EXECUTIVE SUMMARY

Student participation in voucher programs has more than doubled since 2010. It is estimated that these programs now serve between 147,000\(^1\) and 189,900\(^2\) students across the country. Voucher, education savings account (ESA), and tax incentive programs allow students to use public dollars to pay for private school tuition costs or other educational expenses. These programs often base eligibility on family income level or student disability status. Currently, there are 64 voucher, ESA, and tax incentive programs in place across 31 states and D.C., and some states have established more than one program. Sixteen states have established programs targeting students with disabilities. Specifically, 10 of the 17 states (including D.C.) with vouchers, four of the six states with ESAs, and two of the 21 states with tax incentives have designed programs for students with disabilities. While voucher, ESA, and tax incentive programs have gained popularity, there are three major considerations for families of students with disabilities when considering and evaluating these programs: the potential loss of federal civil rights protections, inadequate access to information, and added costs.

LOSS OF CIVIL RIGHTS PROTECTIONS

Students with disabilities are entitled to a number of rights under various federal laws. Of those laws, the Individuals with Disabilities Education Act (IDEA) is the most comprehensive and guarantees several important protections, including: (1) the right to a free, appropriate education (FAPE) in the least restrictive environment (LRE); (2) protection from suspension for more than 10 days; and (3) the right to file a due process complaint if the child’s needs are not being met. Importantly, IDEA applies only to public schools, and not private schools. None of the 17 states with voucher programs nor the six states with education saving account (ESA) programs explicitly allow parents to retain full protections under IDEA. Moreover, none of the 19 voucher, ESA, or tax incentive programs aimed specifically at students with disabilities explicitly allow them to retain full IDEA rights. Instead, states either: (1) require parents to waive their rights in exchange for the voucher; (2) treat vouchers as parental placement in private school under IDEA (which relieves the district of responsibility for the student); or (3) remain silent about whether IDEA rights will be upheld by the private school accepting the voucher.

\(^1\) Government Accountability Office (2016, August). School choice: Private school choice programs are growing and can complicate providing certain federally funded services to eligible students. GAO-16-712. Washington, DC.

INADEQUATE ACCESS TO INFORMATION

Parents may not even know that by enrolling in a voucher, ESA, or tax incentive program, they are signing away their children’s rights under IDEA. States fail to share this information in a clear and understandable format. Indeed, many states’ laws are silent regarding a student’s rights under IDEA or the legal implications of a student’s participation in a voucher, ESA, or tax incentive program. For example, Florida’s McKay Scholarship, the largest voucher program for students with disabilities, doesn’t mention IDEA rights at all. In most other states, no resources exist to help parents understand the ramifications of relinquishing IDEA rights to enroll their children in one of these programs.

FAILURE TO COVER FULL COST OF PRIVATE SCHOOLS

There are also financial implications for families who wish to take advantage of voucher, ESA, or tax incentive programs. The amount of money awarded to families—whether up-front through vouchers or ESAs or months later through tax deductions and credits—is rarely sufficient to cover the full cost of private school tuition and fees. In Georgia, for example, the average voucher amount is $5,614,\(^3\) while the average cost of private school tuition is over $10,000.\(^4\) When the amount awarded through the program doesn’t cover the full cost of tuition, parents must make up the difference. When that difference is thousands of dollars, it means the voucher, ESA, or tax incentive really just functions like a coupon for parents who can already afford to send their child to a private school.

The growing number of state voucher, ESA, and tax incentive programs suggests a desire for greater choice and flexibility in how students are educated. However, the 64 programs established across the country are draining funding from public schools, leaving the public schools with far fewer resources with which to serve their students. Voucher, ESA, and tax incentive programs leave students with disabilities without critical civil rights protections and require families to endure a great financial burden, often without access to the information they need to make the best decision for their child.


While voucher, education savings account (ESA), and tax incentive programs have existed in several states for years, there has been a growing interest in expanding these programs at the state and national level. For students with disabilities, these programs have important implications related to their rights and protections under civil rights laws. In addition, parents may not receive all the information they need to make an informed decision, and there may be hidden costs placed on parents who choose one of these programs. Therefore, there are important considerations for parents who are evaluating whether these programs are the right choice for any student with a disability.

THREE TYPES OF PROGRAMS

There are primarily three different programs offered across various states and D.C.: (1) private school vouchers; (2) tax incentives; and (3) education savings accounts. Though these programs utilize different legal mechanisms, all three provide public funding for private schooling.

<table>
<thead>
<tr>
<th>Type of program</th>
<th>Number of states with programs</th>
<th>Number of programs across states</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Voucher programs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For students with disabilities</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>For other students or groups</td>
<td>11</td>
<td>15</td>
</tr>
<tr>
<td><strong>Education savings accounts</strong></td>
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<td></td>
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<tr>
<td>For students with disabilities</td>
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<td>4</td>
</tr>
<tr>
<td>For other students or groups</td>
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<td>2</td>
</tr>
<tr>
<td><strong>Tax incentives</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For students with disabilities</td>
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<td>3</td>
</tr>
<tr>
<td>For other students or groups</td>
<td>19</td>
<td>28</td>
</tr>
</tbody>
</table>
VOUCHER PROGRAMS

Voucher programs, which began in 1990, provide public dollars to pay tuition at a state-approved private or parochial school. Sixteen states and Washington, D.C., have voucher programs in place. As many as 178,000 U.S. students participate in voucher programs. There are 27 total programs (with some states operating multiple programs) and 12 of those are specifically for students with disabilities. In many voucher programs, states allocate all or part of the public funding that would have followed the student to their public school to a voucher that pays for partial or full tuition at a private school, including religiously affiliated schools.

The amount of money awarded to a student varies by program, grade level and, in some cases, disability category. For example, Florida's McKay Scholarship for Students with Disabilities uses a formula to determine the voucher amount for each student. The formula takes into account factors such as a child's disability or the school district they live in and calculates how much money the child is eligible to receive under the program. McKay vouchers in 2016 were worth anywhere between $4,954 and $23,306, with an average of about $7,944. Under Georgia's Special Needs Scholarship Program, parents can enter information into an online “calculator” and get an estimate of the amount of the voucher they may be eligible to receive.

Proponents maintain that private school voucher programs allow parents to select a school that best fits the needs of their child. But this may not be without cost. These programs often eliminate students’ rights under IDEA when they enroll in a private school and leave parents to pay a large share of the cost. And substantial research on these programs indicates that they do not necessarily lead to better outcomes for students. In some states, like Louisiana, students participating in voucher programs actually showed negative results in both reading and math.

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SCHOOL VOUCHERS, EDUCATION SAVINGS ACCOUNTS, AND TAX INCENTIVE PROGRAMS
Implications and Considerations for Students With Disabilities

TAX INCENTIVES

Tax incentive programs provide mechanisms for any individuals (not only parents) or businesses to either: (1) spend money on private school or educational expenses for their child; or (2) donate money to nonprofit organizations that are charged with issuing private school vouchers in the form of “scholarships” to students.

Tax incentives for approved educational expenses

These kinds of programs allow parents or guardians to receive a tax credit or a tax deduction for approved educational expenses, including private school tuition for their child. While each state defines approved expenses differently, commonly approved expenses include private school tuition, books, transportation, and technology. These programs either lower the amount of taxes a person owes to the state or reduce a person's total taxable income. Indiana's program, for example, allows parents or guardians of students in private or homeschools to claim a deduction of up to $1,000 for education expenses such as private school tuition, tutoring, or textbooks. More than 53,000 people in Indiana claimed this deduction in 2015.8 Similarly, a program in Wisconsin allows parents or guardians to deduct from their taxable income up to $4,000 per child in grades K–8 and up to $10,000 per child in grades 9–12 for private school tuition.9 There are nine programs in the U.S. that allow individuals to receive these kinds of tax credits or deductions. South Carolina’s program is specifically for students with disabilities.

Tax incentives for donations to scholarship-awarding nonprofits

Other tax incentive programs provide full or partial tax credits for individuals or businesses that donate to a state-approved nonprofit. The nonprofit then distributes scholarships to the families of eligible students to pay for tuition at approved private schools. In some cases, donors may make a recommendation about how their money is spent, allowing their money to fund a specific student’s tuition.10

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SCHOOL VOUCHERS, EDUCATION SAVINGS ACCOUNTS, AND TAX INCENTIVE PROGRAMS
Implications and Considerations for Students With Disabilities

There are 21 programs that allow individuals or businesses to make these kinds of donations to nonprofits. South Carolina and Arizona are the only two states with tax incentive programs specifically for tuition for students with disabilities. Some states allow a dollar-for-dollar credit to donors, which is an indirect way for the state to fund private school tuition through these scholarship programs.11

If admitted to a private school that accepts a scholarship through the tax incentive program, students and their families are responsible for complying with their selected private schools’ code of conduct in order to maintain enrollment at the school. Step Up for Students, a nonprofit that manages Florida’s Tax Credit Scholarship Program, notes in their parent handbook: “Scholarship students must follow all academic and discipline policies of the private school they attend. Private schools have a right to expel or suspend students if their published policies are not followed.”12 Importantly, private schools have great latitude in deciding which students will be accepted and which will not.

Unlike many voucher programs, tax incentive programs essentially provide a mechanism that prevents public dollars from being tied directly to private use. This roundabout and indirect funding method has protected many tax incentive programs from legal challenges. The Supreme Court upheld the constitutionality of Arizona’s program in 2011.13

EDUCATION SAVINGS ACCOUNTS

Education savings accounts (ESAs) are state-funded accounts that eligible parents can utilize to pay for a variety of approved education-related expenses. There are currently six ESA programs, four of which are specifically for students with disabilities. Arizona’s ESA program was created for students with disabilities but recently expanded its eligibility to all students. And Nevada’s program is currently suspended after the Nevada Supreme Court ruled that its funding could not come from the state public school budget.14

To participate in an ESA, parents must withdraw their child from a public or charter school. Once a student is no longer enrolled in public school, a parent can then receive government funds to cover a variety of educational expenses. While these are seemingly intended to fund expenses like private school tuition and fees, tutoring, or online learning, they also allow parents to use the funds to pay for services offered by public schools, such as extracurricular activities. A combination of public and private education would be possible under these programs. For example, Tennessee’s Individualized Education Account Program allows families to use ESA dollars to fund private school tuition or private tutoring for children who are homeschooled. But students also have access to programs offered by public school, like certain eligible classes or extracurricular activities.15

**STATES WITH VOUCHER-TYPE PROGRAMS**

Vouchers, ESAs, and tax incentive programs operate differently in each state and have their own eligibility criteria. The way each program is carried out has important implications for students with disabilities and their families.

Voucher programs present a multitude of issues for public schools and the students they serve. This paper addresses three important challenges vouchers pose specifically to students with disabilities and their families. However, we recognize that there are additional concerns for parents and the public to consider related to voucher programs, including the use of public money to fund religious schools, the failure of voucher programs to meet accountability standards or improve academic achievement, and the ways voucher programs drain public schools of desperately needed resources.16

LOSS OF CIVIL RIGHTS PROTECTIONS

Individuals with Disabilities Education Act (IDEA)

When a parent decides to enroll their child in a private school using a voucher, ESA, or tax incentive program, there is no guarantee that they will retain any of their rights under the Individuals with Disabilities Education Act (IDEA). Though there are some murky exceptions, not one of the 12 voucher programs for students with disabilities explicitly requires a private school accepting a voucher to uphold a student’s rights under IDEA. In fact, many state laws require a parent to formally waive their rights under IDEA, and others are silent on the matter. This means when a student takes a voucher, parents must be prepared to give up important protections like the right to an Individualized Education Program (IEP), a free, appropriate public education (FAPE), an education in the least restrictive environment (LRE), and procedural due process protections to safeguard these rights while attending a private school.

Arkansas, for example, requires parents who participate in its voucher program to sign a waiver, which reads as follows: “As of the date I

16 For more information on these topics, see the many resources developed by the the National Coalition for Public Educa- tion at https://www.ncpecoalition.org/.
sign this waiver, I hereby acknowledge that 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, 20 U.S.C. § 1400 et. seq. during the time I choose to enroll my child(ren) in private school.”

ESA programs are no different. Of the four ESA programs for students with disabilities, none explicitly allow parents and children to retain their rights under IDEA. For example, Mississippi’s Equal Opportunity for Students with Special Needs program states that parents must sign and acknowledge that they have been “provided clear notice” that their child has no more entitlement to FAPE so long as they are participating in the program.

Tax incentive programs similarly waive or fail to mention the IDEA rights of students with disabilities. South Carolina’s programs provide guidance on how to get your child an IEP (necessary to be eligible for the program), but provide no guidance about what happens to IDEA rights if you attend a private school through the program.

By relinquishing their rights under IDEA, students with disabilities lose important legal protections and academic opportunities. The right to FAPE, for example, ensures that students have a meaningful opportunity to participate in the same curriculum that is being taught to students without disabilities. Without it, there is no legal guarantee of

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*When a student with a disability is placed by their parent in a private school, the student is entitled to “equitable participation to 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 “private 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 students with a disability in the private school.

services and support to help a child meet grade-level expectations.\textsuperscript{19} Also as a part of IDEA, parents of students with disabilities have the right to attend and participate in IEP meetings, can bring experts to help the team make decisions about their child’s education, and have the right to agree to the services or changes in service before those are implemented. IDEA’s focus on parental rights is critical, yet it is not required by private schools.\textsuperscript{20} In fact, without these critical IDEA protections, private schools can change or eliminate a child’s services without notifying parents and at any time.

<table>
<thead>
<tr>
<th>Major provisions of IDEA</th>
<th>How they protect families and students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free, appropriate public education (FAPE)</td>
<td>FAPE requires that all students with disabilities be educated at no cost to parents in the public school system, no matter the disability of the student, and that the education is tailored to best serve his or her needs.</td>
</tr>
<tr>
<td>Least restrictive environment (LRE)</td>
<td>IDEA requires that students be educated in the “least restrictive environment” (LRE) to ensure that kids who receive special education spend as much time as possible in the general education environment, learning with their non-disabled peers “to the maximum extent that is appropriate.”</td>
</tr>
<tr>
<td>10-day rule</td>
<td>IDEA requires that if a child with a disability is removed from school by suspension for 10 days (whether consecutive or not), the school must convene a meeting to determine if the misbehavior leading to the suspension is or is not a symptom of a student’s disability. If it is decided that it is a symptom of a student’s disability, then added protections and further interventions apply.</td>
</tr>
<tr>
<td>Due process rights</td>
<td>IDEA establishes a legal process parents can follow if they disagree with the school about a student’s special education services, before resorting to the court system. Under due process, parents can file a written complaint against the school, can seek agreement in a resolution session, and then have a hearing with a hearing officer to consider the evidence and rule on the dispute.</td>
</tr>
</tbody>
</table>


\textsuperscript{20} 34 C.F.R. § 300.140
Any parent may choose to place their child in a private school, and many do so for a variety of reasons unrelated to their child’s disability. Nonetheless, parents should recognize that private schools do not have an obligation to provide special education services to a student with a disability. When families enroll in a voucher, ESA, or tax incentive program, private schools and the local school district may avoid responsibility for providing educational services to children under IDEA by: (1) requiring parents to waive their rights under IDEA; (2) treating the voucher like a parental placement under IDEA and waiving IDEA rights; or (3) remaining silent on whether those rights still apply. Therefore, parents should be aware of how their IDEA rights may change before enrolling in a voucher, ESA, or tax incentive program.

**Rights Under Section 504 of the Rehabilitation Act**

Section 504 of the Rehabilitation Act of 1973 is a federal law that protects the rights of people with disabilities who participate in programs that receive federal funding, including funding from the Department of Education. The law prohibits any program or activity that receives federal funding from excluding, denying benefits to, or discriminating against any “otherwise qualified individual” solely on the basis of his or her disability. It also requires schools that receive federal funding to provide

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21 29 U.S.C. § 794

**Programs May Encourage Students With Disabilities To Leave Public Schools**

Aside from the loss of these important protections under IDEA, mechanisms that allow students with disabilities to be educated in private schools using public funds can lead to a more segregated education system, especially where voucher, ESA, or tax incentive programs target students with disabilities. IDEA has been underfunded since its inception and school districts struggle to serve their students with disabilities each year with inadequate resources. Voucher, ESA, or tax incentive programs might incentivize shifting the responsibility of serving students with disabilities from the local public school to private schools. Some programs even encourage students with disabilities to take advantage of them and leave the public school system. For example, under Florida’s McKay Scholarship all public schools are required to inform parents about their option to choose the McKay voucher program within 10 days of every IEP meeting. While this provision may have been intended to merely inform parents of the scholarship’s existence, it may be interpreted as a way to encourage parents to remove their child from the district.
appropriate educational services to students with disabilities in order to meet their needs as well as they meet the needs of students without disabilities. A child who receives an evaluation under Section 504 may be entitled to certain accommodations or individualized services that best provide an educational experience comparable to that of students without disabilities—like speech therapy or extended testing time. However, private schools do not follow Section 504 and therefore do not follow the federal civil rights requirements it imposes. Thus, children with disabilities attending private schools through a voucher, ESA, or tax incentive program would not be afforded the protections and accommodations due to them through Section 504.

**Rights Under the Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) is a civil rights law that protects individuals with disabilities across many areas of public life, including transportation, schools, workplaces, and public and private spaces. The law was passed in 1990 to ensure that people with disabilities (of all ages) had access to the same rights and opportunities as those without disabilities, similar to civil rights protections afforded to individuals based on race, sex, national origin, gender, age and religion. For example, the ADA prevents employers from discriminating on the basis of an applicant’s disability, requires public transportation to be fully wheelchair accessible, and allows for the use of service animals in businesses. While various ADA protections apply to all public schools and to many private schools, there are specific exemptions within the ADA for private schools operated by religious organizations. Thus, students with disabilities attending the nearly 70 percent of all private schools that maintain some kind of religious affiliation would not be protected by the ADA. Those students could be subject to discrimination based on their disability, may be rejected from or denied access to private schools, or may be treated differently than other students due to their disability.

**INADEQUATE ACCESS TO INFORMATION**

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 credit, or ESA fails to fully inform parents about what they are giving up.

In all cases examined, the language used by states was difficult to interpret, unclear, and not

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helpful, especially if a child hadn’t yet been identified with a disability. For example, rather than providing clear language around what happens to student rights under their program, Utah’s Carson Smith Special Needs Scholarship program “General Overview” document instructs parents to do their research elsewhere. It states: “Acceptance of the Special Needs Scholarship has the same effect as a parental refusal to consent to Special Education services. The ‘refusal to consent to Special Education and Related Services’ is clearly understood and accepted (refer to IDEA or state Special Education Rules for information).”

With the exception of Ohio, which provides a single comparison chart of what happens to a student’s FAPE rights when accepting a voucher, parents are not typically provided resources regarding IDEA rights under school choice program participation. Thus, students and their families may unknowingly lose IDEA protections.

In some cases, state laws are silent regarding IDEA rights altogether. Two of the 12 voucher programs make no mention of the IDEA rights at all—including Florida’s program, which has over 31,000 participants. Of the 27 “Frequently Asked Questions” listed on Florida’s McKay Scholarship program website, none mention IDEA rights, and the waiver parents have to sign to participate in that program says nothing about IDEA rights.

A 2016 report by the Council of Parent Attorneys and Advocates (COPAA) found that many parents participating in school choice programs did not understand the impact their participation had on their IDEA rights. Georgia’s Special Needs Scholarship (GSNS) program maintains a resources page for parents on its website that acknowledges this lack of clarity. The “Understanding the Program” guide states: “Many parents/guardians are surprised to learn that a private school participating in the GSNS Program is not required to follow a student’s IEP and is not required to provide special education services to a student.” Georgia provides no resources on what the loss of IDEA rights could mean for a student participating in the program.


FAILURE TO COVER FULL COST OF PRIVATE SCHOOLS

In many states, funding for voucher, ESA, or tax incentive programs is rarely enough to cover the cost of private school tuition and fees, especially for students with disabilities who may seek to attend a specialized school or receive additional specialized services. Where the program does not cover the cost of a child’s education, parents or guardians are expected to make up the difference. Louisiana’s School Choice Program for Students with Certain Exceptionalities “Frequently Asked Questions” document states: “If the school's tuition and fees exceeds the certificate amount, then parents are responsible for paying the difference.”28 This clearly limits the families who can take advantage of these programs to those with a certain level of income security.

Under individual tax incentive programs, parents are expected to cover the cost of tuition and fees up front and receive the tax write-off later. In many cases, private schools have added fees not included in the tuition that parents will be responsible for. A 2017 *New York Times* report indicated that private schools could charge anywhere from $5,000 to $23,000 in additional fees on top of the tuition amount.29 The following chart shows the discrepancy in funding between the average voucher and ESA amount in states that have programs designed for students with disabilities compared to the state’s average private school tuition—not including added fees—as well as private schools specializing in serving students with learning disabilities (LD):

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## SCHOOL VOUCHERS, EDUCATION SAVINGS ACCOUNTS, AND TAX INCENTIVE PROGRAMS

### Implications and Considerations for Students With Disabilities

<table>
<thead>
<tr>
<th>State</th>
<th>Average voucher amount(^{30})</th>
<th>Average ESA amount</th>
<th>Average tax credit or scholarship amount</th>
<th>Average private school tuition(^{31})</th>
<th>Sample tuition at private school for LD</th>
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</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>–</td>
<td>–</td>
<td>$4,447 scholarship</td>
<td>$10,538</td>
<td>$10,538</td>
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<tr>
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<td>–</td>
<td>$10,032</td>
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<td>$2,264</td>
<td>–</td>
<td>–</td>
<td>$6,147</td>
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<td>$5,364</td>
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<td>South Carolina</td>
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<td>$4,357</td>
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</tbody>
</table>


FOR PARENTS: FREQUENTLY ASKED QUESTIONS ABOUT VOUCHERS, EDUCATION SAVINGS ACCOUNTS, AND TAX INCENTIVE PROGRAMS

What types of programs does my state offer?

It depends on where you live. Some states offer multiple types of programs—vouchers, education savings accounts, and tax incentives. Others offer none at all. It’s important to know the programs available in your state and how they operate before making any decisions.

Will the program cover the full cost of the school I am considering? Or will I be responsible for some of the cost?

In many states, there is a discrepancy between the cost of private school tuition and the actual amount a voucher, ESA, or tax incentive program will cover. This is especially true if you are considering a specialized private school, such as those that are geared toward students with specific learning disabilities (SLD). If the program provides less than the school’s tuition, you will likely have to pay the difference, on top of other costs. Private schools do not cover things like transportation or related services your child may need. Any costs not covered by the voucher or ESA will be your responsibility. In addition, if you choose to use a tax incentive program, you will need to pay the education costs up-front and receive a tax credit or tax deduction later.
Is my child eligible to participate in a voucher, ESA, or tax incentive program?

It depends on the program you’re considering. Some programs are only available to families who earn less than a certain amount of money each year. Others are available only to students who have an Individualized Education Program (IEP) from a public school. Knowing the eligibility requirements for each type of program in your state will help you determine which options are available to your child.

Will my student’s rights under IDEA apply in private schools? What kind of special education or related services will my child receive if I use a voucher?

First, private schools do not follow IDEA. Even if you use money from an ESA or a tax incentive program to attend a private school, there is no requirement that the private school follow IDEA. Second, no voucher programs explicitly require private schools to honor your child’s rights under IDEA. Each state handles IDEA rights under voucher programs differently. Some will require you to waive your rights while others make no mention of IDEA rights at all. In states where IDEA rights are not upheld or where you are required to sign away your rights, there will be no IEP, no IEP meetings, and no notice of changes to educational services for your child. As a result, your child will not receive the same services services he or she receives in the public school system. Every private school is different and you will need to work with the private school to advocate for what your child needs. For these reasons, when choosing a voucher program, it is important to determine whether and how your student’s rights will be upheld in a private school. You can also ask whether your child will stop receiving his or her educational services upon entering the private school.

Can I use a voucher, ESA, or tax incentive program to enroll my child in any private school in my state?

Not automatically. First, you may be limited to only those private schools that have been pre-approved by the state. In addition, not all private schools participate in voucher, ESA, or tax incentive programs, so the one you are considering may not be an option. Second, the school must accept your child, and private schools have the ability to reject a student for just about any reason.
Is the private school I choose required to accept my child?

No, private schools have great discretion in determining which students to enroll. The same civil rights protections afforded to students with disabilities in public schools do not apply to them in private schools. It is possible to be eligible for a voucher, ESA, or tax incentive program and still have a hard time finding a school that will enroll your child and meet his or her needs. In addition, the discipline rules you may be familiar with under IDEA do not apply in private schools. A private school can expel a student at any time and for any reason.

Will the private school I am considering for my child be able to meet his or her needs without any support from the district?

It depends on the school you choose. First, it is important to know that private schools are not held to the same standards as public schools. There is generally no state testing or verification of how the students are performing in private schools. Instead, parents need to ask what academic information the private school can share to show that its students are successful. In addition, there is no guarantee that a private school can meet the full range of needs of students with disabilities. Most private schools cannot provide the same amount of or intensity of academic and behavioral supports for students with disabilities as public schools do. Further, educators at private schools may not have the same credentials or training as those in public schools. It is important to know how the private school you are considering will be able to address your child’s academic, behavioral, or social/emotional needs, especially if the voucher amount awarded to you through the voucher, ESA, or tax incentive program does not cover the cost of additional services.

Where can I get more information on my state’s programs?

Your state’s department of education is the best place to find information about whether a voucher, ESA, or tax incentive program is offered in your state. However, states generally do not provide clear or comprehensive information about these programs to parents, especially parents of students with disabilities who have questions relating to IDEA rights and special education services in private schools.
CONCLUSION

Congress has long recognized the right of students with disabilities to fully participate in public life and contribute to society through repeated reauthorizations of IDEA. IDEA's findings section begins, “Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society.”32 In the absence of IDEA and other federal laws, students with disabilities are left vulnerable, potentially losing substantial civil rights protections. If voucher, education savings accounts, and tax incentive programs continue to expand in this way, students with disabilities and their families risk being unprotected and uninformed about critical changes to their rights. Moreover, families may be left with the burden of added costs and inadequate access to information needed to make informed decisions about what's best for their child. To promote opportunities for students with disabilities, policymakers, parents, students, and advocates must work together to improve policies that protect students’ rights and support students’ success.