilities, and where even less attention is paid to their particular needs.

But the facts point to a different conclusion: that even vouchers specifically for students with disabilities are dangerous programs that do not protect their rights or promote their educational success. Although these vouchers are supposedly designed to ensure students with disabilities get a “better” education than they would receive in public schools, they are similar to most general-use vouchers in lacking quality and accountability standards that would have any chance of making that a reality (explained further in the next section). And although proponents claim that these programs are designed to promote the rights of students with disabilities, the laws are still generally written so that students lose the vast majority of their special education rights under federal law (also explained further below).

In 2020, Education Law Center and other advocacy groups analyzed the state-collected data on the Arkansas voucher program for students with disabilities, finding “inequitable enrollment statistics, troubling data inconsistencies, and little accountability for the public funds spent on the voucher program.”²⁴ Key findings included:

- Of those for whom data was available, there [were] significant racial disparities: 5% of voucher students were Latinx, 12% were Black, and 78% were White. Students with disabilities in Arkansas public schools, on the other hand, [were] 11% Latinx, 23% Black, and 61% White.

²⁴ Public Funds Public Schools, “Public School Advocates Urge Arkansas Legislature to End Broken Voucher Program” (Sept. 10, 2020), <https://pfps.org/public-school-advocates-urge-arkansas-legislature-to-end-broken-voucher-program.html>.

- Due to participating private schools’ inconsistent reporting and data collection standards, the Free or Reduced Price Lunch (FRPL) status of 44% of participating students [was] unreported. Of available data, just 30% of voucher students were eligible for FRPL, while 60% of Arkansas public school students [were] eligible.
- Only three-quarters of participating private schools [were] accredited, while a quarter [were] on some type of path to accreditation. Thus, schools participating in the voucher program [were] receiving taxpayer dollars without completing a rigorous accreditation process, let alone being held to the same accountability and reporting standards as public schools.
- Nearly 20% of voucher students [had] left their private schools, for reasons including dismissal, inability to pay tuition amounts not covered by their voucher, and lack of access to transportation.²⁵

As generally happens with vouchers, the evidence was ignored: Arkansas continued to operate this program, eventually enacted universal vouchers, and many other states enacted vouchers specifically for students with disabilities or programs with broader eligibility.

Vouchers Lack Quality and Accountability Standards and Lead to Worse Outcomes

The laws that establish and govern voucher programs are notably devoid of meaningful quality or accountability standards.²⁶ Most often, there are few to no curricular requirements, teacher certification mandates, or other standards to ensure participating private schools are providing an adequate education—or really, any education at all—to voucher students. These programs also increasingly lack standardized testing and reporting requirements that would allow the public to measure their effects.

However, the data we do have on academic outcomes for voucher students is dismal. Study after study shows that vouchers not only fail to improve education outcomes, they actually have a detrimental academic impact on participating students. Studies in Louisiana, Indiana, and Ohio found that students who attended private schools using vouchers actually performed worse

²⁵ *Ibid.*

²⁶ See, e.g., Arianna Prothero and Alex Harwin, “[Private School Choice Programs Fall Short on Transparency, Accountability](#),” *Education Week* (Feb. 28, 2020).

than their similar peers in public schools.²⁷ As ELC Senior Fellow and Michigan State University Professor Josh Cowen has explained, the negative educational effects of voucher programs are “on par with what the COVID-19 pandemic did to test scores, and larger than Hurricane Katrina’s impacts on academics in New Orleans.”²⁸

Vouchers Often Fund Virtual Education, Which Inadequately Serves Many Students with Disabilities

Vouchers are often used to fund virtual education. But research shows that virtual learning is simply not an effective, long-term substitute for brick and mortar schools.²⁹ Because private virtual schools are not held accountable in the same way as public schools, they usually don’t report data on funding, student outcomes, and other important measures, and are largely absent from studies of virtual education.³⁰ But based on what is known about virtual schools, including virtual charter schools, as well as extensive research on the harmful effects of voucher programs, it is clear that voucher-supported, private virtual schools are a misuse of scarce public resources.³¹

Virtual education is particularly ineffective and inappropriate for many students with

²⁷ Jonathan N. Mills & Patrick J. Wolf, [The Effects of the Louisiana Scholarship Program on Student Achievement after Four Years](#), University of Arkansas, EDRE Working Paper 2019-10 (2019); Megan Austin, R. Joseph Waddington & Mark Berends, [Voucher Pathways and Student Achievement in Indiana’s Choice Scholarship Program](#), The Russell Sage Foundation Journal of the Social Sciences, 20-40 (2019); David Figlio & Krzysztof Karbownik, [Evaluation of Ohio’s EdChoice Scholarship Program: Selection, Competition, and Performance Effects](#), Thomas B. Fordham Institute (2016).

²⁸ Josh Cowen, “[How School Voucher Programs Hurt Students](#),” *Time* (Apr. 19, 2023).

²⁹ See, e.g., In the Public Interest, [Why Online Education Can’t Replace Brick-and-Mortar K-12 Schooling](#) (2020).

³⁰ See, e.g., National Education Policy Center, [Virtual Schools in the U.S. 2019](#) (Alex Molnar ed., 2019).

³¹ Public Funds Public Schools, [Vouchers for Private Virtual Education Are Misspent Public Money](#) (2020).

disabilities.³² Many of these students are not able to learn well without in-person instruction, due to difficulties such as challenges attending to or using a computer. Furthermore, some of the services they require, such as occupational and physical therapies, are particularly difficult to provide virtually. Additionally, the burdens of virtual education for students with disabilities fall disproportionately on low-income families, who are less likely to have reliable internet connectivity, personal devices, and an adult available to be present with the student during the school day.³³

Students Who Use Vouchers Lose Most of their Special Education Rights, and Parents Are Often Not Aware that These Rights Have Been Relinquished

Federal law provides three main sets of statutory protections for students with disabilities. First, as explained above, the IDEA ensures public school students receive a FAPE, including a detailed IEP and services delivered by certified special education teachers.³⁴ The IDEA also protects students with disabilities from segregation within the school system by requiring they be educated with their non-disabled peers to the maximum extent appropriate, in what is called the “least restrictive environment” (LRE).³⁵ Additionally, the IDEA protects students from disciplinary action, such as lengthy suspension or expulsion, based on behavior that is caused by their disabilities.³⁶ Finally, the IDEA gives parents access to dispute resolution procedures, such as the right to request a due process hearing, to resolve special education disputes.³⁷ Second,

³² See, e.g., June Ahn & Andrew McEachin, *Student Enrollment Patterns and Achievement in Ohio’s Online Charter Schools*, Educational Researcher, 46(1), 44-57 (2017); *Abigail P. v. Old Forge Sch. Dist.*, 105 F.4th 57 (3d Cir. 2024).

³³ Katie Reilly, “[The Achievement Gap is ‘More Glaring Than Ever’ for Students Dealing with School Closures](#),” *Time* (Mar. 26, 2020).

³⁴ 20 U.S.C. §§ 1401(26)(A), 1412(a)(1), (a)(4), (a)(14)(C), 1414(d).

³⁵ 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 104.34.

³⁶ 20 U.S.C. § 1415(k)(1)(E)–(G); 34 C.F.R. §§ 300.530–.536.

³⁷ 20 U.S.C. §§ 1415(b), (f); 34 C.F.R. § 300.507(a)(1).

Section 504 of the Rehabilitation Act prohibits disability-based discrimination in programs or activities that receive money from the U.S. Department of Education.³⁸ Section 504 also requires school districts to provide all eligible students with disabilities a FAPE in the LRE,³⁹ and it applies to a broader range of students than the IDEA.⁴⁰ Third, Title II of the Americans with Disabilities Act (“ADA”) prohibits disability-based discrimination by state and local governments, including public schools, and requires that public schools be physically accessible.⁴¹

When students with disabilities use vouchers to attend private schools, they forego the vast majority of these protections. They lose the right to an individualized education designed to meet the needs of each eligible student with a disability—in other words, a student with a disability who is using a voucher gives up his or her legal right to receive the specific programs and services necessary for that student to make adequate educational progress.⁴² Additionally, students using vouchers lose protections against unfair discipline and intra-school segregation.⁴³ And parents generally give up their rights under IDEA to receive notification of, provide input on, and seek judicial remedies regarding most changes to their children’s education and services.⁴⁴

Finally, Title II of the ADA does not apply to private schools. While some private

³⁸ 34 C.F.R. § 104.4(a).

³⁹ 34 C.F.R. §§ 104.33(a), 104.34(a)

⁴⁰ See 29 U.S.C. §§ 705(20), 794; 34 C.F.R. § 104.3(j).

⁴¹ 42 U.S.C. §§ 12131(1), 12132; 28 C.F.R. § 35.130(a).

⁴² See 20 U.S.C. § 1412(a)(10); 29 U.S.C. § 794(b)(1); National Council on Disability, *Choice & Vouchers—Implications for Students with Disabilities* 59–66 (2018); Claire Raj, *Coerced Choice: School Vouchers and Students with Disabilities*, 68 Emory L.J. 1037, 1059 (2019).

⁴³ See 20 U.S.C. § 1415(k)(1)(E)–(F); 29 U.S.C. § 794(b)(1); National Council on Disability, *Choice & Vouchers*, *supra*, at 59-66.

⁴⁴ Raj, *supra*, at 1058–59; U.S. Department of Education, *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools* 30 (2011).

schools are covered by Title III of the ADA, which prohibits discrimination in public accommodations, that statute neither limits private schools' ability to deny enrollment to students with disabilities nor requires them to provide an appropriate education or services.⁴⁵ Moreover, Title III does not cover private religious schools at all,⁴⁶ even though they comprise the majority of private schools nationwide.⁴⁷ In such schools, in the absence of state-law protections, students with disabilities are not entitled even to basic ADA accommodations, such as accessible entrances, desks, and toilets.

Parents are often unaware of the loss of these rights. A seminal GAO report found that “in school year 2016-17, 83 percent of students enrolled in a program designed specifically for students with disabilities were in a program that provided either no information about changes in IDEA rights or provided information that [the U.S. Department of Education] confirmed contained inaccuracies about these changes.”⁴⁸ Although some voucher statutes now pay lip service to the idea that parents must be informed of the loss of federal special education rights when they participate in the program, it is unclear whether and how well this is happening. As voucher programs become universal, and safeguards in voucher laws generally decrease, the potential for lack of information or misinformation that can be devastating to families of students with disabilities only increases.

Vouchers Can Fund Schools that Actively Discriminate Against Students with Disabilities

The loss of legal rights for students with disabilities who use vouchers to attend private

⁴⁵ See 42 U.S.C. §§ 12181–12189.

⁴⁶ 42 U.S.C. § 12187

⁴⁷ See Stephen P. Broughman, Adam Rettig & Jennifer Peterson, U.S. Department of Education, National Center for Education Statistics, *Characteristics of Private Schools in the United States: Results from the 2015–16 Private School Universe Survey 2* (2017).

⁴⁸ U.S. Government Accountability Office, *Private School Choice: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities* (2017).

schools is not theoretical. Many private schools, including those eligible to receive vouchers in states with voucher programs, have policies that explicitly discriminate against or disadvantage students with disabilities. Here are a few of the numerous examples throughout the country of private schools with such policies:

- Emmanuel Christian School in West Virginia states: “ECS is not permitted to accept or retain students who. . .exhibit definite learning or behavioral disabilities.”⁴⁹
- Our Lady of Perpetual Help School in Tennessee states, “Our Lady is not able to meet the needs of every learner. . . . In the event that we cannot meet your child’s needs, every effort will be given to assist in transitioning to another school or program.”⁵⁰
- All Saints Catholic School in Florida states that “any student with a disability does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school under the Individuals with Disabilities Education Act (IDEA)”⁵¹

As these examples demonstrate, some private schools have admissions or other criteria that outright or in effect preclude students with disabilities from attending, while others make clear they will not provide special education services or accommodations to students with disabilities.

Vouchers Do Not Cover the Full Costs of Private Education – Especially for Students with Disabilities

Vouchers frequently do not come close to covering the full cost of private school tuition, let alone the expense of other essentials that are provided for free in public schools.⁵² Whereas public schools provide goods and services such as transportation, books, and free or reduced-

⁴⁹ Emmanuel Christian School, *Student Handbook 6*, <https://www.emmanueleagles.com/handbook> (last visited November 8, 2024).

⁵⁰ Our Lady of Perpetual Help, *2024-2025 Student and Parent Handbook 34*, [https://assets.speakcdn.com/assets/2983/olph_cdom_handbook_2024-2025_final_draftdocx_\(1\).pdf](https://assets.speakcdn.com/assets/2983/olph_cdom_handbook_2024-2025_final_draftdocx_(1).pdf) (last visited Nov. 8, 2024).

⁵¹ All Saints Catholic School, *2023-2024 Student/Parent Handbook 27*, <https://allsaintscatholicsschool.net/wp-content/uploads/2023/08/2023-2024-Final-Handbook-Student.pdf> (last visited November 8, 2024).

⁵² See, e.g., Meghan Casey Whittaker, *The Average Voucher Doesn’t Cover Full Cost of Private School, NCLD Data Analysis Shows*, Understood (Nov. 21, 2017).

price meals, these and other key resources must often be purchased separately by families using vouchers to attend private schools. Thus, vouchers simply shift the cost of many core educational resources to families, or put them out of reach for all but the wealthiest.

This reality is magnified for students with disabilities, whose education often costs several times that of a student without disabilities. Whereas few voucher programs provide more than \$10,000 per student, and often far less, some sources report that private school tuition for a student with disabilities can range from \$40,000 to \$100,000.⁵³ Furthermore, private schools that enroll students with disabilities may charge additional fees and costs for special education services that public schools are required to provide for free.

Voucher Programs Divert Funding and Resources from Public Schools, While Concentrating Higher-Need Students Within Them

As noted above, public schools around the nation are chronically underfunded. Diverting much needed funding from public education to pay for private school vouchers exacerbates that underfunding. For example, a 2017 study of the voucher program in Wisconsin found that the program's expansion posed "a significant fiscal threat to public schools."⁵⁴ Meanwhile, many voucher programs have expanded from small "experiments" to multi-billion-dollar boondoggles. The threat to state budgets and public school funding posed by voucher programs has increased dramatically as states have expanded these programs to wider swaths of students and as more than ten states have made them universal.

At the same time they divert funding from public education, voucher programs concentrate higher-need students, such as students with disabilities, in public schools. Reasons

⁵³ Selene Almazan & Denise Stile Marshall, Council of Parent Attorneys & Advocates, *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice* 16 (2016).

⁵⁴ Ellie Bruecker, *Assessing The Fiscal Impact of Wisconsin's Statewide Voucher Program* 4-5, National Education Policy Center (2017).

include those explained above: many private schools refuse to serve these students, and public schools are the only schools in which they retain their special education rights. Often, students who took a voucher but did not receive the promised benefits return to public schools, but the funds that had already been diverted to the private school via a voucher do not return with them. Thus, voucher programs leave public schools—which welcome all students and serve the vast majority of them—with fewer resources to serve a higher-need student population. This is not a solution to teacher shortages or the other challenges facing students with disabilities, nor does it promote any of the goals of this Commission.