

Voucher Schemes: A Bad IDEA for Students with Disabilities

Students with disabilities are entitled to the services and accommodations they need to receive an appropriate public education and achieve postsecondary success. NEA believes proactive early intervention, professional development, and full funding of the Individuals with Disabilities Education Act (IDEA) are the best ways to improve the quality of education for students with disabilities, reduce the number of children inappropriately referred for special education services, and provide great public schools for all children, including those with special needs. We should focus on these proven strategies rather than voucher schemes that offer parents empty promises while asking them to give up federally protected civil rights.

— NEA President Dennis Van Roekel

The basic premise of the Individuals with Disabilities Education Act (IDEA) is that all children with disabilities have a federally protected civil right to a free and appropriate public education that meets their specific needs in the least restrictive environment possible. Those who want to privatize education claim that vouchers would provide children with special needs better access to education and services than are available under IDEA. The reality is that parents and children would lose a multitude of rights if special education were funded through vouchers or through education tax credits, with no guarantees that sacrificing these rights would yield a better quality education or better services. This is why NEA opposes vouchers for students with disabilities.¹ The best way to ensure that every child, including those most vulnerable, has access to a free, quality education is to invest in our public school system and in strategies that have been proven effective for children with special needs.

IDEA requires that each child identified as having special needs be provided an Individualized Education Program (IEP) that describes the special education and related services that child will need, as well as the supports and resources that will be needed by the school personnel who will be implementing the IEP. Parents must be included in the team convened to develop, evaluate, and modify IEPs. Services identified in the IEP must be provided at no charge to the student, parent or guardian. States and school systems may not refuse to provide services based on expense, or on the grounds that a child's disability is too severe

to benefit from special services. Children with special needs are entitled to participate in classroom and extracurricular activities with other children to the maximum extent appropriate to their individual needs, with the use of such services and modifications of the curriculum as needed. Children with special needs whose behavior could result in disciplinary action are entitled to a hearing to determine whether their behavior is based on inadequately treated needs, and remain entitled to appropriate education and services while suspended or expelled. IEPs must be reviewed periodically and revised as needed, and are enforceable by law.

Consequence of accepting a special education voucher

Where placement in a private school is needed to fulfill the terms of a child's IEP, IDEA authorizes such enrollment. In those cases, the district contracts with the private school to provide the child's education and all special services and accommodations set forth in the IEP, at the district's expense. Children and parents have all the rights that they would have if the child were served by a public school, including due process in the event the IEP is not fully implemented.

But when parents accept a voucher, or use a tax credit to defray the cost of private school for their child with special needs, **none of these protections apply.** The U.S. Department of Education's Office of Civil Rights confirms that parents who use a voucher waive their rights and their children's rights under IDEA.² Private schools may decline to accept students based on their disability, could decline to abide by the IEPs of students they do accept, or could segregate children with needs from other children. Indeed, all but three of the providers par-

participating in Ohio's autism voucher program restrict admissions, and only 15 accept children with more severe disabilities. Fully, 75 percent of the first students participating in this program were enrolled with providers created to primarily or exclusively serve students with disabilities. As a result, the program undercuts decades of advocacy for the inclusion of children with disabilities in general education classrooms.³ Private schools may also suspend or expel students without due process, and they are under no obligation to provide alternative education or services after such action.

Accountability is a big concern

IDEA and the Elementary and Secondary Education Act (ESEA, also known as No Child Left Behind), hold schools and districts accountable. The public schools must include children with disabilities in state- and district-wide assessments and publicly report the average achievement of this group. Teachers of students with disabilities must be highly qualified. Teachers of students with disabilities must show that they are highly qualified by demonstrating knowledge and skills in the subjects they teach. Furthermore, special education teachers must be licensed by the state as special education teachers. States must monitor and evaluate school district policies and procedures for developing and implementing IEPs and for processing complaints. States must also correct deficiencies in program operations, insure proper accounting of federal funds, and make annual reports on the academic achievement of children being served.

No state that has established a voucher program for students with disabilities has included any such accountability measures.⁴ Voucher students are not included in state assessments, so taxpayers have no way of knowing how the voucher funds have been spent, and how students have fared. States have set no minimum criteria for the qualifications of private schoolteachers—in some cases they do not even require a college degree, let alone special training in the needs of children with disabilities. Nor are private schools required to disclose the qualifications of their teachers, denying both parents and taxpayers vital information. What little has come to light about the voucher programs is that many schools receiving taxpayer dollars to serve children with disabilities offer no special services to these children⁵, and that significant sums have been lost to fraud, waste and abuse.⁶

The cost is high

Although their supporters often claim that vouchers for children with disabilities will save states money by persuading children to leave public school and attend private school, these programs have not reduced the cost of public education or of special education.⁷ Nor have these programs proved effective at improving the achievement of students with disabilities. Indeed, anecdotal evidence suggests that the programs are primarily benefiting private schools and their investors.⁸ In addition to representing significant net expenses to the state, they often come with hidden costs to parents as well, including the risk that tuitions will rise beyond the value of the voucher, and that schools may charge additional fees for needed services. According to a study of Ohio's voucher program for children with autism, 14 providers charge fees to families above the voucher cap, which may be why families from relatively affluent Ohio communities are more likely to use the voucher than those from poorer communities.⁹

Voucher programs invite constitutional challenges

Although voucher programs that include religious schools have been found not to violate the federal Constitution,¹⁰ many state constitutions have provisions that are more restrictive than the First Amendment with regard to state funding of sectarian institutions, and also require states to provide a uniform system of public education. These clauses have been interpreted to prohibit a voucher program that targeted students with disabilities.¹¹

Policymakers should focus on reforms that work

Vouchers would sacrifice accountability and civil rights protections for children with special needs without improving the quality of services, student achievement, or parental options. Policymakers should instead provide full funding for IDEA, and implement reforms that work, such as smaller class size so teachers can provide more individual attention; professional development for general education teachers who teach children with special needs; and professional development, training, and technical assistance to facilitate the inclusion of parents as collaborative partners in the Individual Education Program team.

References

- ¹ NEA Resolution A-24. Voucher Plans and Tuition Tax Credits.
- ² Letter from Susan Bowers, Acting Deputy Assistant Secretary for Civil Rights, and Patricia J. Guard, Acting Director, Office of Special Education Programs, U.S. Department of Education, to John Bowen, Attorney for Pinellas County (FL) School Board, confirming that federal civil rights laws “do not directly apply to the private schools participating” in the voucher program, www.ed.gov/policy/speced/guid/idea/letters/2001-1/bowen3302001fape.doc. See also additional letters clarifying rights under private placement: www.ed.gov/policy/speced/guid/idea/letters/2003-2/redact062703fape2q2003.doc and www.ed.gov/policy/speced/guid/idea/letters/2003-3/redact070103lre3q2003.doc.
- ³ “Analyzing Autism Vouchers in Ohio,” Policy Matters Ohio, 2008, www.policymattersohio.org/AnalyzingAutismVouchers.htm.
- ⁴ McKay Scholarship (FL), Ohio Autism Scholarship Program, Carson Smith Special Needs Scholarship (UT) Scholarship for Pupils with Disabilities (AZ)(constitutional challenge pending).
- ⁵ “Vouchers don’t help disabled students,” Palm Beach Post, December 8, 2003, www.palmbeachpost.com/state/content/news/vouchers/vouchers1208.html.
- ⁶ “Officials at Christian academy accused of school voucher fraud,” St. Petersburg Times, June 30, 2004, www.sptimes.com/2004/06/30/State/Officials_at_Christia.shtml.
- “Educator, activist Marva Dennard arrested in voucher thefts,” St. Petersburg Times, December 7, 2007, www.sptimes.com/2007/12/07/Southpinellas/Educator__activist_Ma.shtml.
- “Voucher Complaints Chase Pair,” St. Petersburg Times, April 7, 2002.
- “Tossing McKay Voucher Dollars,” St. Petersburg Times, November 13, 2002.
- “Control Limited in State Voucher Program,” Sun Sentinel, October 14, 2001.
- “Voucher Plan’s Rush Leaves Standards Behind,” St. Petersburg Times, February 23, 2003.
- ⁷ During the 2006–07 school year, the McKay voucher program in Florida cost \$140,077,434. Ohio’s autism voucher program cost \$15 million. Georgia’s special needs voucher program cost \$5,639,648. Arizona’s voucher program for special needs (which has been found unconstitutional) was statutorily capped at \$2.5 million. Utah’s program cost \$2.4 million. In every case, costs have increased annually.
- ⁸ “Investment firm sees profit in disabled students,” Palm Beach Post, February 22, 2005, www.palmbeachpost.com/state/content/news/epaper/2005/02/22/m1a_VOUCHER_0222.html.
- ⁹ “Analyzing autism vouchers in Ohio,” Policy Matters Ohio, March 2008, www.policymattersohio.org/AnalyzingAutismVouchers.htm.
- ¹⁰ *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), www.law.cornell.edu/supct/html/00-1751.ZS.html.
- ¹¹ *Cain v. Horne*, No. 07-0143 (Ariz. Appl Div. Two, May 15, 2008) holding that the state’s voucher programs violate a provision of the state constitution that prohibits the appropriation of public funds “in aid of any church, or private or sectarian school, or any public service corporation.” See also, *Holmes v. Bush*, No. 04-2323 (Fla. January 5, 2006), www.floridasupremecourt.org/pub_info/summaries/briefs/04/04-2323/Filed_01-05-2006_Opinion.pdf.

Resources

- “**Information Underload: Florida’s Flawed Special-Ed Voucher Program**,” Sara Mead, Education Sector, 2007, www.educationsector.org/research/research_show.htm?doc_id=506895
- Think Twice: Special Education Vouchers Are Not All Right**, Andrew J. Rotherham and Sara Mead, Progressive Policy Institute, 2003, www.ppionline.org/ppi_ci.cfm?knlgAreaID=110&subsecID=900030&contentID=251810
- “**Jeopardizing a Legacy: A Closer Look at IDEA and Florida’s Disability Voucher Program**,” People For the American Way and Disability Rights Education and Defense Fund, 2003, www.pfaw.org/pfaw/general/default.aspx?oid=9063
- “**Analyzing Autism Vouchers in Ohio**,” Policy Matters Ohio, 2008, www.policymattersohio.org/AnalyzingAutismVouchers.htm

