



National Down Syndrome Congress Policy Brief

Potential Impact of Proposed Federal Vouchers

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Executive Summary

Individual families make decisions about whether a private school is best for their child.

From a policy perspective for the broader Down syndrome community, NDSC must look at the impact on public schools, where most students with Down syndrome will likely still be educated, if federal education funding is used for vouchers.

Students who would use proposed federal vouchers for private schools would lose rights under IDEA and other civil rights laws.

There would be no federal accountability for academic achievement.

Public school funding would be depleted for those who remain there.

This creates equity concerns for those who cannot afford the costs of private schools that are not covered by the federal funds, those who live in areas without private schools, those with more significant needs who won't be accepted by a private school, and those who are discharged from private schools because of behavior or other intensive needs and then end up back in public school.

If the use of federal funding for vouchers and similar programs is seriously considered, it will be important to address the concerns raised in this brief.



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Background

NDSC recognizes that there are parents who place their children in private schools for a variety of reasons, including difficulty in getting their child's rights and educational needs met in public schools under the Individuals with Disabilities Education Act (IDEA). NDSC also recognizes that many parents are very concerned about vouchers that use public money for private schools.

A student who uses a voucher to attend private school is considered a parentally placed student under IDEA. This is different from a situation where students are placed in a non-public school by the local education agency (LEA) to ensure a free appropriate public education is available to the child. It is also different from the choice to attend charter schools. [Although charter schools have some of their own issues for students with disabilities, they are considered public schools.](#) In situations where the LEA places the student in private school or the student goes to a public charter school, all federal civil rights statutes apply, including IDEA.

Many states already have vouchers. However, so far, federal funds have not been used for these programs, except in the District of Columbia (DC). In light of proposals to use IDEA and Elementary and Secondary Education Act (ESEA-also known as ESSA) funds for voucher programs, it is important to understand the potential consequences for an individual student with Down syndrome, as well as for the broader community of students with intellectual and developmental disabilities who are mostly educated in public schools. Many of the concerns discussed in this brief already arise with existing State-funded vouchers and other programs for private school choice. However, these State programs are not the subject of this brief.

Federal Rights and Private Schools

Students using a voucher to attend private school are considered parentally placed and are not provided with an Individualized Education Program (IEP) or with any other rights and protections under IDEA and ESEA. Also, the monitoring, accountability, and technical assistance that takes place under these federal laws for public schools does not apply to private schools. Although there is some applicability of the anti-discrimination provisions of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act to private school, the rights are limited, especially for religious



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schools. For example, ADA requirements, including reasonable accommodations, do not apply to religious schools. It is important to note that despite advocacy efforts to include language requiring schools in the federally funded DC voucher program to provide students with the same civil rights protections and rights and protections under IDEA as students in public schools, the bill funding this program does not include this language. This example raises concerns about how these rights may also be excluded in any expansion of federally funded private school voucher programs.

Some families make an informed decision to give up their child's IDEA rights when placing their child in a private school. However, others do not realize their children will lose these rights and all the implications of this loss. For example, there is no right to therapies and other supportive services including transportation, usually provided by public schools. If there is a dispute about the student's education there are no IDEA due process rights.

In the event of behavioral issues that are a manifestation of the student's disability, unlike public schools, a private school can still decide to unilaterally expel the student unless the school gets federal funding and Section 504 applies. It is unclear whether a school's acceptance of federal funds through vouchers or education savings accounts (ESAs) would be considered "federal funding" for purposes of Section 504. Because voucher and ESA funding is provided to parents, who are the end beneficiaries of the funding, rather than directly to private schools, this could break the chain of federal funding, and therefore Section 504 protections would not apply.

Students whose needs cannot be met and are discharged from a private school are then required to start the evaluation and planning process under IDEA, if they then enroll in public school. During this time, the student is in school without needed services and support.

In addition to parentally placed students losing rights under IDEA, the private schools they attend are not held accountable for the academic achievement of students with disabilities. Under the Every Student Succeeds Act (ESSA), public schools must provide data specifically about the academic performance of students with disabilities. In certain circumstances public schools that are consistently underperforming for these students would get extra funding to work on improvement. Also, public schools are required to share the data on the students with disabilities subgroup with parents through the school report card. There also may be differences in requirements to have certified teachers in private schools.

As discussed, a parentally placed private school student with a disability has no individual rights under IDEA. However, the law does require that an LEA spend a proportionate amount of its IDEA funds to provide "equitable services" to this group of students, which could include direct and/or indirect services. In making these decisions, IDEA requires that the LEA engage in timely and meaningful consultation to determine which students with disabilities from this group will be designated to receive special education and related services. Therefore, some of these parentally placed private school students with disabilities may not receive any special education and related services.

ESSA also has a provision for "equitable participation" for private school students. A portion of ESSA funds received by each LEA is designated to address the needs of eligible students. Private schools choosing to take advantage of services supported by ESSA funds work together with LEA staff to determine and deliver equitable services and opportunities. As is true under IDEA, there is no individual right to this funding.

Depletion of Public School Funding

Any direct use of IDEA or ESEA funds for vouchers or other ways to pay for parental placement in private schools will very likely deplete federal funding for students with disabilities who remain in public school. Most public school funding comes from State and local budgets, in part because Congress has never fully funded IDEA. Nonetheless, States and districts rely on federal funding to provide services to students with disabilities, as well as to help with the salaries and training for teachers and specialized instructional support personnel (e.g. physical, speech, occupational therapists).

Even though some individual costs of educating a student with a disability are reduced when that student is parentally placed in a private school, there is still depletion of funds because fixed expenses that benefited that student also must be spent for the students who remain. Examples of these fixed expenses are personnel costs for administrative staff, bus drivers, teachers, and specialized instructional support personnel, utilities, maintenance and capital expenditures to fix or replace aging schools. There is also the cost of having to provide equitable services to private school students under IDEA.

Congress acknowledged the problem of the loss of federal funding for public schools, including charter schools, when the law creating the DC voucher program

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was enacted in 2004. In that year and for every year since then, Congress has provided many millions of dollars to the DC Public Schools and public charter schools systems in addition to funding for the voucher program. The law specifically states that the intent of this approach was to ensure that progress would continue to be made to improve DC traditional public schools and public charter schools and to ensure that funding for the voucher program would not lead to a reduction in funding for these public schools.

Equity Concerns

Unless enough funding is provided to pay the full costs of attending private school, including tuition, transportation, materials and any therapies/supportive services not provided by the LEA through the IDEA equitable services requirement, students who come from families who cannot afford to pay the difference cannot attend the private schools. The same is true for students, especially in rural areas, where there are few, if any, private school options. There is also the issue of private school admissions policies that block admission of many students with disabilities, especially those with more significant needs. Often the student's only option is to stay in public school or attend a special education private school with no inclusive opportunities. The other group of students who may not be able use vouchers are those who have previously been discharged or expelled from private schools.

When talking about school choice policies it is important to acknowledge the students who for various reasons would not have a choice. There is a concern that students from economically disadvantaged families, students who live in rural areas and those who have significant disabilities would be overrepresented in a public school system that is operating without the funds currently allocated for public school education.

Conclusion

It is a family decision whether to send their child to private school. However, from a broader policy perspective there are many concerns about proposals to use federal education funding for vouchers and similar programs. If these proposals get serious consideration by Congress, it will be important to raise the concerns in this brief and advocate for these concerns to be addressed.

Resources

[Congressional Research Service-Rights of Students with Disabilities Under IDEA, Section 504 and the ADA](#)

[Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private School](#)

[COPAA resource on Voucher Programs and Students with Disabilities](#)

[National Council on Disability Choice and Vouchers- Implications for Students with Disabilities](#)

[NEA report on ESSA and Equitable Participation](#)