

# STUDENTS' CIVIL RIGHTS ALERT

As currently designed across states, voucher, education savings account (ESA), and tax incentive programs allow some students to use public money to pay for private school tuition. When students with disabilities accept money through one of these programs and enroll in a private school, they are often denied the rights afforded to them under federal laws like the Individuals with Disabilities Education Act (IDEA). Here is what you need to know about how voucher, ESA, and tax incentive programs impact the civil rights of students with disabilities.

<i>Which laws protect students with disabilities?</i>	<i>How do voucher, ESA, and tax incentive programs impact these laws?</i>
<p><b>Section 504 of the Rehabilitation Act (Section 504)</b></p> <p>A federal civil rights law that prohibits discrimination based on disability and requires schools to meet the needs of students with disabilities as adequately as the needs of students without disabilities.</p>	<p>Private schools do not follow Section 504, so children with disabilities using a voucher, ESA, or tax incentive program to attend private schools are not afforded protections and accommodations under this law.</p>
<p><b>Individuals with Disabilities Education Act (IDEA)</b></p> <p>A federal law that requires schools to provide special education and related services to students with disabilities who qualify, free of cost.</p>	<p>No states explicitly require private schools to uphold IDEA for students with disabilities using a voucher, ESA, or tax incentive program. Many either: (1) require parents to waive their rights; or (2) treat a voucher like a parental placement, releasing the district from responsibility. The rest are silent about whether students retain IDEA rights. Parents must be prepared to give up important protections like those described on the next page.</p>
<p><b>Americans with Disabilities Act (ADA)</b></p> <p>A federal civil rights law that prohibits discrimination against people with disabilities in public life and requires schools and employers to provide reasonable accommodations.</p>	<p>Students with disabilities might not be protected by the ADA in private schools operated by religious organizations. Between 69% and 88% of all private schools participating in voucher programs maintain some kind of religious affiliation, and the ADA contains exemptions for such schools.</p>

## WHICH IDEA RIGHTS ARE AT RISK WHEN ATTENDING PRIVATE SCHOOLS USING A VOUCHER, ESA, OR TAX INCENTIVE PROGRAM?

All student and parent rights under IDEA are at risk. Here are some examples:

### A free education

IDEA guarantees—at no cost to parents—a public education and services related to a child's disability. But when the voucher amount is not enough to cover private school tuition or the services a child needs, parents are expected to make up the difference. Many private schools also have fees associated with enrollment that may not be covered by the voucher.

### Disciplinary safeguards

When a child is subject to discipline in public school, IDEA requires educators to take steps to ensure the school is properly implementing the child's Individualized Education Program (IEP). Under a voucher program, disciplinary policy is at the sole discretion of the private school, whether the disciplinary incident was caused by the disability or not.

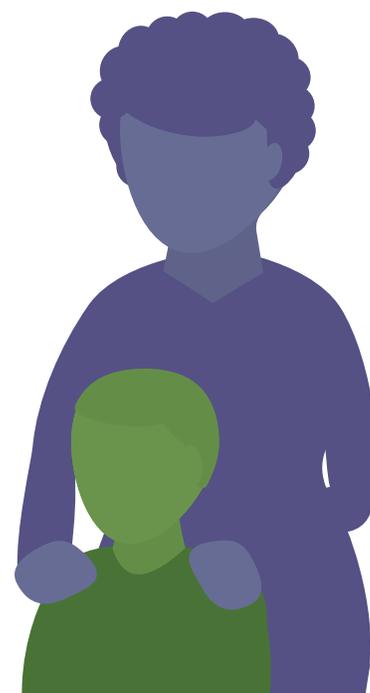
### Parent/guardian participation

IDEA gives parents full participatory rights in their child's education. Services and placement cannot be changed or implemented without notifying parents, and parents can call a meeting at any point. Under a voucher program, private schools have no obligation to involve or inform parents about decisions regarding the child's education.

## ARE PARENTS REQUIRED TO WAIVE IDEA RIGHTS?

No state explicitly requires private schools to enforce IDEA rights when serving a student with disabilities through a voucher, ESA, or tax incentive program. Each program treats IDEA rights differently, with some making no mention of IDEA at all. However, in reviewing all 64 voucher, ESA, and tax incentive programs and their supporting materials on state websites, it is clear that language around the impact of choosing a voucher, tax incentive or ESA fails to fully inform parents about the civil rights they are potentially giving up.

On the following page are a few examples of how states may treat students' rights under voucher, ESA, or tax incentive programs:



## STUDENTS' CIVIL RIGHTS ALERT

## Waiver of Rights



Arkansas' Succeed Scholarship Program includes a waiver stating:

"...the resident school district is under no obligation to provide services or education to the child(ren) listed below except for services that may or may not be provided to other private school students as part of the district's regular obligations under the Individuals with Disabilities Education Act ..."

When a student with a disability is placed by their parent in a private school, the student is entitled to "equitable participation services" to meet their individual needs, but they are not entitled to FAPE. Based on the number of students with disabilities the particular private school is serving, the district will determine the school's "proportional share" of the district's IDEA funds. That money will then be spent on services for the students with disabilities in the private school. However, all services are provided at the discretion of the school. There is no guarantee under IDEA that the services provided through the "proportional share" of funds will be the services a particular student needs or the amount or duration of services that are required to meet the needs of each student with a disability in the private school.

## Parental Refusal to Consent



Georgia's Department of Education explains that:

"Acceptance of the scholarship shall have the same effect as a parental refusal to consent to services pursuant to the Individuals with Disabilities Education Act."

## Silence on IDEA



Florida's McKay Scholarship program offers 27 Frequently Asked Questions, none of which mention IDEA rights.

The waiver parents are required to sign to participate in the program is also silent about IDEA rights.

Voucher, ESA, or tax incentive programs can and often do eliminate a child's rights under IDEA, and the protections provided under civil rights laws like the ADA or Section 504 are typically not followed by private schools. Because none of the 64 programs effectively inform parents of the rights they are giving up, parents should ask questions and ensure they understand the implications these programs may have for their child.

For more information on these issues, visit [ncl.org/vouchers](http://ncl.org/vouchers).