

Private Choice and Children with Disabilities: The Limits of the IDEA

By

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## **Abstract**

This dissertation utilizes a qualitative approach to research, guided by policy analysis and evaluative case studies. The purpose of the study is to examine what information is made available to parents regarding their rights, and the rights of their child, when utilizing a voucher or education savings account to attend a private school. The question of focus is: what explanations do states provide to parents/guardians of children with disabilities regarding their rights, including the equitable service provision, under the IDEA in a voucher or ESA program? Ultimately, this study seeks to provide information that assists parents, schools, state agencies, federal agencies, and publicly elected officials in making informed decisions regarding the rights of children with disabilities.

The dissertation begins with an introduction and statement of the problem. Next, a review of pertinent literature is included, followed by the study's theoretical framework, research design and methodology. Findings show that few programs provide clear information to parents of children with disabilities about their rights when participating in a voucher or ESA program. Finally, discussion, conclusions, and implications for practice and future research are shared.

## Chapter 1: Introduction of Study

School choice continues to be a source of contention in education. Several avenues of school choice that are gaining popularity include vouchers, tax credit scholarships, and education savings accounts, including those specifically for students with disabilities. While general education voucher programs have existed since 1990, the majority of special education vouchers and education savings accounts have been enacted within the last decade. This study focuses on vouchers and education savings accounts within the U.S. and their potential impact on students with disabilities to receive a free and appropriate public education.

### Statement of Problem

People with disabilities have, historically, not received the same type of treatment and protection as the non-disabled population. “In the 1800s, people with disabilities were considered meager, tragic, pitiful individuals unfit and unable to contribute to society, except to serve as ridiculed objects of entertainment in circuses and exhibitions” (Anti-Defamation League, 2017). During this time and into the early 1900s, little effort was made to provide any education to people with disabilities. When an education was provided, it was often at an institution that was segregated from their same-aged peers. In the aftermath of World War II, “veterans made disability issues more visible to a country of thankful citizens who were concerned for the long-term welfare of young men who sacrificed their lives to secure the safety of the United States” (Anti-Defamation League, 2017). While some advancements were made for people with disabilities during this time, it was the United States Supreme Court ruling in *Brown v. Board of Education of Topeka* that provided a window of opportunity for people with disabilities. With the Court finding that “separate educational facilities are inherently unequal” on the basis of race

(Brown v. Board, 1954, p. 495), the same argument was applied for people with disabilities (Yell, 2019). The result of this recognition created the foundation for federal disability laws.

The most significant federal disability laws are Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). One of the shared themes between these laws is ensuring that people with disabilities have the access and opportunity to receive an education. How these laws apply to public schools is relatively straightforward, but the introduction of publicly funded private school choice programs has complicated their application (Almazan and Marshall, 2017; Braun, 2017; Mead, 2014). Reports issued by the Government Accountability Office (GAO) have highlighted several problems in relation to these programs and the educational rights a student with a disability has when they elect to participate in a voucher, tax credit scholarship, or education savings account program. Two significant concerns of private choice programs raised by the GAO centered on the parental notification of rights and the equitable service provision of the IDEA (GAO, 2016; GAO, 2017a). The GAO reported inadequate information for both the notification of rights and the equitable service provision could create confusion for parents and private choice programs, which, in turn, could have an adverse educational effect for students (GAO, 2016; GAO, 2017a). The GAO's recommendations to remedy these issues included updating federal guidance documents, having states and districts notify families of their change in rights when exercising a private school choice, and a possible congressional mandate to require states to notify families of their change in rights (GAO, 2016; GAO, 2017a). At the moment, it is unclear how the GAO's recommendations have been received.

In order to protect the educational rights that people with disabilities have, research is needed to examine the interplay between federal disability law and private choice programs.

Given the recommendations of the GAO, a beginning point is to understand how, if at all, states have responded to the GAO recommendations. As such, this study will address the following question: What explanations do states provide to parents/guardians of children with disabilities regarding their rights, including the equitable service provision, under the IDEA in a voucher or ESA program?

## **Chapter 2: Review of Literature**

This literature review will provide a historical and contextual account of private choice programs within the U.S. and the educational rights of students with disabilities. Specifically, it examines in four ways the statutory relationship between these programs and the federal rights for students with disabilities. Section one provides a historical review of vouchers, highlighting major events that have shaped how modern vouchers are viewed today. Section two discusses other choice programs and the relationship between federal disability laws and private schools. Section three focuses specifically on vouchers and ESAs and the issues raised by a Government Accountability Office report. Finally, section four discusses how these issues are relevant to the proposed study.

### **Early Vouchers**

A free public education is a guarantee that all 50 states have adopted within their state constitutions (Railey, 2017). Traditionally, states have met this obligation through the allocation of public tax dollars to fund locally operated public schools. As early as 1869 and 1873, however, Vermont and Maine, respectively, offered education vouchers for students whose towns had insufficient numbers of students to form a public school (EdChoice, 2019l, p. 2). These vouchers differed slightly from current vouchers because they allowed students to use the voucher to attend a public or private, non-sectarian school (EdChoice, 2019l, p. 2). Modern vouchers, in contrast, are not dependent on whether there is the availability of a public school. Modern vouchers use a pre-determined amount of public funding that would normally have gone to the public school to cover partial or full tuition at an approved private school, whether it be sectarian or not (EdChoice, 2019m). In layman's terms, it is a publicly funded coupon that is provided to eligible families to attend a private school of their choosing.

The seed from which our current understanding of vouchers grew is found in Milton Friedman's work *Capitalism and Freedom* (Friedman & Friedman, 2002). Friedman, an economist, stressed the importance of education and noted that "a stable and democratic society is impossible without a minimum degree of literacy and knowledge" (Friedman & Friedman, 2002, p. 86). He argued that vouchers would allow parents to spend money more freely on the type of education that best suited their child, so long as there existed a common, minimum degree of standards each school followed (Friedman & Friedman, 2002, p. 89). Friedman envisioned a system in which public and private schools competed with each other, which would "introduce flexibility into [the] school system" and lead to the "development and improvement of all schools" (Friedman & Friedman, 2002, p. 93). However, Friedman did caution that a glaring problem with his voucher proposal arose in regard to school segregation. Never wanting the government to encroach on an individual's freedom of choice, Friedman stated that to "enforce segregation or enforce integration" were both "bad solutions" (Friedman & Friedman, 2002, p. 117). However, the United States Supreme Court ruling in *Brown v. Board of Education of Topeka* (1954) that found "separate educational facilities are inherently unequal" on the basis of race created an opportunity for individuals to exploit Friedman's theory for the worse.

One of the most infamous examples of this defiance to integration occurred in Prince Edward County, Virginia. The day following the Supreme Court's decision in *Brown II*, which stated integration should occur with "with all deliberate speed", the Prince Edward County Board of Supervisors voted to provide "only the legal minimum of \$150,000 to the schools instead of the \$685,940 the school board had requested" (Turner, 2004, p. 1681). Furthermore, white members of the community joined together to form the Prince Edward School Foundation, which

solicited cash pledges to cover teacher salaries at private, white only schools (Spreng, 1997; “The Closing of Prince Edward County's Schools”, nd; Turner, 2004). The plans to resist integration were implemented in 1959 and led to the closing of public schools in Prince Edward County for five years. Turner (2004) found that the lack of a public option “wreaked havoc on the educational and emotional lives of black children, and on the viability of the black community as a whole” (p. 1683). Yet again, the Supreme Court had to intervene to remedy this situation. In *Griffin v. School Board of Prince Edward County*, the Court found that “closing the Prince Edward County schools while public schools in all the other counties of Virginia were being maintained denied the petitioners and the class of Negro students they represent the equal protection of the laws guaranteed by the Fourteenth Amendment” (*Griffin v. School Board*, 1964, p. 225).

Unfortunately, using school choice as a means to bypass integration was not an isolated incident. As Ryan (2004) states, “Southern states and school districts relied on school choice to avoid integration” (p. 1636). One form of choice was “the emergence of segregation academies” (Hershkoff and Cohen, 1992, p. 2). Segregation academies were private schools that provided government assistance through tuition grants to help white families send their children to white-only schools (Hershkoff and Cohen, 1992; *Segregation Academies and State Action*, 1973; *Southern School Desegregation*, 1967). In a 1967 report issued by the Commission on Civil Rights, eight states were found to have had enacted some form of tuition grants and stated, “The formation of private schools for white pupils has been encouraged and facilitated by the availability from Southern State governments of tuition grants which were instituted to resist and frustrate the implementation of the 1954 Brown decision” (*Southern School Desegregation*, 1967, p. 72).

Another common form of choice employed was the freedom-of-choice plan. In this plan “students were automatically re-enrolled in the same school every year but had the option to change their enrollment if desired” (Stancil, 2018). The freedom-of-choice plan did little to support integration and was eventually ruled unconstitutional in *Green v. County School Board of New Kent County* (Green v. County, 1968).

While using public monies to help fund students at private schools to further segregation was thwarted, the push for the use of public monies to help fund students at private schools in more general terms was just beginning. In 1972, a small voucher experiment was conducted in Alum Rock School District of San Jose, California (Mecklenburger, 1972). As Levinson states:

The prime aim of the transitional voucher experiment in Alum Rock was to change the operation of a school system from a public monopoly – where central office administrators allocate resources and determine what kind of education is to be offered – to a market system where parent choice determines the amount and variety of schooling. (Levinson, 1976, p. 1)

The Alum Rock vouchers had some of the characteristics that aligned with Friedman’s theory. For example, the vouchers were provided to parents for a pre-determined amount; they provided freedom to choose the particular setting they wished their child to be in, and the voucher was available to all applicants (Mecklenburger, 1972). The Alum Rock vouchers, however, differed significantly from what Friedman envisioned in that the voucher was only redeemable for differing public school programs (Levinson, 1976; Mecklenburger, 1972). This voucher experiment only lasted for three years, but as Mecklenburger (1972) found in speaking with a spokesman for the American Federation of Teachers: “Vouchers introduce us to a whole new ball game. Alum Rock is just the top of the first inning” (p. 25).



## **Modern Vouchers**

In April of 1983, voucher proponents started to put runners in scoring position with help from President Reagan and the publishing of “A Nation at Risk” (Gardner, 1983). The report was a shock to many with claims of “being overtaken by competitors throughout the world” due to “the mediocre educational performance that exists [in the U.S.] today” (Gardner, 1983, p. 5). While Gardner’s methodology was questioned, the fear of an eroding public education system was in the air (Kamenetz, 2018; Pear, 1985; Strauss, 2019). President Reagan and his Education Secretary William Bennett capitalized on this fear and began pushing for education reform that included school vouchers (Strauss, 2019). While they were unsuccessful in passing federal voucher legislation, politically conservative school reform advocates continued to fight for school vouchers at the state level. Most notably among them was Wisconsin Governor Tommy Thompson.

## **Choice Programs**

In 1990, Governor Thompson signed into law the Milwaukee Parental Choice Program (MPCP), the first “true” school voucher program (Pitrof, 2004). The program started small and “was limited to 300 Milwaukee students whose families had an income less than 175% of the poverty level” (Wisconsin Private School Vouchers, 2015). The MPCP had to report data to the Wisconsin State Superintendent on their effectiveness as judged by one of four standards:

- 1.) 70% or more of the pupils in the program advance one grade level each year;
- 2.) 90% or better attendance rate for the pupils in the program;
- 3.) 80% or more of the pupils in the program demonstrate significant academic progress;
- 4.) 70% or more of the families of the pupils in the program meet parent involvement criteria established by the private school (Mead, 2014).

The MPCP was not supported by everyone though and encountered two legal challenges.

The first was *Davis v. Grover* and was challenged on three issues:

- 1.) Whether the MPCP is a private or local bill which was enacted in violation of the procedural requirements mandated by art. IV, sec. 18 of the Wisconsin Constitution;
- 2.) Whether the MPCP violates art. X, sec. 3 of the Wisconsin Constitution, which requires the establishment of uniform school districts;
- 3.) Whether the MPCP violates the public purpose doctrine which requires that public funds be spent only for public purposes (*Davis v. Grover*, 1992).

Prior to reaching the Wisconsin Supreme Court, *Davis* was challenged on an additional issue relating to how schools participating in the MPCP served children with disabilities (Mead, 2014, p. 350). The challenge focused on a rule created by the State Superintendent that would have required MPCP schools to operate in a more similar manner to public schools in serving students with disabilities (Mead, 2014). The trial court judge dismissed this rule, and the issue was not included in later appeals (Mead, 2014). Thus, the Wisconsin Supreme Court evaluated the MPCP in relation to just the first three issues. In short, the Wisconsin Supreme Court found that the MPCP was not in violation of the state constitution on the issues it was challenged on and allowed the program to continue.

The second legal challenge to the MPCP was *Jackson v. Benson* (*Jackson v. Benson*, 1998). *Jackson* was heard on multiple issues, but as Mead (2014) notes, “*Jackson* is best known for the court’s analysis of the Establishment of Religion Clause issues raised by the legislature’s removal of the requirement that MPCP schools be non-sectarian” (p. 353). In their review, the Wisconsin Supreme Court relied upon the three-prong test established in *Lemon v. Kurtzman* to

determine if the MPCP violated the Establishment Clause (*Lemon v. Kurtzman*, 1971). The Wisconsin Supreme Court found there was no violation due to the MPCP:

- 1.) having a secular purpose to “provide low-income parents with an opportunity to have their children educated outside of the embattled Milwaukee Public School system” (p. 857);
- 2.) not having the primary effect of advancing religion because “The amended MPCP, therefore, places on equal footing options of public and private school choice, and vests power in the hands of parents to choose where to direct the funds allocated for their children's benefit” (p. 872-873);
- 3.) not creating an excessive entanglement because “The State's regulation of participating private schools, while designed to ensure that the program's educational purposes are fulfilled, does not approach the level of constitutionally impermissible involvement” (*Jackson v. Benson*, 1998, p. 875).

The decision was appealed to the U.S. Supreme Court, but the Court declined to grant certiorari (*Jackson v. Benson*, 1998). However, following the *Jackson* decision, two noteworthy events occurred that paved the way for future choice programs: the filing of the court case *Zelman v. Simmons-Harris* and the enactment of Florida's John M. McKay Scholarship Program for students with disabilities (*Zelman v. Simmons-Harris*, 2002; EdChoice, 2019c).

In *Zelman*, “a group of Ohio taxpayers, which included Doris Simmons-Harris, filed a suit in federal court” claiming that Cleveland's voucher program was unconstitutional because “the program violated the Establishment Clause of the First Amendment” (Welner, 2014). The Federal District Court and Sixth Circuit Court of Appeals both found the program to be in violation of the Establishment Clause, and the case was appealed to the U.S. Supreme Court,

which agreed to hear arguments in 2002. In this landmark 5-4 decision, the Court ruled that vouchers used to attend sectarian schools did not violate the Establishment Clause (*Zelman v. Simmons-Harris*, 2002). Chief Justice Rehnquist, delivering the opinion of the Court, stated:

In sum, the Ohio program is entirely neutral with respect to religion. It provides benefits directly to a wide spectrum of individuals, defined only by financial need and residence in a particular school district. It permits such individuals to exercise genuine choice among options public and private, secular and religious. The program is therefore a program of true private choice. In keeping with an unbroken line of decisions rejecting challenges to similar programs, we hold that the program does not offend the Establishment Clause. (*Zelman v. Simmons-Harris*, 2002, p. 662-663)

The Court's decision was a momentous victory for choice advocates and choice programs. It provided a green light for programs currently in existence and the creation of future choice programs.

One program that had come into existence during the time that *Zelman* was making its way through the lower courts was Florida's John M. McKay Scholarship Program for students with disabilities. This was the first choice program specifically for students with disabilities (EdChoice, 2019c). Similar to general education vouchers, the John M. McKay Scholarship Program had specific eligibility requirements needed to participate in the program. For example, initial eligibility required the student to have an Individualized Education Program (IEP) or 504 Plan and to have met one of the following four criteria:

- 1.) Spent the previous year in a FL public school; or
- 2.) Enrolled and reported for funding by FL School for the Deaf and Blind during previous Oct and Feb surveys; or

- 3.) Received Specialized Instructional Services previous school year and has current IEP or 504; or
- 4.) Was a foster or military child who transferred from a different state and provided at least 60 days notice of scheduled scholarship payment and gained acceptance to eligible school (EdChoice, 2019e).

Two notable differences, however, from general education vouchers were that the McKay Scholarship Program had no family annual income requirement to limit participation and accepting the McKay Scholarship Program voucher required participants to waive their procedural safeguards guaranteed under the Individuals with Disabilities Education Act (IDEA) (EdChoice, 2019e). These were immensely crucial details because the McKay scholarship program became the template on which other states adopted their special education voucher programs. Furthermore, it also served as the template on which States developed their Tax-Credit Scholarship (TCS) and Education Savings Account (ESA) programs for students with disabilities.

### **Tax-Credit Scholarships and ESAs**

Tax-credit scholarships are another form of choice that allows students to attend a private school and, in some instances, an alternative public school (“School Choice Report Series”, 2018; EdChoice, 2019o). The most notable difference between tax-credit scholarships and vouchers is how tax-credit scholarships are funded. As noted by EdChoice (2019o), “Tax-credit scholarships allow taxpayers to receive full or partial tax credits when they donate to nonprofits” (EdChoice, 2019o). Taxpayers may be either individuals or businesses and their donations are collected and distributed by a state-approved nonprofit, typically referred to as a school tuition organization (STO) or scholarship granting organization (SGO) (“School Choice Report Series”,

2018; EdChoice, 2019o; GAO, 2017b). The funds distributed by the SGOs can be used to cover costs of tuition, transportation, books, school fees, homeschooling expenses, preschool, public school initiatives and career and technical education (GAO, 2019; GAO, 2017b). However, similar to vouchers, what each tax-credit scholarship covers is limited to the particular requirements of each program (GAO, 2019; GAO, 2017b). Currently, there are 22 tax-credit scholarship programs and the GAO notes that “7 of 22 programs are limited to students with disabilities or allow students with disabilities to qualify for a scholarship even if they do not meet some requirements for students without disabilities” (GAO, 2017b, p. 9).

Whereas tax-credit scholarship programs use donations to fund their programs, Education Savings Accounts (ESAs) are more similar to vouchers in that they provide public monies to families for a private education (“School Choice Fast Facts and Statistics”, 2019). With an ESA, families are provided a set amount of money “that would have gone to a student’s assigned district” (EdChoice, 2019a). The amount of money provided varies from state to state and can either be a set amount or a percentage of the amount the public district would have received (EdChoice, 2019a; EdChoice, 2019n). Typically, funds are provided to parents through “debit cards” to cover any pre-approved educational service such as “private school tuition, textbooks, curricula, online learning, individual public school classes, and Advanced Placement courses” (EdChoice, 2019b). Furthermore, “Parents can even roll over unused funds from year to year and even into a college savings account” (EdChoice, 2019n). Proponents of ESAs claim that this is “the next generation of school choice” because parents may use the funds on the debit card multiple times to “fully customize their children’s education” (EdChoice, 2019b). However, like general education vouchers, these programs have been met with resistance, specifically

pertaining to, as noted above, those who can access these programs and their relationship to federal disability law.

### **IDEA Rights and Private Placement**

Students with disabilities enrolled in the public education system are ensured rights under three main federal disability laws: Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the IDEA. In the K-12 public education system, the IDEA “is without doubt the most prescriptive of the three acts with regard to the educational experience of children with disabilities” (Mead, 2017). The IDEA is comprised of Parts A through D, with Part B highlighting the “educational guidelines for school children 3-21 years of age” that States must follow (IDEA, n.d.). Those guidelines are comprised of six main components:

- 1.) A Free and Appropriate Public Education (FAPE)
- 2.) Appropriate evaluation
- 3.) Individualized Education Program
- 4.) Least Restrictive Environment (LRE)
- 5.) Procedural safeguards
- 6.) Parent/Student Participation (Saleh, n.d; IDEA, n.d.)

These components ensure access and protection for students with disabilities to a greater extent than Section 504 or the ADA.

A good illustration of this protection is that Section 504 and the IDEA both include a right to FAPE. Importantly, in their definitions of FAPE, Section 504 and the IDEA both require that services be provided at no cost to the individual (34 C.F.R. §104.33(c)(3); 20 U.S.C. § 1401(9)(A)). However, Section 504 is a civil rights law that protects an individual from being discriminated against on the basis of disability, whereas the IDEA is an educational benefit law

for people with disabilities. As such, the service provisions of FAPE in each law carry different meanings. As Team (2019) notes, services in Section 504 relate to “changes to the learning environment to enable students to learn alongside their peers” and IDEA services ensure that a “child’s unique needs” are met (Team, 2019). Put differently, Section 504 ensures that a student has equal access to an education, while the IDEA ensures that a student receives and incurs a benefit from that education.

The IDEA also has more prescriptive language on what it requires to help ensure that a student receives a FAPE. One illustration of this is the requirement that each state agency establish and maintain qualifications for special education teachers, paraprofessionals, and service personnel (20 U.S.C. § 1412(a)(14)(A)). This includes certification, licensing, or degree requirements to ensure that these personnel “are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities” (20 U.S.C. § 1412(a)(14)(A)). While other provisions prescribed in the IDEA are similarly targeted to what a school must do to ensure a student receives a FAPE, one notably different provision addresses what happens if the school in which the child is attending fails to meet its obligation to provide a FAPE.

In this situation, when a FAPE is not provided, the procedural safeguards of the IDEA go into effect. The procedural safeguards of the IDEA outline not only the rights of children with disabilities, but also their parents/guardians. For example, a copy of the procedural safeguards must be provided to parents annually and “include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner” (20 U.S.C. § 1415(d)(2)). An important component provided under the procedural safeguards includes the option of filing a due process



complaint (20 U.S.C. § 1415). When a due process complaint is filed, parents and families can seek compensatory services which “may include physical and occupational therapy, summer educational services, tutoring, and small group instruction” (Gopal, 2004). It may also include paying for services that parents provided to the child during the time FAPE was denied, paying for future educational services to compensate for denial of FAPE, and possibly paying for a private educational placement (Gopal, 2004). In the unfortunate instances where the due process complaint is unsatisfactory, there remains the option to file a lawsuit in state or federal court (Lee, 2019). These examples highlight a few ways in which the IDEA provides a more comprehensive and substantial guarantee to an education for students with disabilities than Section 504 or the ADA. This guarantee, however, is dependent on the type of institution the student attends and the motive behind the placement (See Appendix A of this study).

Students who attend a public institution, regardless of motive, are guaranteed the full protections provided under the IDEA. If a student attends a private institution, the motive for placement plays a crucial role. Placement of a student in a private institution can be done in coordination with the public agency or independent of the public agency. When placement is done in coordination with the public agency, “the financial obligations for that placement are the responsibility of the public agency, and the child is entitled to all the rights the child would have if he or she were in a public school, including the right to FAPE” (GAO, 2017a, p. 7). When a parent/guardian chooses to enroll a child in a private institution independent of the public agency, the GAO notes:

In general, IDEA does not require school districts to pay for the cost of special education and related services of a child with a disability at a private school if the district made a

free appropriate public education available to the child and the parents elected to place the child in such private school or facility (GAO, 2017a, p. 8)

Additionally, a parentally placed student in a private institution loses the protections under the IDEA related to discipline, special education teacher requirements and LRE requirements (GAO, 2017a, p. 7-8).

The exception to this occurs when a parent/guardian enrolls their student in private institution who was previously receiving special education and related services provided by the public agency. When a disagreement arises impacting the education of a student with disabilities the public agency is providing, a parent/guardian has due process rights provided to them under the IDEA. As the GAO states:

Parents may request a due process hearing if they have a dispute related to the identification, evaluation, educational placement of a child with a disability, the provision of FAPE, or the implementation of IDEA's disciplinary procedures. This could include disputes regarding the development or implementation of an IEP and the location where services will be provided (GAO, 2017a, p. 9)

If the public agency is found to have violated the requirements of the IDEA, the private placement of students and their rights moving forward will be covered through the provisions outlined in the IDEA. Furthermore, the parent/guardian may be provided additional reimbursements to compensate for services provided or lost during the dispute process.

Conversely, if the public agency is found to have not violated the requirements of the IDEA, the rights of the student mirror those of a private placement made independent of the public agency, and the parent/guardian is not entitled to reimbursements. While most of the IDEA rights for parentally placed students relate to the motive for placement, there are two notable caveats.

The first caveat relates to the “child find” provision of the IDEA (34 C.F.R. § 300.111). The child find provision mandates that each State agency have policies and procedures in place to identify, locate, and evaluate:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services (34 C.F.R. § 300.111(a)(1)(i))

If a state agency fails in the child find process, the due process protections of the IDEA remain in effect. If the state agency concludes that a child has a disability, however, the second caveat comes in to play.

This second caveat relates to the equitable services provisions of the IDEA (34 C.F.R. § 300.132). The equitable service provision requires public school districts to provide for the participation in special education and related services of parentally placed private school children with disabilities (34 C.F.R. § 300.132). The services provided by the public district must be done in consultation with private schools and funded through a proportionate share of IDEA Part B funds (34 C.F.R. § 300.133). As the GAO (2016) states:

The formula for determining the proportionate share is based on the number of eligible parentally placed children with disabilities attending private schools located in the district, in relation to the total number of eligible public and private school children with disabilities in the district’s jurisdiction. (GAO, 2016, p. 8)

Put differently, if 5 percent of the children with disabilities in a public school district’s boundaries are parentally placed, then 5 percent of the federal IDEA Part B funds the district receives must be used to serve the parentally placed students. However, while parentally placed

children may benefit from these services, the IDEA states that “No parentally-placed private school child with a disability has an *individual* [emphasis added] right to receive some or all of the special education and related services that the child would receive if enrolled in a public school” (34 C.F.R. § 300.137). The absence of an individual right to special education and related services for parentally placed students effectively creates a group entitlement. Consequently, the proportionate amount of funds used to provide special education and related services may overly benefit some students while providing no benefit to other students.

### **Comparison of Special Education Vouchers and ESAs**

While each voucher, ESA and tax-credit scholarship program is unique to the confines of their respective states, the funding structure of tax-credit scholarship programs make them markedly different. As such, focusing on the similarities and differences of voucher and ESA programs allow for a more nuanced comparison. When examining those programs specifically designed for children with disabilities, to be eligible for a special education voucher or an ESA, all programs require a student to have been diagnosed with a disability or have an IEP (Braun, 2017; GAO, 2017a; “School Choice Report Series”, 2018). Additionally, there are no income limits placed on families to prohibit student eligibility (Braun, 2017; School Choice in America Dashboard, 2019). In terms of student rights, Bon, Decker and Strassfeld (2016) found that “None of the 17 existing SVPs [special education voucher and ESA programs] allow parents and students to retain all their rights and protections under the IDEA after accepting an SVP” (Bon, Decker and Strassfeld, 2016, p. 513). Braun (2017) found that “no state except Utah requires voucher-receiving schools to spell out for parents the specific services they will provide to students” (p. 5). Braun (2017) and Bon et al (2016), however, also found that every private

school participating in the special education voucher or ESA must comply with state's health and safety laws and federal laws that prohibit any discrimination on the basis of individuals race, color, or national origin (Bon et al, 2016; Braun, 2017).

Most programs also require some form of teacher training/qualification to participate in the program, although these requirements are significantly more relaxed than those required under the IDEA (Almazan and Marshall, 2017; Bon et al, 2016; Braun, 2017). The majority of these programs have a specific funding mechanism in place to determine the amount each student is awarded and all of the programs allow for these funds to be used to cover some or all of the participating private school's tuition (Almazan and Marshall, 2017; Bon et al, 2016; Braun, 2017; "School Choice Report Series", 2018). Finally, none of the programs prohibit returning to the public system if they are dissatisfied with their private choice (Braun, 2017). Despite these shared characteristics, there are numerous discrepancies among the programs.

One difference of vouchers and ESAs across States is the amount of funding that each program provides and who can access each program. As Almazan and Marshall (2016) note, "The range for vouchers and/or savings accounts is from \$2,000 (Mississippi) to \$27,000 (Ohio, students with autism)" (p. 8). These differences are observed across States and, occasionally, within a State. For example, Ohio has two voucher programs for students with disabilities (Bon et al, 2016, p. 511). While one program is open to all students with disabilities, the other program is specifically limited to students with autism (Bon et al, 2016, p. 511). In the 2017-2018 school year, the average voucher value of each program was \$9,913 and \$22,996, respectively (EdChoice, 2019h; EdChoice, 2019i).

In contrast, Mississippi has two voucher programs for students with disabilities, one being limited specifically to students with a speech and language impairment and the other for students with dyslexia (Bon et al, 2016, p. 511). In the 2018-2019 school year, both vouchers had an average annual amount provided to families of \$4,985 (EdChoice, 2019f; EdChoice, 2019g). The number of students participating in each program also has a wide variance. For example, Mississippi's Nate Rogers Scholarship for Students with Disabilities had one participating student in the 2018-2019 school year, while Florida's John M. McKay Scholarship for Student with Disabilities had 30,965 participating students EdChoice, 2019e; EdChoice, 2019f). Relatedly, the GAO released two separate reports on the potential impacts that voucher and ESA programs may have for students with disabilities that warrant further attention.

### **GAO Findings**

The first report is GAO-16-712, *Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students*. In this report, the GAO examined:

- 1) the characteristics of private school choice programs and the students who participate in them;
- 2) the requirements private school choice programs have for participating private schools; and
- 3) how selected public school districts work with private schools to provide equitable services in the context of private school choice programs and the extent to which the U.S. Department of Education (Education) provides related guidance (GAO, 2016, p. 2)

To accomplish this, the GAO included all 20 voucher programs and all five ESAs, operating in the fall of 2015 (GAO, 2016, p. 2) The GAO interviewed public and private school officials, officials for the U.S. Department of Education, and both advocates and opponents of choice programs. (GAO, 2016, p. 3) Additionally, they reviewed federal laws, regulations, guidance documents, and surveyed the voucher programs (GAO, 2016, p. 2). A vital component of these

reviews centered on the equitable service provision of the IDEA (GAO, 2016, p. 3). The GAO noted that public school districts initiated the child find requirement and provided services to parentally-placed students through the consultation process (GAO, 2016, p. 31). However, the GAO found that some state and district officials “were confused about whether participation in private school choice programs changed students’ eligibility for federally funded equitable services or changed the public school district’s roles and responsibilities in providing these services” (GAO, 2016, p. 34). For example, one school district the GAO contacted reported that a student would not be entitled to equitable services, if the student was in a private choice program, even if the student had already qualified (GAO, 2016, p. 35). This confusion also extended to the equitable service requirements of initial evaluations and reevaluations. The GAO noted that districts stated that part of the confusion was due to the frequency in which both types of evaluations must occur, but also on what funding could be used to cover the administrative cost of both types of evaluations (GAO, 2016, p. 35). Importantly, wherever the confusion lay, districts reported to the GAO that further guidance from the Department of Education would be helpful in clarifying roles and responsibilities.

At the time this GAO report was issued, the Department of Education had not “clarified guidance on equitable services requirements in the context of private school choice programs, such as explaining that these programs should not affect students’ eligibility for equitable services” (GAO, 2016, p. 37). Despite the findings the GAO had found, the Department of Education stated, “they have not had any recent inquiries or requests for guidance on these issues, and therefore, the agency has no current plans to specifically address private school choice programs in its equitable service guidance” (GAO, 2016, p. 37). However, the GAO argued further action was needed and issued the following recommendation:

Given the growing number of private school choice programs, we recommend that the Secretary of Education incorporate information about providing equitable services in the context of private school choice programs into guidance. (GAO, 2016, p. 38)

After providing a draft report to the Department of Education, the Department stated:

they would consider appropriate guidance regarding states' and districts' responsibilities to ensure that IDEA's equitable services provisions are applied to students with disabilities whose parents enroll them in private schools under choice programs (GAO, 2016, p. 38)

The GAO warned that:

Absent such guidance, states and districts are likely to continue to be confused about how to implement equitable services in the context of these programs and may risk incorrectly or inefficiently implementing equitable service provisions (GAO, 2016, p. 38).

Providing external stakeholders with "quality information to clarify requirements and responsibilities and adapt to emerging trends" is an integral part of the Department of Education's role (GAO, 2016, p. 37). Furthermore, providing external stakeholders with quality, clarifying information would help ensure the equitable services requirements were being implemented appropriately "in the context of growing private school choice programs" (GAO, 2016, p. 37). Similar concerns, and suggestions for remedies, were made in a separate GAO report the following year.

The second report was, GAO-18-94, *Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities*. In this report, the GAO was tasked "to examine accountability and transparency in private school choice programs, including



the information provided to families of students with disabilities” (GAO, 2017a, p. 2-3). The GAO created three parameters to examine accountability and transparency which included:

- (1) the academic, administrative, and financial accountability mechanisms in private school choice programs;
- (2) the information available to the public and prospective parents on private school choice programs and participating private schools; and
- (3) how parents of students with disabilities are informed about any changes in their rights under federal law when enrolling in private school choice programs, including how the U.S. Department of Education provides information about these rights (GAO, 2017a, p. 2).

Their report included a review of “publicly available documents from all 23 voucher programs and all four ESA programs operating in the United States as of January 2017,” interviews with program officials from the largest voucher and ESA programs, a random sampling of participating private school websites and interviews with researchers (GAO, 2017a, p. 2-3). A full list of the 27 programs the GAO examined can be found in Appendix B of this study.

Turning to the first parameter of accountability, the GAO found that 18 of the 27 programs require testing of participating students (GAO, 2017a, p. 11). However, in interviews with program officials they found that “some private schools were unfamiliar with or unequipped to administer standardized tests,” that “smaller private schools sometimes lack the staff and budgets to administer standardized tests,” and that “protecting student privacy in small private schools can be challenging” (GAO, 2017a, p. 12). For administrative accountability, the GAO found that 25 of the 27 programs “require participating private schools to comply with state and local health and safety standards,” 19 of the 27 “require participating private schools to employ

teachers and other staff with specific qualifications or credentials,” and 14 of the 27 programs “require schools to hire paraprofessionals and/or specialists with specific qualification or credentials” (GAO, 2017a, p. 13-14). For financial accountability the GAO found that 15 of the 27 programs “require private schools to provide proof of fiscal soundness in order to participate” and that 8 of the 27 “require participating schools to provide annual audits” (GAO, 2017a, p. 15).

The second parameter that the GAO focused on was the information that programs and private schools made available to the public. Of the 27 programs, over 20 of the programs include information related to grades served, contact information and an address (GAO, 2017a, p. 18). Additionally, it found that “Just over one-third (10 of 27) of private school choice programs—serving 65 percent of students in choice programs—provide guidance to parents on how to choose a school” (GAO, 2017a, p. 19). However, the GAO noted that “far fewer programs provide information on school accreditation status (6 programs), student race and ethnicity data (5 programs), and graduation rates (4 programs)” (GAO, 2017a, p. 17). The random sampling of private school websites that the GAO analyzed also had varying levels of information provided. For example, the GAO estimates that “no more than 53 percent of private schools in voucher programs for students with disabilities mention students with disabilities or special education services anywhere on their websites” (GAO, 2017a, p. 21-22). The GAO also stated that:

no more than 21 percent of private schools participating in a voucher program specifically designed for students with disabilities provide certain types of special education/disability-related information on their websites that might be of interest to

prospective families choosing a school for their student with a disability. (GAO, 2017a, p. 22)

In addition to the information that private choice programs and schools made available to the public, the GAO went on to analyze how students were informed of their rights.

The final issue the GAO examined was how parents of children with disabilities were notified of the change in their federal rights when accepting a voucher or ESA. Of the 27 programs, the GAO found that 14 of the programs provided no or inaccurate information on changes in IDEA rights (GAO, 2017a, p. 26). Furthermore, 9 of the 15 programs specifically for students with disabilities fell into the category of providing no or inaccurate information (GAO, 2017a, p. 26). Importantly, the inaccurate information was not limited to the changes in IDEA rights, but also to the services that may be provided through the equitable service provision (GAO, 2017a, p. 24-25). In a 2016 report, the GAO recommended that “[The US Department of]Education include in its guidance information about providing equitable services in the context of private school choice programs” (GAO, 2016). However, the 2017 GAO report found no evidence that the USDOE had made any updates to their guidance documents to address their concerns about equitable services in private choice programs (GAO, 2017a, p. 28).

The GAO found that this lack of information could lead to serious confusion for parents and provided several examples including:

- 1.) Parents are under the impression that since school choice programs are operated and funded by the state, and are often designed for students with disabilities, their children will have similar protections to those ensured to public school children under IDEA;

2.) Private schools sometimes request a copy of a student's IEP, parents can mistakenly assume that the private school will provide the services and accommodations outlined in the document;

3.) Services at public schools were provided free of charge (GAO, 2017a, p. 28-29).

While there is no federal or state requirement to notify families of these changes, both the USDOE and GAO strongly recommend that states and districts do (GAO, 2017a, p. 29).

Furthermore, the GAO made a recommendation to Congress that it "consider requiring that states notify parents/guardians of changes in students' federal special education rights when a student with a disability is moved from public to private school by their parent" (GAO, 2017a, p. 30).

This recommendation was by no means made lightly. The GAO found significant problems with the lack information on the changes in special education rights and wanted to ensure the protection of students with disabilities. Nowhere is this concern made more clear than in the conclusion of the report where the GAO states, "Absent a requirement in IDEA that states notify parents of such changes, states are unlikely to begin providing parents with consistent and accurate information about changes that affect some our nation's most vulnerable children" (GAO, 2017a, P. 29).

While the GAO highlighted how vouchers and ESA programs can create confusion for parents and states, this confusion can extend to the highest levels of federal education oversight. For example, former Secretary of Education Arne Duncan was on C-SPAN discussing a book he wrote and taking calls from viewers. Questions from callers covered a variety of topics including: Race to the Top, No Child Left Behind, Common Core, vocational training, and school safety. One of calls he took asked two questions, the first about school funding and the second about students using vouchers and IDEA protections. More specifically, the caller

inquired “In Wisconsin for example, when the student takes a special education voucher, they forfeit their rights to IDEA protections. I was wondering if you could speak to why that is and if there's anything the federal government can do for that?” (Arne Duncan, 2018) While the former Secretary of Education was able to provide a comprehensive answer to the question on school funding, he was not as knowledgeable on the voucher question. His response was,

I actually don't understand it. It does not make sense what Wisconsin seems to be doing there, if what you're saying is accurate. First of all, I'm not a fan of vouchers. I want children to have access to great public schools. If parents want to send their children to faith-based schools or do other things, they absolutely have the right to do that. But where students are forfeiting their protections under the IDEA that does not make sense to me. (Arne Duncan, 2018)

The former Secretary of Education's response is surprising. Whether it was a due to a lack of knowledge, confusion, or a combination of those factors, he provided little clarification to the question. In turn, this strengthens the concerns issued by the GAO and the associated recommendations for change.

### **Summary of Literature Review**

Private Choice Programs have complicated history in the U.S. education system. The earliest voucher programs were provided to help children attend a school where no local school existed, but then morphed into a system that was used to resist school desegregation. Despite the illegality of those programs, vouchers continued to dominate the discourse as a viable alternative to public education. The creation of the MPCP, and subsequent voucher programs, led to various constitutional challenges. Having withstood these legal challenges, voucher programs were cemented in the landscape of contemporary education. Furthermore, this also solidified tax-credit

scholarships and ESAs as private choice options as well. The creation and expansion of choice programs for students with disabilities began to raise concerns, specifically with what rights a student with a disability has in a private choice program. Due to the uniqueness of each program, researchers focused on what the statutes of each program provided. While there exists a clear body of research comparing the statutory language among the programs and what the language provides, there is little to no research examining the impact this language has had on implementation, particularly regarding the notification of IDEA rights.

For example, the GAO highlighted numerous inconsistencies across vouchers and ESAs for students with disabilities regarding parental notification of IDEA rights (GAO, 2017a, p. 28-30). Absent from this report, however, was why some programs included this information while others did not. Additionally, there is no indication as to why the USDOE has not updated their guidance documents, in respect to the equitable service provision for private choice programs. Since the GAO's recommendation, no research has been done to examine whether federal and state agencies are taking steps to mitigate the issues concerning parental notification of IDEA rights. These are crucial details to examine due the significance associated with the forfeiture of IDEA rights.

While a parent has every right to choose to forego the rights provided by IDEA, how they arrive at that choice should not be undermined by a lack of information. Parents should have a fair and transparent choice, but that cannot occur without a fair and transparent exchange of information. Without a fair and transparent exchange of information of IDEA rights, families could unwittingly be forgoing the significant amount of protections that the IDEA provides. This, in turn, could result in the loss of a meaningful education for their child with no legal course of action to hold the school accountable. Ironically, this is precisely why the IDEA

was created in the first place: to provide and protect the right to an education for the most vulnerable population of students. Thus, forfeiting these rights should be made abundantly clear to families. Not only because of the importance it has with making a fair and transparent choice, but also because of potential harm that can occur absent this knowledge.

### **Theoretical Framework**

The theoretical framework utilized in this dissertation is grounded in disability studies in education (DSE). DSE has existed as a special interest group in the American Education Research Association since the early 2000's (Corcoran, White, & Whitburn, 2015; Danforth & Gabel, 2006). At its core, DSE "provides a platform for researchers from disparate disciplines and professional callings who share a concern with the oppression of people with disabilities in and through education" (Slee, Corcoran, & Best, 2019, p. 5). Crucially, DSE is about "fully exploring the ways in which disability transforms arguments about power, identity, and justice" (Danforth & Gabel, 2006, p. 3). As Taylor (2006) notes, DSE scholarship "includes social constructionist or interpretivist, materialist, postmodernist, poststructuralist, legal, and even structural-functionalist perspectives and draws on disciplines as diverse as sociology, literature, critical theory, economics, law, history, art, philosophy, and others" (Taylor, 2006). The range of research traditions and methodologies allows DSE researchers the freedom needed to conduct research that is focused on advancing the rights of people with disabilities "to access and participate and succeed in education" (Corcoran, White, & Whitburn, 2015, p. vii). This sort of research is not limited to within the school walls but extends to a broader context including policies effecting students with disabilities.

According to Danforth and Gabel (2005), how DSE is "(ir)relevant to local, state, and national policy" remains "one of the most difficult questions we face" (p. 9-10). One reason why

this is a difficult question is due to the entrenchment of the medical model in viewing people with disabilities. Inherent to the medical model approach is the belief that something is “wrong” with the student and must be provided with something more to “fix” them. An example of this mindset can even be found in the IDEA. As Gabel (2016) states:

resource allocation for disabled students in US schools is directly connected to the categorical imperatives of the IDEA. Therefore, resources are available if a district opts into the medical model bureaucracy which, of course, all districts must do if they want to receive federal funding (p. 193)

One challenge for DSE policy researchers then, is how to interrogate policies relating to the IDEA without directly challenging how the IDEA perpetuates a deficit view of people with disabilities. One avenue that Gabel (2016) suggests is to “study and write about ways in which the protections of the IDEA—particularly equal access—can be maintained while its drawbacks, dangers, and expenses—particularly those associated with medical model thinking—are minimized or extinguished” (p. 193). Additionally, Danforth and Gabel (2006) note that DSE includes “evidencing oppression, suffering, and inequality in action” (p.7). Given the stated research question highlighted in the previous section, the DSE theoretical framework is the ideal lens in which to approach the study of the rights of students with disabilities in parental choice programs. Not only does the study specifically examine the protections of the IDEA, but how knowledge of these protections is being communicated to parents. The GAO noted that parents may be unknowingly, forfeiting IDEA protections through private choice programs (GAO, 2017a). If agencies are not proactively taking measures to remedy this issue, they may be creating an inequitable system that oppresses the rights of students with disabilities. The DSE theoretical framework will guide how that information is collected, analyzed, and shared. In turn,



this will advance the ultimate goal of the study, which is to promote policies that ensure the rights of an equitable education for students with disabilities.

### Chapter 3: Research Design

This study will require an examination of specific policies and their relation to program development. To accomplish this, the study will utilize a qualitative approach to research guided by policy analysis and evaluative case studies. Policy analysis includes the investigation of “cases that led to a particular court decision, a state statute or a school board policy” (Permeth & Mawdsley, 2006, p. 144). Additionally, Majchrzak (1984) states that policy analysis is “interested in the process by which policies are adopted as well as the effects of those policies once adopted” (p. 13). An important characteristic for policy analysis requires a focus “on helping policymakers to solve social problems” (Majchrzak, 1984, p. 18). Additionally, Permeth and Mawdsley (2006) state that policy analysis needs to be “delivered in a timely manner in a usable format” (p. 132). Given the multiple federal and state level policies this study will examine, and specifically those policies relating to protections for students with disabilities, the use of policy analysis makes logical sense. Additionally, to help ensure the findings of the study are delivered in a timely fashion, it will also employ an evaluative case study approach to strengthen the policy analysis.

Citing a previous edition, Merriam (1998) defines a case study as “an intensive, holistic description and analysis of a single instance, phenomenon, or social unit” (p. 27). Majchrzak (1984) notes that case studies can examine “the process by which an intervention or policy action has been implemented” which “is particularly useful for developing recommendations concerning the future implementation of policy options” (p. 63). An evaluative case study is a unique type of case study because in addition to the description and analysis of the information, it also requires a judgement of the information. The collection of documents from various sources specific to voucher and ESA programs, as well as the analysis of those documents,

required some form of judgement throughout the process of this study. Given the description, analysis, and judgment required for an evaluative case study, the use of this design paired with policy analysis creates an integrated design in which the study was conducted.

### **Data Collection**

The main avenue for data collection was accomplished through the compilation and analysis of documents. Merriam (1998) identifies three major types of documents as being “public records, personal document, and physical material” (p. 113). The majority of document collection for this study relied upon public records. Public documents, among many others, include government documents, websites, agency records, program documents, transcripts, and mass media (Merriam, 1998). The collection of these types of documents provided a current and historical context in relation to the research question. Additionally, as new documents related to the research question emerged, it allowed for a comparison of old and new documents, which is essential to policy analysis.

### **Methods**

To examine the research question, this study was conducted in two stages. Stage 1 focused on federal agencies and Stage 2 focused on private choice programs with an emphasis on voucher and ESA programs. The following sections provide further details that was included in each stage.

Stage 1 focused on federal agencies, specifically the Government Accountability Office (GAO) and the Office of Special Education Programs (OSEP) of the U.S. Department of Education. The GAO is an independent, non-partisan organization that provides information on programs and activities funded through federal taxes. Due to the IDEA being a federally funded program, the GAO has the regulatory authority to assess issues related to the IDEA. Analyzing

documents provided by the GAO and OSEP helped to identify the reason(s) for previous reports related to the IDEA and clarify their findings. Additionally, analyzing documents provided by OSEP was used to determine how the GAO reports have impacted OSEP's role in overseeing and assessing compliance. Due to GAO reports 16-712 and 18-94 carrying the greatest relevance to this study, the focus of the data collection centered on the recommendations provided within each report.

Stage 2 focused on private choice programs, both general programs and those specifically designed for students with disabilities. The private choice programs included the voucher and ESA programs that are outlined in GAO reports 16-712 and 18-94. Tax credit scholarship programs were omitted from the study because their funding structure involves a third party. Below are the 27 programs that were examined.

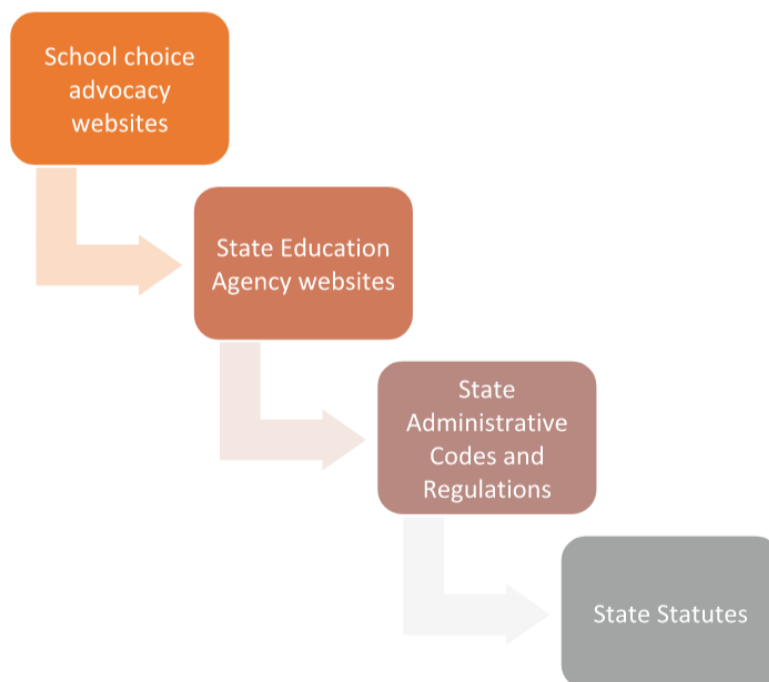
**Table 3.1**

Voucher and ESA Programs Included in the Study

State	Program Name	Program Type (Voucher/ESA)
Arizona	Empowerment Scholarship Account Program	ESA
Arkansas	Succeed Scholarship Program	Voucher
District of Columbia	Opportunity Scholarship Program	Voucher
Florida	Gardiner Scholarship Program	ESA
Florida	John M. McKay Scholarships for Students with Disabilities Program	Voucher
Georgia	Special Needs Scholarship Program	Voucher
Indiana	Choice Scholarship Program	Voucher
Louisiana	Louisiana Scholarship Program	Voucher
Louisiana	School Choice Program for Certain Students with Exceptionalities	Voucher
Maryland	Broadening Options and Opportunities for Students Today (BOOST) Program	Voucher
Mississippi	Dyslexia Therapy Scholarship for Students with Dyslexia Program	Voucher
Mississippi	Nate Rogers Scholarship for Students with Disabilities Program	Voucher

<b>State</b>	<b>Program Name</b>	<b>Program Type (Voucher/ESA)</b>
Mississippi	Education Scholarship Account	ESA
North Carolina	Opportunity Scholarship Program	Voucher
North Carolina	Special Education Grants for Children with Disabilities	Voucher
Ohio	Autism Scholarship Program	Voucher
Ohio	Cleveland Scholarship and Tutoring Program	Voucher
Ohio	Educational Choice Scholarship Program (EdChoice)	Voucher
Ohio	Educational Choice Scholarship Expansion Program (EdChoice)	Voucher
Ohio	Jon Peterson Special Needs Scholarship Program	Voucher
Oklahoma	Lindsey Nicole Henry Scholarship Program for Children with Disabilities	Voucher
Tennessee	Individualized Education Account Program	ESA
Utah	Carson Smith Special Needs Scholarship Program	Voucher
Wisconsin	Milwaukee Parental Choice Program	Voucher
Wisconsin	Racine Parental Choice Program	Voucher
Wisconsin	Special Needs Scholarship Program	Voucher
Wisconsin	Wisconsin Parental Choice Program	Voucher

With the programs identified, the next step was to collect documents that related to each of the private choice programs. Four main avenues were targeted in the collection of documents for each program. Those four avenues include school choice advocacy websites, State Education Agency websites, State Administrative Codes and Regulations, and State Statutes. Documents collected from these avenues sought information that explains what students' rights are under the IDEA upon acceptance and/or participation in the voucher or ESA program and information regarding the application of the equitable service provision. These four sources of information were selected as they might those examined by a parent considering whether to enroll their child in a voucher or ESA Program. For each state, the information was collected and examined in the order depicted in Figure 3.1.

**Figure 3.1***Order of Data Collection and Analysis*

Information collected from each source was then analyzed and coded. When collecting information that explains the rights under the IDEA, upon acceptance and/or participation in the voucher or ESA program, analysis focused on how students in these programs are not entitled to a Free and Appropriate Public Education (FAPE) within the private choice setting. Information gathered was coded under three categories: Clearly Stated Loss to a FAPE, Reference to a Loss to a FAPE, No Mention of a Loss to FAPE.

To be coded as a clearly stated loss to a FAPE, the language used had to include some or all of the following elements:

- that the child participating in the choice program does not have an individual right to a FAPE.

- that the child participating in the choice program does not have an individual right to special education or related services they would receive if enrolled in public school.
- that the public school is not required to provide a FAPE while child is participating in the choice program.
- that the procedural safeguards provided under the IDEA are no longer applicable while participating in the choice program.
- that, except for the child find, while participating in the choice program there is no ability to file a state complaint.
- that, except for the child find, while participating in the choice program there is no ability to request a due process hearing for alleged violations of the IDEA.
- that participation in the choice program has the same effect as a parental refusal to consent to services under the IDEA.

To be coded as a reference to a loss to a FAPE, language must include some or all of the following elements:

- that participation in the choice program results in different rights than they would receive in the public school.
- that participation in the choice program results in different services than they would receive in a public school, but that a child may still receive some services provided by the public school district.

To be coded as no mention of a loss to a FAPE, none of the elements from a clearly stated loss to a FAPE or reference to a loss to FAPE can be included. Language that includes the following elements will also be coded as no mention to a loss to a FAPE:

- private schools are not required to provide special education services.

- private schools may not discriminate against students labeled with a disability.

In addition to the requirements above, a key component to the coding process took into consideration the context in which those elements are stated and from a perspective of an individual with a rudimentary understanding of special education law. For example, a document could state that a child in the choice program will have an Individual Service Plan, but not an IEP, because the child is parentally placed and does not receive the same services covered under the IDEA. In this example, while the language closely aligns with the last element in the category “clearly stated loss to a FAPE,” it is stated under the context as it relates to an IEP. Additionally, to know that services covered under the IDEA also relates to protections associated with a FAPE, requires a higher understanding of special education law. As such, this example would be coded as a reference to a loss to FAPE, rather than a clearly stated loss to a FAPE.

In each stage, an analysis of the documents was conducted through the theoretical framework of DSE. Conducting analysis through the DSE framework explored the information gathered in relation to issues of power, identity, and justice for people with disabilities (Danforth & Gabel, 2006). Importantly, a discussion of the educational rights for people with disabilities cannot occur without addressing the issues of power, identity, and justice. This is the key element that separates an analysis through the DSE framework from a more traditional analysis. A more traditional analysis would simply examine the policies and information and look for its effect on educational rights. DSE analysis, however, examines the policies and information through the issues of power, identity, and justice, first, and then how those issues effect educational rights. Utilizing the DSE framework for analysis allowed the study to focus on identifying the educational barriers and solutions for people with disabilities. This approach not



only aligns with the policy analysis methodology, but has the added benefit of ensuring coherence throughout the entire study.

### **Limitations**

This study has potential limitations that should be noted. This study was limited to voucher and ESA programs, but omits tax-credit scholarship programs, one of the most popular approaches to public subsidies of private education. Future research on programs not included in this study would benefit from the findings of this study and allow for a more thorough comparison of programs. Another limitation of study includes the potential impact of researcher bias. Document analysis proceeded as described above, but no attempt was made to verify information with state program officers. The theoretical framework of the study will help mitigate the issue of researcher bias but does not eliminate it. Interviews with program administrators was initially contemplated and attempted, but was found to be infeasible due to the COVID pandemic. Likewise, the data gathered and analyzed did not include examining or sampling information provided by participating private schools. This study provides a snapshot of the more official and general sources of information concerning parents' rights and the provision of equitable participation. Furthermore, the coding of information obtained from official and general sources also introduces an element of researcher bias. To guard against that outcome, data collected and how it was coded was peer reviewed throughout the study (Merriam, 1998, pg. 204-205). While a fuller picture of how parents of children with disabilities obtain and understand their rights while participating in these private choice programs would include school sources, that information was beyond the scope of this study. Finally, the findings of the proposed study are limited to the time in which they were collected and analyzed, namely March,

2020 to August, 2022. As such, subsequent policies or governmental decisions relevant to the study may be omitted.

### **Significance**

The significance of this study rests within its potential to ensure that students with disabilities, and their families, are not unknowingly forgoing protections provided to them by the IDEA. In multiple reports issued by the GAO, they found the lack of accurate information regarding student IDEA rights when accepting voucher or ESA worrisome. One reason for concern related to the number of students and families this could potentially impact. As the GAO notes, in the 2016-2017 school year there were approximately 181,624 students utilizing either a voucher or an ESA (GAO, 2016, p. 4). Furthermore, almost a third of those students (55,288) were in programs where eligibility was based primarily on a student having a disability (GAO, 2016). The GAO findings suggest that unless Congress moves to remedy the situation, the lack of information and the number of families this impacts is likely to continue. Currently, there exists no research as to whether the U.S. Department of Education, state education agencies, or voucher and ESA programs are taking actions to remedy this on their own volition. This study would be the first to address this gap in literature. Furthermore, the findings have the potential to aid students and families in making more informed decisions, help agencies and programs develop policies to remedy the issue on their own, and to provide further information to Congress as to whether congressional action is needed. Each of these potential outcomes will help ensure that students with disabilities, and their families, are provided with all the information needed to make the decision that is best for their needs.

## Chapter 4: Findings

As previously stated, this study will address the following question: What explanations do states provide to parents/guardians of children with disabilities regarding their rights, including the equitable service provision, under the IDEA in a voucher or ESA program? Importantly, this question was developed based on two significant concerns of private choice programs raised by the GAO, which centered on the parental notification of rights and the equitable service provision (GAO, 2016; GAO, 2017a). The findings from the data collection process will be presented with this in mind. Specifically, it will follow a path that families may take when pursuing information related to private choice programs and the parental notification of rights. Beginning with information found on private choice advocacy websites, it will then move to information found on state department of education websites. Following this, information will be presented based on state codes and regulations and then state statutes. A full list of how programs were coded can be found in Appendix C of this study. Finally, this chapter will conclude with what information was provided in relation to the equitable service provision for these programs across the same sources.

### **School Choice Advocacy Group Websites**

The process to identify state specific school choice advocacy groups and what information they communicated began at the website for EdChoice (EdChoice, 2019p). The decision to begin here was based on two factors. First, information provided on that website was cited multiple times in the literature reviewed in Chapter 2. Second, this website provided information about specific state choice programs and links to state groups they identified as being supportive of school choice. Utilizing state groups provided by EdChoice allowed for a more comparative approach to identifying state choice advocacy programs.

In total, 18 school choice advocacy websites were explored for information that clearly stated there would be a loss of due process rights (i.e. Free and Appropriate Public Education) when enrolling in a school choice program. All the states, with the exception of Washington D.C., had at least one link to a school choice advocacy group. Arizona, Florida, North Carolina, and Utah had two links to school choice advocacy groups, which was the most for the states in this study. The links provided to each school choice advocacy group varied in the information provided. Some of the school choice advocacy websites were more focused on their organization and how to become involved in advancing school choice in their state. For example, one of Florida's school choice advocacy websites stated, "Policy is our purpose" when clicking their "About Us" link (ExcelinEd, 2022). Similarly, one of Utah's school choice advocacy websites had the approach to "educate parents on the education opportunities currently available to them and their children" and then "train these parents on how to advocate for their children to their state representatives" (Education Opportunity for Every Child, 2021). Other school choice advocacy websites had additional links for education providers, parents, and specific choice programs in their state. Following the links for parents and specific choice programs, only Ohio's school choice advocacy website had a clearly stated a loss to a FAPE directly on their website. However, Ohio has four choice programs and this clearly stated loss to FAPE was only found for the Jon Peterson Scholarship Program and the Autism Scholarship Program. For the Jon Peterson Scholarship Program and the Autism Scholarship Program, the clearly stated loss to a FAPE used the exact same language. The clearly stated loss to a FAPE language was, "The school district where you live is no longer responsible for making sure your child receives a free and appropriate education (FAPE)." (School Choice Ohio 2021a; School Choice Ohio 2021b). Arkansas's school choice advocacy website was the only website that included

language that referenced a loss to a FAPE. On Arkansas school choice advocacy website, there were multiple links to required waivers that parents/guardians needed to fill out and sign as part of the application process (The Reform Alliance, 2022). In only one of these waivers, the Resident School District Waiver, did it mention that the resident school district was under no obligation to provided services outlined in the IDEA. Specifically, the Resident School District Waiver stated:

As of the date I 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.

(State of Arkansas Department of Education, n.d.)

How this differed from the school choice program's responsibilities was not stated. The remaining 15 school choice advocacy sites provided no information related to the loss of FAPE when attending a choice school.

### **State Department of Education Websites**

After examining school choice advocacy group websites, the next place a parent/guardian may look for information is the state department of education website in which they reside. All the states, with the exception of D.C., had information about the school choice options in their state. Navigating to the school choice information often required exploring links for parents and families. For example, information for Arizona, Arkansas, Mississippi, North Carolina, Ohio, Tennessee, and Wisconsin were found by first starting with links for parents and or families. Another common way this information was accessed was through direct links or under links for

topics and/or programs. For example, Louisiana had a link to “School Choice” that was always accessible at the top of their webpage (See Figure 4.1).

**Figure 4.1**

*Screenshot of Louisiana Department of Education Website*



(Source: Louisiana Department of Education, n.d.)

Similarly, Maryland had a direct link to their choice program that was always accessible when hovering over a “Quick Link” tab at the top of their webpage. Information for Florida, Georgia, and Indiana was found by first clicking on links that related to additional topics and/or programs. Oklahoma and Utah had the most unique path in that it first required navigating to their special education main page before a link to their choice program was accessible. Arkansas, Georgia, Indiana, Mississippi, Ohio, and Tennessee also had links to school choice programs on their special education main page. Florida, Louisiana, Mississippi, North Carolina, Ohio, and

Wisconsin have multiple choice programs that were included in this study. With the exception of North Carolina and Wisconsin, those states all had dedicated webpages to their specific choice programs. Wisconsin lumped information on the MPCP, RPCP, and the WPCP on one page with a separate page dedicated to the SNSP, the program that specifically serves children with disabilities. North Carolina had no dedicated pages for their choice programs on their Department of Education website. Of the information found on the sites of the 27 programs, 11 had a clearly stated loss to a FAPE, three referenced a loss to a FAPE, and 13 had no mention of a loss to a FAPE.

The eleven programs that had a clearly stated loss to a FAPE were Arkansas Succeed Scholarship Program, Florida's Gardiner Scholarship Program and John. M. McKay Scholarship Program for Students with Disabilities, Georgia's Special Needs Scholarship Program, Mississippi's Education Scholarship Account program, Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, Tennessee's Individualized Education Account Program, Utah's Carson Smith Special Needs Scholarship Programs, and Wisconsin's Special Needs Scholarship Program. Florida's Gardiner Scholarship Program and John. M. McKay Scholarship Program for Students with Disabilities, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, and Wisconsin's Special Needs Scholarship Program had this information directly available on their program webpages. More commonly, this information was accessible through specific pdf links provided on the webpages. Arkansas Succeed Scholarship Program, Mississippi's Education Scholarship Account program, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, and Utah's Carson Smith Special Needs Scholarship Program had this information in a pdf link for

applications to their programs. Georgia's Special Needs Scholarship Program had this information in a pdf about understanding the program and Tennessee's Individualized Education Account Program had this information in pdf link to a handbook for account holders. Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program both had this information in pdf links to frequently asked questions. Both of these programs also included pdf links on their webpages that provided a comparison of a FAPE between the public school and scholarship programs. For example, Table 4.1 shows an excerpt of that FAPE comparison that can be found for both programs. (See Appendix D of this study for full table.)

**Table 4.1**

*Ohio Comparison of Rights in Public School vs. Scholarship Program*

<u><b>IDEA and Chapter 3323</b></u>	<u><b>Peterson Scholarship Program</b></u>
<p>A public school district must provide a <b>Free Appropriate Public Education (FAPE)</b> to students with disabilities. A <b>Free Appropriate Public Education</b> includes special education and related services that:</p> <ul style="list-style-type: none"> <li>• Are provided at no cost;</li> <li>• Meet the standards of the Ohio Department of Education;</li> <li>• Include an appropriate preschool, elementary, or secondary school education; and</li> <li>• Are provided in conformity with an IEP that meets Ohio's standards for IEPs.</li> </ul> <p>Special education is specially designed instruction to meet the needs of a child with a disability.</p> <p>Examples of related services include transportation, speech-language pathology services, audiology services, interpreting services, physical and occupational therapy, recreation, and counseling services.</p>	<p>A child who participates in the Jon Peterson Scholarship Program is a unilaterally privately placed student, and is <b>not entitled to FAPE</b>.</p>



Wisconsin's Special Needs Scholarship Program also had table of this comparison as a pdf link on the Special Needs Scholarship Program webpage and embedded within the application to the program. Conversely, programs like Arkansas Succeed Scholarship Program, Georgia's Special Needs Scholarship Program, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, Tennessee's Individualized Education Account Program, and Utah's Carson Smith Special Needs Scholarship Program contain language that acceptance/participation in their programs results in a loss of rights and directly cites IDEA, 20 U.S.C. Section 1400 in the information provided. Figure 4.2 provides an example. Note the explanation provided in the final paragraph.

**Figure 4.2**

*Screenshot of the Website for the Lindsey Nicole Henry Scholarship*

ship-program-children-disabilities

Home / Family Resources / Lindsey Nicole Henry (LNH) Scholarship Program for Children with Disabilities

## Lindsey Nicole Henry (LNH) Scholarship Program for Children with Disabilities

### Lindsey Nicole Henry Scholarship

SPECIAL EDUCATION SERVICES

The Lindsey Nicole Henry (LNH) Scholarship Act authorizes the parent or guardian of a public school student with a disability who is served under the Individuals with Disabilities Education Act (IDEA), and who spent the prior school year enrolled in an Oklahoma public school to exercise their parental option and request to have an LNH Scholarship awarded for their child to attend a participating private school approved by the State Board of Education. The Act also authorizes scholarship eligibility for the following categories of students:

- A student who has had an Individualized Service Plan developed by the Department of Human Services (DHS)
- A student who is a child of a military family with permanent change of station orders who has moved to Oklahoma after receiving IDEA services in another state
- A student who has been served through the SoonerStart program and during transition has been determined to be eligible for school district services
- A student who has been in out-of-home placement through the office of Juvenile Affairs
- A student who has been in out-of-home placement with DHS, or who was adopted while in the permanent custody of DHS

Additionally, according to Section (F)(1) of the LNH Act: "Acceptance of the Lindsey Nicole Henry Scholarship shall have the same effect as a parental revocation of consent for services pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of IDEA." As required by the revocation of consent provisions of the Individuals with Disabilities Education Act, a federal law, and the LNH Act, when a parent accepts an LNH scholarship, (1) the student is no longer entitled to receive special education and related services from any Oklahoma public school district and (2) each Oklahoma public school district must treat the student as a nondisabled student for all purposes, including discipline. Upon acceptance of an LNH scholarship, the parent/guardian will receive a Written Notice from the student's public school district that confirms this information.

#### Special Education

- Main Page
- School Age - Part B ▼
- Sooner Start - Part C
- Family Resources ▼
- Recent Updates
- OTISS
- Section 504

(Source: Oklahoma State Department of Education, 2022)

Florida's Gardiner Scholarship Program and John. M. McKay Scholarship Program for Students with Disabilities, as well as Mississippi's Education Scholarship Account program include

language that the rights under IDEA are not in effect while participating in their choice programs.

Of the 11 programs that had a clear statement to a loss to a FAPE in information provided on their state department of education websites, most also had a clearly stated loss to FAPE in either their state's administrative codes and regulations or state statute. For example, Georgia's Special Needs Scholarship Program, Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, Tennessee's Individualized Education Account Program, and Utah's Carson Smith Special Needs Scholarship Program all had a clearly stated loss to a FAPE in administrative codes and regulations, as well as state statute. Mississippi's Education Scholarship Account program had a clearly stated loss to a FAPE in state statute but no reference to a loss to a FAPE in administrative codes and regulations. Arkansas' Succeed Scholarship Program, Florida's Gardiner Scholarship Program and John. M. McKay Scholarship Program for Students with Disabilities had a clearly stated loss to a FAPE in information found on their state department of education websites, but no clearly stated loss or reference to a loss to a FAPE in administrative codes and regulations or state statute.

The three programs that mention a loss to a FAPE in information found on state department of education websites were Arizona's Empowerment Scholarship Account Program, Indiana's Choice Scholarship Program and Mississippi's Nate Rogers Scholarship for Students with Disabilities Program. Like the programs that had a clearly stated loss to a FAPE, all three programs had references to a loss to a FAPE in pdf links on the choice program websites. Information for Arizona's Empowerment Scholarship Account Program was found in their choice program parent handbook, whereas Indiana's Choice Scholarship Program and

Mississippi's Nate Rogers Scholarship for Students with Disabilities Program had their information in pdf links to frequently asked questions. Each of these programs had separate ways in which they made the reference to a loss to a FAPE. In the parent handbook for Arizona's Empowerment Scholarship Account Program, they state that participation in their program "means that a child does not have the same protections under the Individuals with Disabilities Education Act (IDEA) (the federal law governing Special Education) as a publicly enrolled student with a disability" (Arizona Department of Education, 2022). However, it then goes into a further description of what services the resident school district may provide without a further explanation of what is not provided. In the FAQ for Indiana's Choice Scholarship Program, they include a specific section about what rights are given up if attending a choice school. In this section they state that "A Choice school is not required to meet all of the procedural or substantive requirements that apply to public schools" and if a disagreement about services arises that the remedies of "mediation and due process hearings" are not available (Indiana Department of Education, 2021). In Mississippi's Nate Rogers Scholarship for Students with Disabilities Program FAQ, their reference was found in relation to a question about whether a choice program is required to have an IEP or a service plan. The answer provided stated that this was not a requirement because these students are parentally placed and do not fall under the protection of the IDEA. While each of these programs do make a reference to a loss to a FAPE in information provided on their state department of education websites, there was no clear statement or reference to a loss to a FAPE in administrative codes and regulations or state statute for each of these programs.

The remaining 13 programs had no mention of a loss to a FAPE in information on their state department of education websites. Of those 14 programs, Louisiana's Scholarship Program

was the closest to making a reference to a loss to a FAPE. In that program's FAQ they stated that "Participating Scholarship schools are not required to provide special education or related services to students with disabilities" (Louisiana Department of Education, 2021). Similarly, other than the Special Needs Scholarship Program, the remaining three choice programs in Wisconsin had information that stated Choice schools are only required to offer services it can make with minor adjustments and that parents should contact their local school district on the difference in services that are available. The other nine programs had no such information, even if it was included in information for other programs in that state. For example, Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program both had a clearly stated loss to a FAPE. Comparatively, this information was absent for Ohio's Cleveland Scholarship and Tutoring Program, Educational Choice Scholarship Program, and their Educational Choice Scholarship Expansion Program. Mississippi's Dyslexia Therapy Scholarship for Students with Dyslexia Program also fell into this category. Almost all of these programs also had no clearly stated loss to a FAPE or reference to a loss to a FAPE in their state's administrative rules and regulations or statute. The lone exception was w Carolina's Opportunity Scholarship Program which had a reference to a loss to a FAPE in state statute, but not in their administrative rules and regulations.

### **State Statute and State Administrative Codes and Regulations**

Upon looking at state department of education websites, the most likely source that parents/guardians might turn to next are state statutes and state administrative codes and regulations. There were seven programs that had a clearly stated loss to a FAPE in their state statutes. Six out of the seven of these programs also had a clearly stated loss to a FAPE in their administrative codes and regulations. These six programs were Georgia's Special Needs

Scholarship Program, Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, Tennessee's Individualized Education Account Program, and Utah's Carson Smith Special Needs Scholarship Program. The one program that had a clearly stated loss to a FAPE in state statute but not in administrative codes and regulations was Mississippi's Education Scholarship Account program. Furthermore, there was no reference to a loss to a FAPE for Mississippi's Education Scholarship Account program in administrative codes and regulations, or of the any other programs. Only two programs had a reference to a loss to a FAPE in state statute, which were North Carolina's Opportunity Scholarship Program and Wisconsin's Special Needs Scholarship Program. All other programs had no reference to a loss to a FAPE. Table 4.2 provides the language included in both statues and regulations.

**Table 4.2**

*Statutory and Regulatory Language Concerning a Loss of FAPE*

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
Georgia Special Needs Scholarship Program	With respect to local school systems, the acceptance of a scholarship shall have the same effect as a parental refusal to consent to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq., and a parental waiver of rights to educational accommodations under Section 504 of the federal Rehabilitation	(6)Parent Responsibilities for Selecting Eligible Private Schools (e) Acceptance of scholarship shall have the same effect as a parental refusal to consent to services in a public school pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400, et seq. Acceptance of a scholarship waives a parent's rights under	

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
	Act of 1973, 29 U.S.C.A. Section 701, et seq	IDEA therefore, a private school is not required to follow a student's IEP developed by the public school. Nonetheless, refusal of services does not meet the standard of revocation under IDEA. (34 C.F.R. § 300.9) Therefore, the regulations regarding proportionate share for students parentally placed in private schools shall apply to students who receive a scholarship under this Rule. (34 C.F.R. §§ 300.132-133 and Ga. Rules & Regs. 160-4-7-.13(3) )	
Mississippi Education Scholarship Account	Education Scholarship Account To ensure that students are treated fairly and kept safe, all eligible schools shall: (g) Notify a parent or guardian applying for the ESA program that the parent or guardian waives the right of the participating student to an individual entitlement to a free and appropriate public education (FAPE) from their home school district, including special education and related services, for as long as the student is		

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
	participating in the ESA program		
Ohio Autism Scholarship Program	Autism Scholarship Program Except for development of the child's individualized education program, the school district in which a qualified special education child is entitled to attend school and the child's school district of residence, as defined in section 3323.01 of the Revised Code, if different, are not obligated to provide the child with a free appropriate public education under Chapter 3323. of the Revised Code for as long as the child continues to attend the special education program operated by either an alternative public provider or a registered private provider for which a scholarship is awarded under the autism scholarship program. If at any time, the eligible applicant for the child decides no longer to accept scholarship payments and enrolls the child in the special education program of the school district in which the child is entitled to attend school,	(6) If the district of residence determines that the child is a child with a disability, the district of residence shall provide the child with an annual IEP that makes a free appropriate public education (FAPE) available to the child. (7) The district is not obligated to provide a child participating in the autism scholarship program with FAPE while a parent of the child is receiving funds from the autism scholarship program.	



Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
	that district shall provide the child with a free appropriate public education under Chapter 3323. of the Revised Code		
Ohio Jon Peterson Special Needs Scholarship Program	(A) Except for development of the child's individualized education program, as specified in division (B) of this section, the school district in which a qualified special education child is entitled to attend school and the child's school district of residence, if different, are not obligated to provide the child with a free appropriate public education under Chapter 3323. of the Revised Code for as long as the child continues to attend the special education program operated by either an alternative public provider or a registered private provider for which a scholarship is awarded under the Jon Peterson special needs scholarship program.	(D)(4) For purposes of Chapter 3323. of the Revised Code and IDEA, a scholarship recipient has only those rights that apply to all other unilaterally parentally placed children, with the exception of the right to have a public school district develop an IEP in accordance with division (B) of section 3310.53 of the Revised Code. To the extent that tuition and fees for the scholarship child exceed the scholarship amount, the eligible applicant is responsible for the payment of all amounts that exceed the scholarship amount in accordance with the terms agreed to between the eligible applicant and the providers. Rule 3301-101-04 (D)(5) That the applicant understands that acceptance of a scholarship relieves the school district of residence and the school district in which the student is entitled to	

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
		<p>attend school, if different, of the obligation to provide the child with FAPE</p> <p>-05</p> <p>(8) The district is not obligated to provide a child participating in the scholarship program with FAPE, however, the child may be eligible to receive services under IDEA;</p> <p>(9) If, at any time, a parent of a child participating in the scholarship program decides to return the child to the district of residence, the district of residence shall be required to provide the child with FAPE</p>	
Oklahoma Lindsey Nicole Henry Scholarship Program for Children with Disabilities	Acceptance of a Lindsey Nicole Henry Scholarship shall have the same effect as a parental revocation of consent to service pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of the IDEA	Section 210:15-13-7 (5) 70 O.S. § 13-101.2 provides that acceptance of a Lindsey Nicole Henry Scholarship shall have the same effect as a parental revocation of consent under 20 U.S.C. Section 1414(a)(1)(D) and 1414(C) of the Individuals with Disabilities Education Act (IDEA). The State Department of Education will provide a form, available online from the agency website, which a parent/guardian shall complete to indicate that they	

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
		<p>understand the revocation of consent for service under IDEA. The parent/guardian shall return the completed revocation of consent form to OSDE, and a copy of the form shall be forwarded by OSDE to the school district that most recently served the student.</p> <p>Okla. Admin. Code § 210:15-13-7</p>	
North Carolina Opportunity Scholarship Program			<p>Opportunity Scholarship Program Web Site Availability. - Information about scholarships and the application process shall be made available on the Authority's Web site. The Authority shall also include information on the Web site notifying parents that federal regulations adopted under IDEA provide that no parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.</p>

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
Tennessee Individualized Education Account Program	Participation in the program shall have the same effect as a parental refusal to consent to the receipt of services under 20 U.S.C. § 1414 of the Individuals with Disabilities Education Act (IDEA)	Not to enroll the parent's eligible student in a public school during participation in the IEA program and to release the LEA in which the student resides and is zoned to attend from all obligations to educate the student. Participation in the program shall have the same effect as a parental refusal to consent to the receipt of services under 20 U.S.C. § 1414 of the Individuals with Disabilities Education Act (IDEA).	
Utah Carson Smith Special Needs Scholarship Program	The scholarship application form shall contain the following statement: "I acknowledge that: (1) A private school may not provide the same level of special education services that are provided in a public school; (2) I will assume full financial responsibility for the education of my scholarship student if I accept this scholarship; (3) Acceptance of this scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education	“(5) [(4)] A Carson Smith Scholarship student is eligible to receive equitable services under the Individuals with Disabilities Education Act.” Utah Admin. Code 277-602-4 (1) (a) A parent of an eligible student or a parent of a prospective eligible student may appeal only the following actions under this rule: (i) an alleged violation by the Superintendent of Sections 53F-4-301 through 308 or this rule; or (ii) an alleged violation by the Superintendent of a required timeline.	

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
	<p>Act, 20 U.S.C. Sec. 1400 et seq.; and            (4) My child may return to a public school at any time."            (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student.            (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq</p>	<p>(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.            Utah Admin. Code 277-602-7            “(4)            (a) The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.            (b) Nothing in the appeals process established under this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.” Utah Admin. Code 277-602-7</p>	
Wisconsin Special Needs Scholarship Program			<p>Special Needs Scholarship Program            (4) Department duties.            (am) The department shall develop a document for inclusion with an application under sub. (2) (f), and revise it as necessary, comparing the rights of a child with a disability and of his or her parent under this subchapter, other than this section, and 20 USC 1400 to 1482, with the rights of a child with a</p>

Program	Clearly Stated in State Statute	Clearly Stated in State Administrative Codes and Regulations	Referenced in State Statute
			disability and of his or her parent under this section and 20 USC 1400 to 1482. (bm) Receipt by an applicant of the document developed under par. (am), acknowledged in a format prescribed by the department, constitutes notice that the applicant has been informed of his or her rights under this section and 20 USC 1400 to 1482. Subsequent acceptance of a scholarship under this section constitutes the applicant's informed acknowledgment of the rights specified in the document.

For the seven programs that had a clearly stated loss to a FAPE in state statute, four specifically state that acceptance of scholarship shall have the same effect as parental refusal to consent to services outlined in the IDEA. Those four programs were Georgia's Special Needs Scholarship Program, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, Tennessee's Individualized Education Account Program, and Utah's Carson Smith Special Needs Scholarship Program. The other three programs, Mississippi's Education Scholarship Account program and Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program, stated that the home school district in which the student resides is

not required to provide a FAPE for as long as the student is participating in the scholarship program. The language that was used in state statute for these programs almost exactly mirrored what was in their state administrative codes and regulations. The exception again being Mississippi's Education Scholarship program which had no clearly stated, or reference to a, loss to a FAPE in their state administrative codes and regulations. North Carolina's Opportunity Scholarship Program and Wisconsin's Special Needs Scholarship Program, which each reference a loss to a FAPE in state statute only, both have this reference as a requirement delegated to their state department of education websites. For example, in the state statute for North Carolina's Opportunity Scholarship Program, a sub section is titled "Web Site Availability" (Special Education Scholarships, 2021). Under this section, it states that on their department of education website there needs to be information that notifies parents that "federal regulations adopted under IDEA provide that no parentally paced private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school" (Special Education Scholarships, 2021). Similarly, a subsection in state statute for Wisconsin's Special Needs Scholarship Programs outlines duties that the state department of education shall take. Within this section it states that that the department shall develop a document "comparing the rights of a child with a disability and of his or her parent, other than this section, and 20 USC 1400 to 1482, with the rights of a child with a disability and of his or her parent under this section and 20 USC 1400 to 1482" (Special Needs Scholarship, 2022). Despite this statutory requirement, and as previously noted, neither of these programs had a clearly stated loss to a FAPE, or reference to a loss to a FAPE, on their state department of education websites.

The vast majority of the programs had no mention to a loss to a FAPE in state statute or in their state administrative codes and regulations. In total, there were 18 programs that had no mention to a loss to a FAPE in state statute and 21 programs that had no mention to a loss to a FAPE in state administrative codes and regulations. The 18 programs that had no mention to a loss to a FAPE in state statute were Arizona's Empowerment Scholarship Account Program, Arkansas's Succeed Scholarship Program, D.C.'s Opportunity Scholarship Program, Florida's Gardiner Scholarship Program and John M. McKay Scholarships for Students with Disabilities Program, Indiana's Choice Scholarship Program, Louisiana's Scholarship Program and School Choice Program for Certain Students with Exceptionalities, Maryland's Broadening Options and Opportunities for Students Today Program, Mississippi's Dyslexia Therapy Scholarship for Students with Dyslexia Program and Nate Rogers Scholarship for Students with Disabilities Program, North Carolina's Special Education Grants for Children with Disabilities, Ohio's Cleveland Scholarship Tutoring Program and both Educational Choice Scholarship Programs, and all three of Wisconsin's Parental Choice Programs. Furthermore, all of these programs had no reference to a loss to a FAPE in state administrative codes and regulations, with the additional programs being Mississippi's Education Scholarship Account program, North Carolina's Opportunity Scholarship Program, and Wisconsin's Special Needs Scholarship Program. Of these programs, only a handful have information that indicates a difference between what is offered in the public school and what is available in the choice programs.

For example, in state statute, Arizona's Empowerment Scholarship Account Program, Arkansas's Succeed Scholarship Program, Indiana's Choice Scholarship Program, and Louisiana's Scholarship Program and School Choice Program for Certain Students with Exceptionalities, include language that releases the public school district from providing services



to a student. Arizona’s Empowerment Scholarship Account Program and Indiana’s Choice Scholarship Program both have this language as general statements. Comparatively, Arkansas’s Succeed Scholarship Program and Louisiana’s Scholarship Program and School Choice Program for Certain Students with Exceptionalities have this language as a requirement that a parent or guardian shall acknowledge in writing during enrollment into the programs. This requirement for acknowledgement in writing also applied to Arkansas’s Succeed Scholarship Program, Louisiana’s Scholarship Program, and Mississippi’s Education Scholarship Account in state administrative codes and regulations. Mississippi’s Education Scholarship varied from the others though, in that it stated multiple requirements parents must take as part of the application process and provided a link to the application. One of these requirements was signing and acknowledging, in full, the responsibilities that parents agree to take. Table 4.3 provides the language used that references other sources of law.

**Table 4.3**

*Language Indicating Differences in Rights Between Sectors*

Program	State Statute	State Administrative Codes and Regulations
Arizona’s Empowerment Scholarship Account Program	Not enroll the qualified student in a school district or charter school and release the school district from all obligations to educate the qualified student. This paragraph does not relieve the school district or charter school that the qualified student previously attended from the obligation to conduct an evaluation pursuant to section 15-766	
Arkansas Succeed Scholarship Program	Sign a waiver that releases the State of Arkansas from any legal obligation to	6.00 Responsibilities of Participating Students

Program	State Statute	State Administrative Codes and Regulations
	<p>provide services or education to the student participating in the program except for funding provided for the program under the rules established by the State Board of Education</p> <p>Sign a waiver that releases the student's resident school district from any legal obligation to provide services or education to the student participating in the program while the student is not enrolled in the student's resident school district as provided under the rules established by the state board</p>	<p>3. Sign a waiver that releases the State of Arkansas from any legal obligation to provide services or education to the student participating in the program except for funding provided for the program under these Rules;</p> <p>4. Sign a waiver that releases the student's resident school district from any legal obligation to provide services or education to the student participating in the program while the student is not enrolled in the student's resident school district as provided under these Rules</p>
Indiana's Choice Scholarship Program	<p>Notwithstanding 511 IAC 7-34-1(d)(4), a public school is not required to make available special education and related services to an eligible choice scholarship student if the eligible choice scholarship student receives funds under section 4(a)(2) of this chapter and the special education services are provided to the eligible choice scholarship student by the eligible school. This subsection may not be construed as a restriction or limitation on any of the rights, benefits, and protections granted to an individual under the federal Individuals with Disabilities Education</p>	

Program	State Statute	State Administrative Codes and Regulations
	Improvement Act of 2004 (20 U.S.C. 1400 et seq.)	
Louisiana Scholarship Program	If a scholarship recipient enrolled in a participating nonpublic school would have been entitled to receive special education services in the public school he would otherwise be attending, his parent or legal guardian shall acknowledge in writing, as part of the enrollment process that the parent or legal guardian agrees to accept only such services as are available to all students enrolled in the nonpublic school.	B. Parent/Legal Guardian Obligations 2. If a scholarship recipient enrolled in a participating nonpublic school would have been entitled to receive special education services in the public school he would otherwise be attending, his parent or legal guardian shall acknowledge in writing, as part of the enrollment process that the parent or legal guardian agrees to accept only such services as are available to all students enrolled in the nonpublic school. La. Admin. Code tit. 28 § CLIII-303
Louisiana School Choice Program for Certain Students with Exceptionalities	If a scholarship recipient enrolled in a participating nonpublic school would have been entitled to receive special education services in the public school he would otherwise be attending, his parent or legal guardian shall acknowledge in writing, as part of the enrollment process that the parent or legal guardian agrees to accept only such services as are available to all students enrolled in the nonpublic school.	
Mississippi Education Scholarship Account		<b>a.</b> To be eligible for the Education Scholarship Account (ESA) the student must have had an active Individualized Education Program (IEP) within the past three (3) years. In accordance with Miss. Code Ann. § 37-181-9(1), the Mississippi Department of Education (MDE) Office of Special Education (OSE) has created a standard form for parents to submit to

Program	State Statute	State Administrative Codes and Regulations
		<p>establish the student's eligibility. The application is available online at <a href="https://mdek12.org/OSE/ESA">https://mdek12.org/OSE/ESA</a> or by contacting the OSE.</p> <p><b>b.</b> Along with the application form, parents must provide the following documentation:</p> <p><b>i.</b> copy of parent/legal guardian's driver's license or state-issued identification;</p> <p><b>ii.</b> copy of student's birth certificate;</p> <p><b>iii.</b> legal paperwork to act on behalf of student, if applicable;</p> <p><b>iv.</b> proof of residency (e.g., copy of utility bill);</p> <p><b>v.</b> copy of student's most recent IEP that was developed by a public school and was active within the past three (3) years;</p> <p><b>vi.</b> copy of student's most recent eligibility and/or evaluation; and</p> <p><b>vii.</b> original, signed "<i>Responsibilities of Parents</i>" document with all boxes properly initialed.</p>

As the previous table shows, only six programs had language in state statute or administrative codes codes and regulations indicating a difference in rights, and four of these programs required an acknowledgment in writing. Furthermore, only two programs had this in both statute and administrative codes and regulations, which were Arkansas' Succeed Scholarship Program and Louisiana's Scholarship Program. While the previous sections focused on the notification to a loss to a FAPE, the following section will detail what information is shared regarding the equitable service provision.

### **Equitable Service Provision**

In a 2016 report, the GAO recommended that "Education include in its guidance information about providing equitable services in the context of private school choice programs"

(GAO, 2016, p. 38). Prior to the GAO report, the most relevant information related to the equitable service provision and private schools was a question and answers document issued Office of Special Education and Rehabilitative Services (OSERS). This document, titled *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, had last been updated in April 2011. Within that document, there was no information about how the equitable service provision applied to students who are parentally placed through choice programs, such as vouchers or education savings accounts. Whether or not the GAO report influenced OSERS is unknown, but what is known is that OSERS issued a proposed update to their document in December of 2020. Within that proposal, there is a stand-alone section specifically for state vouchers and scholarship programs. Furthermore, this proposal was made official in February of 2022 and now supersedes the April 2011 document. There is no observable difference in language between the proposal and the officially updated document within the state voucher and scholarship program section. In this section, OSERS provides clarification on the following five questions:

1. Are children with disabilities who attend private schools through a State-funded school choice voucher or scholarship program considered parentally-placed private school children with disabilities under IDEA?
2. Do all of the IDEA requirements for children with disabilities enrolled by their parents in private schools apply to SEAs and LEAs when children with disabilities are enrolled by their parents in private schools participating in a State-funded voucher or scholarship program?
3. May a State require a parent of a child with a disability to revoke consent for their child to receive any special education and related services from the LEA, as a

condition of participation in a State-funded private school choice voucher or scholarship program?

4. Are there any children participating in a State-funded voucher or scholarship program that an LEA is not required to evaluate or consider for equitable services?
5. If a child with a disability who received a State school choice voucher or scholarship reenrolls in a public school, is the child considered a child with a disability? (U.S. Department of Education, 2022)

In the answers to these questions, OSERS makes clear that students attending private schools through state vouchers and scholarship programs are parentally placed and are entitled to the equitable service provision in the same manner as those students who are parentally placed without a state voucher or scholarship program. While OSERS has provided clarification in this manner, only a few programs in this study make any reference to the potential availability of equitable services for students.

Of the 27 programs, only four mention the potential availability of equitable services for students participating in a choice program. Those programs were: (1) Arizona's Empowerment Scholarship Account Program; (2) Florida's Gardiner Scholarship Program; (3) Florida's John M. McKay Scholarships for Students with Disabilities Program; and (4) Utah's Carson Smith Special Needs Scholarship Program. All of these programs had the information on their state department of education websites and none of these programs had this information on their state advocacy group websites or in state statute. For Arizona's Empowerment Scholarship Account Program, this information was found in a parent handbook pdf specific to the Empowerment Scholarship Account Program. Within the handbook, there is a section titled "Proportionate Shares and Equitable Services" (Arizona Department of Education, 2022). Specifically, it states:

Children with disabilities who attend private schools (with or without an ESA) are considered parentally placed private school children with disabilities. While these students do not have an “individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school,” they might still be entitled to receive some special education and related services provided by the school district under the IDEA’s proportionate share provisions (Arizona Department of Education, 2022).

Similarly, Florida’s Gardiner Scholarship Program and John M. McKay Scholarships for Students with Disabilities Program have comparable information in a pdf links to frequently asked questions for each program. Both documents use the same language and inform stakeholders that a public school district is not required to provide the same level of services at the private school that the student would receive in the public school. Additionally, Florida’s programs also inform stakeholders that they may be able to receive some services through the equitable services provision, but that these services may differ in the amount and type. Utah’s Carson Smith Special Needs Scholarship Program was the only program to reference equitable services in information found on their state department of education website and in their administrative codes and regulations. On their state department of education website, the information referencing equitable services was found in a link for applying to the program. In both the application and in the state administrative codes and regulations, there is a single sentence that scholarship participants will be able to receive equitable services offered by the local school district in accordance with the IDEA. Beyond that, no other clarifying information was provided.

### **Summary of Findings**

The table below provides an overview of the coded information regarding a loss to a FAPE.

**Table 4.4**

*Summary of how Programs were Coded in each Avenue for a Loss to a FAPE*

State Statute Language	State Administrative Rules/Regulations	State Department of Education (website/pamphlets)	State Advocacy Group
Clearly - 7 References - 2 No Mention - 18	Clearly - 6 References - 0 No Mention - 21	Clearly - 11 References - 3 No Mention - 13	Clearly - 2 References - 1 No Mention - 15

While each avenue examined had at least a couple of programs that were coded for a clearly stated loss to a FAPE, there was never a majority of programs that did. Of the programs that had at least one avenue coded for a clearly stated loss to a FAPE, only Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program had this in every avenue. In all of the avenues, the majority of the information was coded under no mention of a loss to a FAPE. Similarly, the vast majority of programs had no information pertaining to equitable services. The following chapter will examine this information further and discuss its implications for practice, policy, and future research.



## Chapter 5: Discussion, Implications, and Conclusions

As stated in Chapter 1, this study aimed to address the following question: What explanations do states provide to parents or guardians of children with disabilities regarding their rights, including the equitable service provision, under the IDEA in a voucher or ESA program? The premise of this question was based on two GAO reports, which are outlined in Chapter 1. Chapter 5 will begin with a discussion of my findings and how the findings correlate to the GAO reports. Following that, I will examine my findings through the lens of my theoretical framework and discuss some of the implications of my research. Finally, I will close by providing recommendations for leadership, policy, and future research.

Both GAO reports, *Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students* (GAO report 16-172 ) and *Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities* (GAO report 18-94), reported concerns about the rights of students with disabilities and their families participating in voucher or ESA programs. GAO report 16-172 concerns were centered around the requirements of equitable services, whereas GAO report 18-94 focused on the parental notification of IDEA rights (GAO, 2016; GAO, 2017a). Both reports included a review of relevant literature and interviews with state officials (GAO, 2016, p. 40; GAO, 2017a, p. 33). Information collected for GAO report 16-172 also included a web-based survey of the 20 voucher and five ESA programs operating at the onset of their report (GAO, 2016, p. 40). GAO report 18-94 did not have a web-based survey to collect information, but they did conduct a random sampling of private choice program websites, selected from the 23 voucher programs and four ESA programs operating at the onset of their report (GAO, 2017a, p. 33). While this information provided the foundation for my study, my study differed in three key

ways. First, my study included a legal review of state statutes and state administrative codes and regulations. Incorporating this focus in my study provides for a more in-depth analysis between my findings, what the GAO reported and what, if any, explanations regarding parent and student rights are provided. Second, my study coded information under specific criteria. For example in GAO report 18-94, they state that “Parents of students with disabilities may not be consistently or correctly notified about IDEA rights upon enrolling in Choice Programs” (GAO, 2017a, p. 24). They reported some programs were providing no information about changes in rights or inaccurate information about changes in rights. However, the GAO did not report what information they found that led to that claim and that the statements they identified as appearing potentially inconsistent with IDEA were provided to USDOE and for confirmation (GAO, 2017a, p. 25). Third, my study took a path that a parent or guardian may take to find information. Accordingly, I collected and analyzed information in the following order: choice advocacy websites, state department of education websites, state administrative codes and regulations, and state statutes. I believe that these differences provide a more comprehensive understanding of what information is being communicated, especially when comparing it to what the GAO had previously reported.

To begin, I first turn to my findings and GAO report 16-172. Beginning with this GAO report is a natural starting point for analysis because of its focus on the equitable service provision. While students participating in a voucher or ESA program have no individual entitlement to receive some or all of the services they would have in the public school district, the equitable service provision essentially creates a group entitlement to service. Students in a private school may or may not be included in that group, which is determined through a consultation with the private school and the public school district. Furthermore, the amount and

types of services that may be offered is dependent upon the proportionate share calculation. This calculation can be a confusing process, even for professionals in the education system. The GAO noted as much and reported that some state and district officials “were confused about whether participation in private school choice programs changed students’ eligibility for federally funded equitable services or changed the public school district’s roles and responsibilities in providing these services” (GAO, 2016, p. 34). The GAO recommended that the Department of Education update its guidance on equitable services in relation to private choice programs and that:

Absent such guidance, states and districts are likely to continue to be confused about how to implement equitable services in the context of these programs and may risk incorrectly or inefficiently implementing equitable service provisions (GAO, 2016, p. 38).

In my findings, I reported that OSERS began addressing this concern in December of 2020 through a proposal to update its guidance, *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*. As I further noted, the proposal was made official in February of 2022 and provides clarification and guidance on the equitable service provision, specific to students enrolled in a state voucher or scholarship program. The time from when GAO report 16-172 was issued to when this clarification and guidance was provided was six and a half years. Given the absence of this guidance from the Department of Education, it was unknown whether state choice advocacy groups and states would assume this responsibility of communication. My findings suggest that states did not assume this responsibility. Only four of the 27 programs had information related to the equitable service provision for students participating in a choice program. Additionally, this information was almost exclusively on state department of education websites for choice programs, with only one state having this information in their state administrative codes and regulations. While this study

does not offer further information on whether states continue to be confused on how to implement equitable services to students in choice programs, the lack of information to parents seems to strengthen the concerns outlined by the GAO. Furthermore, in the event that parents or guardians are dissatisfied by the services provided, the remedies for parents or guardians are different for students in private choice programs. Whether or not this information is communicated, and the degree of clarity of that communication, is the next focus of my analysis.

In their 2017 report, the GAO examined 23 voucher programs and four ESA programs (GAO, 2017a). Their report included a review of “publicly available documents from all 23 voucher programs and all four ESA programs operating in the United States as of January 2017,” interviews with program officials from the largest voucher and ESA programs, a random sampling of participating private school websites and interviews with researchers (GAO, 2017a, p. 2-3). While conducting this study, the GAO sought information on how parents of children with disabilities were notified of the change in federal rights when accepting a voucher or ESA. Of the 27 programs, the GAO found that 14 of the programs provided no or inaccurate information on changes in IDEA rights (GAO, 2017a, p. 26). Furthermore, 9 of the 15 programs specifically for students with disabilities fell into the category of providing no or inaccurate information (GAO, 2017a, p. 26). While the GAO report focused primarily on information that was on private choice program websites, the GAO “did not do an independent review of state laws and regulations” (GAO, 2017a, p. 2). My study included this information because while there is no federal or state requirement to notify families of these changes, both the USDOE and GAO strongly recommend that states and districts do so (GAO, 2017a, p. 29). As the GAO noted “Absent a requirement in IDEA that states notify parents of such changes, states are unlikely to

begin providing parents with consistent and accurate information about changes that affect some of our nation's most vulnerable children" (GAO, 2017a, P. 29).

Utilizing the same programs that were outlined in GAO report 18-94, the focus of my findings centered on four main avenues that parents or guardians may turn to in search of information related to their rights, and the rights of their child, in a private choice program. I specifically coded my findings in relation to their rights to a FAPE, because it is under this umbrella in which the remedy of due process is available. My findings, again, seem to strengthen the concerns shared by the GAO. In all four avenues (state advocacy group websites, state department of education websites, state administrative codes and regulations, state statutes) there was never a majority in which there was a clearly stated loss to a FAPE. Only the state department of education website avenue was there a majority for a clearly stated loss to a FAPE and/or a reference to a loss to a FAPE. Even in those instances, however, there was a slim majority with 11 having a clearly stated loss to a FAPE, three referencing a loss to a FAPE, and 13 having no mention of a loss to a FAPE. The accessibility of this information on state department of education websites also varied greatly. While some programs had this information directly available on the choice program website, others had this embedded in a pdf to frequently asked questions or in a pdf to the program application.

Furthermore, the degree of clarity in which information regarding a FAPE was communicated varied, even for programs coded with clearly stated loss to a FAPE. For example, Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program and Wisconsin's Special Needs Scholarship Program, provided a table that compared the rights of a student in a public school to those in their choice programs. Conversely, programs like Arkansas Succeed Scholarship Program, Georgia's Special Needs Scholarship Program, Oklahoma's

Lindsey Nicole Henry Scholarship Program for Children with Disabilities, Tennessee's Individualized Education Account Program, and Utah's Carson Smith Special Needs Scholarship Program contain language that acceptance or participation in their programs results in a loss of rights and directly cites IDEA, 20 U.S.C. Section 1400. So, while these latter programs were coded for a clearly stated loss to a FAPE, to understand the full effects would require a parent or guardian have prior knowledge of what is encompassed under Section 1400 of the IDEA. Without that understanding, a parent or guardian would then have to seek out that information on their own, creating an additional step in understanding their rights in those programs.

My findings also suggest that this clearly stated loss to a FAPE was tied to specific programs, and less to the avenues in which information was communicated or the states in which the programs were located. For example, six programs had a clearly stated loss to a FAPE in state statute, state administrative codes/regulations, and on state department of education websites. Those programs were Georgia's Special Needs Scholarship Program, Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program, Oklahoma's Lindsey Nicole Henry Scholarship Program for Children with Disabilities, Tennessee's Individualized Education Account Program, and Utah's Carson Smith Special Needs Scholarship Program. Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program were the only programs that also had this clearly stated loss to a FAPE on their choice advocacy websites as well. However, Ohio also has two other programs included in this study, neither of which had a clearly stated or reference to a loss to a FAPE in any avenue.

This pattern of varying degrees of information for programs within the same state was also evident from my findings. The states with multiple programs in this study were: Florida, Louisiana, Mississippi, North Carolina, Ohio, and Wisconsin. Only two states, Florida and

Louisiana, provided the same type of information as it related to FAPE. Florida had a clearly stated loss to a FAPE for their programs on their state department of Education websites only, and Louisiana did not have information related to a loss to a FAPE in any avenue. Additionally, the clearly stated loss to FAPE being tied to specific programs is further evidenced by which students those programs primarily serve.

As previously referenced in Chapter 1, Appendix B outlines the programs examined in GAO report 18-94, the same programs that were utilized in this study. The GAO categorized 15 of those as being specifically designed for students with disabilities, since eligibility to those programs is based on a student having a disability. In comparison to the programs that were not designed for students with disabilities, these 15 programs were far better in providing information related to a FAPE.

**Table 5.1**

*Statements about Loss of FAPE: All Programs*

State Statute Language	State Administrative Rules/Regulations	State Department of Education (website/pamphlets)	State Advocacy Group
Clearly - 7	Clearly - 6	Clearly - 11	Clearly - 2
References - 2	References - 0	References - 3	References - 1
No Mention - 18	No Mention - 21	No Mention - 13	No Mention - 15

**Table 5.2***Statements about Loss of FAPE: Programs Designed for Students with Disabilities*

State Statute Language	State Administrative Rules/Regulations	State Department of Education (website/pamphlets)	State Advocacy Group
Clearly - 7 References - 1 No Mention - 7	Clearly - 6 References - 0 No Mention - 9	Clearly - 11 References - 1 No Mention - 3	Clearly - 2 References - 1 No Mention - 12

As Tables 5.1 and 5.2 show, all of the programs that were coded for a clearly stated loss to a FAPE were programs designed for students with disabilities. The GAO reported that 9 of the 15 programs specifically for students with disabilities fell into the category of providing no or inaccurate information (GAO, 2017a, p. 26). My findings suggest that there has been an increase in providing this information since the GAO's report, at least on state department of education websites. For example, outside of information provided on state department of education websites, no other avenue had a majority of programs where information was coded for a clearly stated loss to a FAPE. Furthermore, if not for one program being coded as a reference to loss to a FAPE in state statute, the majority of the programs in those three avenues would have been coded as no mention of a loss to a FAPE. While some progress in notifying parents of the changes in rights appears to have been made, especially for choice programs specifically designed for students with disabilities, there remains much work to be done. Before offering suggestions on the specifics of that work, I first need to revisit my theoretical framework. It is within the lens of that framework in which suggestions will be made.



## **Discussion of Theoretical Framework**

In Chapter 2, I discussed how this study would be conducted through the theoretical framework of disability studies in education (DSE). DSE scholarship includes a wide breadth of research perspectives, but the central focus is how the issues of power, identity, and justice impact the rights of people with disabilities to access, participate, and succeed in education. I believe that my findings demonstrate that the programs within my study have the potential to negatively impact the rights of people with disabilities to access, participate, and succeed in education. The protections granted under the IDEA were created with the stated purpose of ensuring the educational needs of people with disabilities were being met. When parents or guardians are not being clearly informed of the protections they are losing, the issues of power, identity, and justice all come into play. For example, removing the power from families to challenge when they believe their child has not been afforded their right to an education, minimizes the identity of the child with unique learning needs, and creates a system where no recourse for justice is possible. Parents only recourse is to change schools and accept the disruptions that may accompany a new choice. Furthermore, the power to make the notice of changes in IDEA rights required rests within a system that has historically marginalized people with disabilities.

The underlying issues of power within this study are multifaceted. The first, and perhaps main issue, rests within the power of choice. The aim of this study was never to question whether a parent should have a right to choose what they feel is best for their child. Rather, it sought to seek out what information was provided in making that choice. My findings show that the information provided to parents, as it pertains to the rights of the parent and the child when in a choice program, is inadequate. The failure to properly notify parents results in severe removal of

individual power. Individuals with a free market lens might point out that parents could simply choose another option and, overtime, the programs that meet the needs of students will thrive while the programs that do not will fail. However, I believe that individuals with that lens would agree with me that any choice should be a knowledgeable one, predicated on having all available information. When parents are not provided that information, we are stripping away their power of making an informed choice. Furthermore, should they select a choice program, they may be unknowingly forfeiting the protections granted to them under the IDEA. In this situation, not only have they lost the power to make an informed choice, but they have also lost the power to challenge whether their child has been provided a meaningful education. Unfortunately, the power to make the necessary these changes to protect parents and children from these problems rests far outside the locus of control of parents and school officials.

Public education, while locally controlled, works primarily under the parameters of state and federal laws. While my study included an examination of choice advocacy websites, the other three avenues are dictated by state and federal law. Changes to state law require state legislative passage, followed by the governor's approval. Similarly, federal law requires congressional passage, followed by the president's approval. Furthermore, just because a law is passed, it does not mean that it is to the benefit of all. As I point out in Chapter 2, early voucher programs were used as a tool to resist the integration of black students into the public education system. While I do not believe the programs in this study were created with the same sinister intention, that does not preclude them from having potentially harmful effects. The challenge to remedying those potentially harmful effects rests within the power of elected officials. Unfortunately, the political polarization around the creation and implantation of choice programs has created such a divide between those for school choice and those against school choice, that

there appears to be no room for compromise. With no room for compromise, politicians simply need to posture along a specific stance to maintain power. Chapter 2 provides a clear illustration of this problem. When former U.S. Secretary of Education Arne Duncan was asked about students in Wisconsin having to forfeit IDEA rights when taking a voucher, and what could the federal government do about this, his response was:

I actually don't understand it. It does not make sense what Wisconsin seems to be doing there, if what you're saying is accurate. First of all, I'm not a fan of vouchers. I want children to have access to great public schools. If parents want to send their children to faith based schools or do other things they absolutely have the right to do that. But where students are forfeiting their protections under the IDEA act that does not make sense to me (Arne Duncan, 2018)

It is inconceivable that the same individual who oversaw the U.S. Department of Education could have such an ill-informed understanding of a major federal law and its application. His answer underscores the challenge of influencing those with the power to make a change, to do so. Without any incentive to, or repercussions for not making a change, I believe the status quo and the power relationships will remain the same. The inaction of those in power will continue to have potentially harmful effects and, in turn, minimizes the agency of students with disabilities and the parents who act on their behalf.

It is impossible to talk about identity without first acknowledging that my own personal identity and life experiences follow the path of a "typical" individual. I have not encountered obstacles or assumptions from others about what I am and am not capable of based on my physical appearance, learning style, or development. I also need to acknowledge that the language I use and the perspective I take may generalize people or families with disabilities. For

example, when analyzing my findings, I make an assumption that if parents and families are not being notified of their changes in rights that they are unaware or not seeking this information out on their own. I believe that this assumption could be interpreted as having a deficit mindset towards individuals and families with disabilities and their ability to make informed decisions. Furthermore, throughout this study, I used person-first language. While I believe this approach to be inclusive, there is a growing body of people who want disability at the forefront. For example, instead of saying “a person with autism” some people may prefer the language of “an autistic person.” For the latter, rather than implying their disability is secondary to their identity as a person, they are placing their disability as central to who they are as an individual. I believe there is power in both and that both approaches have the ultimate goal of transcending how the identities of people with disabilities are viewed, accepted, valued, and celebrated. It is within that realm where I believe the information communicated to families, in relation to choice programs, fails to honor the identities of people with disabilities.

When a parent or guardian is seeking out a choice program, they are doing so because of some form of dissatisfaction with the public school system in which they reside. They have concluded that their hopes, goals, and dreams for their child will be better met in a different setting. Put differently, they believe that the identity of their child, and their growth, will be better met through a choice program. As I have previously stated, I am not here to question or challenge a parent’s right to choose. However, I believe my findings show that the information provided to families in this process minimizes the identity of students with disabilities. Specifically, by not clearly notifying families of their changes in rights, there is a minimization of the protections afforded by the IDEA. These protections were created because of systemic failure by our public education system to provide a meaningful education to students with

disabilities. In recognition of this failure, the IDEA sought to ensure that the identities of people with disabilities and their specific learning needs were being met. Failing to clearly notify families of these changes in rights diminishes the weight of those protections. In doing so, it results in a devaluation of the student's identity as a person with a disability, who has specific learning needs, with certain protections should those needs not be met. Furthermore, the devaluation of their identity is embedded in the lack of justice they are afforded when their needs are not met in a choice program.

I believe one of the most important safeguards provided under the IDEA is the ability to file a due process complaint (20 U.S.C. § 1415). While I would never wish for a family or school to have to engage in that process, its purpose is crucial. As noted in Chapter 2, filing a due process complaint provides parents and families an avenue to receive compensatory services when they believe their public school has not provided a FAPE. Compensatory services may include "physical and occupational therapy, summer educational services, tutoring, and small group instruction" (Gopal, 2004). Additionally, it could also require the public school district to pay for services that parents provided to the child during the time FAPE was denied, paying for future educational services to compensate for the denial of FAPE, and possibly paying for a private educational placement (Gopal, 2004). Only three programs, Ohio's Autism Scholarship Program and Jon Peterson Special Needs Scholarship Program, and Wisconsin's Special Needs Scholarship Program, had this information clearly stated in information they provided. As presented in my findings, one important characteristic these programs shared was that they provided a table comparing the rights under the IDEA in the public school to rights in the scholarship program. While not legally required to do, I believe this to be the most just approach. It is the most just because they are honoring the importance of the IDEA protections and

clarifying what options for recourse exist should a parent disagree with services being provided once the child is enrolled in a choice program. When this information is not clearly communicated there is an injustice on the front end and potentially on the back end.

As noted in Chapter 2, the GAO reported that a lack of information could lead to serious confusion for parents. Specifically, the GAO found that:

Parents are under the impression that since school choice programs are operated and funded by the state, and are often designed for students with disabilities, their children will have similar protections to those ensured to public school children under IDEA (GAO, 2017a, p. 28)

There is an inherent injustice when programs do not make this information clear because they are failing to honor the rights of students and families under the IDEA. Additionally, when not making this information clear they are setting up the potential for a greater injustice to occur. If parents believe they have the same avenues for recourse should they disagree with services being provided to their child, only to find that they do not, the injustice in that situation is obvious. Not only will parents feel like they have been misled, or even lied to, but their options are severely limited. They could continue at their current school, transfer to another choice school, or go to the public school. None of those options are easy decisions or provide the student with any compensatory services for the deprivations the parent feels their child suffered.

A final, but equally important note, is that much of the previous discussion pertains to the notification of rights specific to parents/guardians of children with disabilities. What is absent from that discussion is the voice of children with disabilities and their outlook on their education. A component to Disability Studies in Education is that it seeks to empower individuals with disabilities to define the issues and problems they are experiencing, instead of others defining it

for them. However, I believe that given the stakes for not clearly communicating this information, there are several courses of action that can be pursued to help remedy the issue of the notification of rights. The following section I will describe suggestions for those in K-12 leadership, make specific policy recommendations at both the state and federal level, and highlight possibilities for future research.

### **Implications for Practice and Policy**

Turning towards those in K-12 leadership first, I believe that local education agencies need to be taking the lead in informing parents of the changes in rights when a student with a disability is in a choice program. LEAs already have the responsibility of meeting with private schools and parent representatives of students with disabilities at the private schools, to consult about how equitable services will be provided (34 CFR 300.134). At this meeting, they could easily include information about the differences in rights between the public school and those in a choice program. Furthermore, if they are not already doing so, I believe that LEAs should be informing private schools and parent representatives of students with disabilities at private schools of the differences in rights regardless of whether the private school(s) participate in a voucher or ESA program. I believe there are a few specific benefits to embedding this information within the equitable service consultation process. First, it is already bringing all relevant stakeholders together. So, instead of trying to find a new time or way to communicate this, LEAs could simply expand upon an existing form of practice. Second, by communicating the differences in rights, regardless if there is voucher or ESA program in the LEAs boundary, LEAs are providing private schools and their parent representatives the “Why” behind the equitable services consultation. Third, by making this a common form of practice regardless of whether a voucher or ESA program is currently available in the LEA’s boundaries, they will

have to make minimal adjustments to their information should a voucher or ESA program expand into the LEA's jurisdiction. Given the likely expansion of school choice programs in the United States, it would be incredibly wise of LEAs to start preparing the groundwork for communicating the changes in rights. However, absent a state or federal requirement, I do not foresee LEAs making this change independently or systematically. As such, I turn to what policy changes should occur at both the State and Federal level.

At the State level, legislatures and state education agencies should work together to ensure that language in statute, administrative codes and regulations, and on state department of education websites clearly articulates the changes in rights and that this consistent messaging in all state materials. To illustrate this suggestion, below are examples of language that could be used in state statute, administrative codes and regulations, and on state department of education websites. All three examples were taken from programs that were coded for a clearly stated loss to a FAPE in my findings. Combined, I believe they provide exemplars that could easily be adopted by states that currently lack clarity around the issue.



**Table 5.3***Example of Clear Statutory Language*

Except for development of the child's individualized education program, the school district in which a qualified special education child is entitled to attend school and the child's school district of residence, as defined in section 3323.01 of the Revised Code, if different, are not obligated to provide the child with a free appropriate public education under Chapter 3323. of the Revised Code for as long as the child continues to attend the special education program operated by either an alternative public provider or a registered private provider for which a scholarship is awarded under the autism scholarship program. If at any time, the eligible applicant for the child decides no longer to accept scholarship payments and enrolls the child in the special education program of the school district in which the child is entitled to attend school, that district shall provide the child with a free appropriate public education under Chapter 3323. of the Revised Code.

(Source: Ohio Autism Scholarship)

**Table 5.4***Example of Clear Language in State Administrative Codes and Regulations*

Acceptance of scholarship shall have the same effect as a parental refusal to consent to services in a public school pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400, et seq. Acceptance of a scholarship waives a parent's rights under IDEA therefore, a private school is not required to follow a student's IEP developed by the public school. Nonetheless, refusal of services does not meet the standard of revocation under IDEA. (34 C.F.R. § 300.9) Therefore, the regulations regarding proportionate share for students parentally placed in private schools shall apply to students who receive a scholarship under this Rule. (34 C.F.R. §§ 300.132-133 and Ga. Rules & Regs. 160-4-7-.13(3)).

(Source: Georgia Special Needs Scholarship Program)

Figure 5.1

*Example of Clear Language from a State Education Agency Website*

COMPARISON OF RIGHTS OF STUDENTS WITH DISABILITIES AND THEIR FAMILIES UNDER STATE AND FEDERAL SPECIAL EDUCATION LAW AND UNDER THE WISCONSIN SPECIAL NEEDS SCHOLARSHIP PROGRAM	
Enrolled in Public School IDEA and Chapter 115	Special Needs Scholarship Program 115.7915 Parentally-Placed Private School
<p>A public school district must provide a free appropriate public education to students with disabilities.</p> <p>A free appropriate public education (FAPE) includes special education and related services that:</p> <ul style="list-style-type: none"> <li>• Are provided at no cost to parents</li> <li>• Include an appropriate preschool, elementary or secondary school education;</li> <li>• Are provided consistent with an Individualized Education Program (IEP); and</li> <li>• Meet the standards of the Wisconsin Department of Public Instruction</li> </ul> <p>Special education is specially designed instruction to meet the needs of the student with a disability.</p> <p>Examples of related services include speech-language therapy, physical and occupational therapy, audiology services, counseling services, and transportation.</p> <p>A public school district must also provide supplementary aids and services to allow the student to participate in regular education. Examples of supplementary aids and services include assistive technology devices or software, modification of assignments or tests, and use of specialized equipment.</p>	<p>Students participating in the Special Needs Scholarship Program are parentally placed private school students.</p> <p>No FAPE entitlement.</p> <p>A participating student receives a scholarship in an amount set forth in state law to pay for attendance at an approved private school. Additional tuition or fees may be charged to students.</p>
<p><b>Individualized Education Program (IEP)</b></p> <p>A public school district is required to develop an IEP for each student with a disability. The IEP must describe how the student is currently performing, and include annual goals and services so the student can make progress both toward attaining the annual goals and meeting grade-level expectations. The IEP must also describe how the student's parents will be informed of the student's progress.</p> <p>The IEP team must meet at least annually to review the IEP, and revise it as necessary.</p> <p>A public school district must fully implement the IEP and provide all services described in the IEP. If the IEP is not fully implemented, the parent can seek relief, including compensatory services, under the state special education complaint process, mediation, or due process.</p>	<p>A participating private school is required to implement the most recent IEP or services plan, as modified by agreement between the private school and the student's parent. There are no rights to relief if disputes arise and no requirement for an annual review of the IEP.</p>
<p><b>Child Find</b></p> <p>A public school district is responsible for identifying, locating and evaluating students with suspected disabilities, including parentally-placed students in private schools.</p>	
<p><b>Reevaluation</b></p> <p>A public school district must generally reevaluate students with disabilities at least once every three years.</p>	<p>Upon the request of the student's resident school district, the IEP team must conduct a reevaluation no more frequently than once every three years for SNSP eligibility purposes.</p>
<p><b>Independent Educational Evaluation (IEE)</b></p> <p>Parents may obtain an IEE free of charge if the parent disagrees with an evaluation conducted by the public school district, unless the school district initiates a due process hearing to defend its evaluation.</p>	<p>Parents of participating students retain the right to an IEE free of charge if they disagree with an evaluation conducted by a public school district, unless the school district initiates a due process hearing to defend its evaluation.</p>

Enrolled in Public School IDEA and Chapter 115	Special Needs Scholarship Program 115.7915 Parentally-Placed Private School
<p><b>Discipline</b> Students with disabilities are entitled to protections regarding school disciplinary practices. Some of these protections include providing educational services when a student is suspended more than 10 days in a school year.</p>	
<p><b>Mediation</b> Mediation is available through the Wisconsin Special Education Mediation System (WSEMS) at no cost to parents, to resolve disputes in public schools under special education law.  This covers a wide range of issues that include evaluations, development of the IEP, implementation of the IEP, where services will be provided, and disciplinary practices.</p>	<p>Access to the mediation system is limited to disputes with the public school district over the evaluation of their child.</p>
<p><b>State Special Education Complaints</b> Parents may file a complaint with the Department of Public Instruction (DPI) if they believe the public school district did not follow state or federal special education law.  This covers a wide range of issues that include evaluations, development of the IEP, implementation of the IEP, where services will be provided, and disciplinary practices.</p>	<p>Parents may file a state IDEA complaint with the DPI only regarding disputes concerning the evaluation of their child by the public school district.</p>
<p><b>Due Process Hearings</b> Parents may request a due process hearing about disputes regarding the identification, evaluation, educational placement or provision of a free appropriate public education by a public school district.  This covers a wide range of issues that include evaluations, development of the IEP, implementation of the IEP, where services will be provided, and disciplinary practices.</p>	<p>Parents may request a due process hearing only regarding the evaluation of their child by a public school district.</p>
<p><b>Records</b> Parents of students with disabilities must be allowed to review all special education records maintained by the public school district.</p>	<p>Parents of students with disabilities have the right to review special education records maintained by the public school district.</p>
<p><b>Prior Written Notice</b> Public school districts must provide parents with written notice before any activity affecting a student's special education identification, evaluation, educational placement or the provision of FAPE.</p>	

(Source: Wisconsin Special Needs Scholarship Program)

Additionally, the example from Wisconsin's SNSP program for information that could be provided on State Department of Education websites has the added potential of being shared by LEAs during the consultation process. It is succinct, thorough, and written in parent-friendly language. LEAs could distribute copies of this table to ensure that if schools and parents were not already aware of the differences in changes in rights, they then would be. While I believe that the examples of statutory changes and how state Departments of Education should present this information provide the most comprehensive approach to ensuring parents are informed of these

changes in rights, I recognize that may take time or not occur. At minimum, state Departments of Education should adopt and implement the comparison of rights provided above. It could be included as an attachment in the application, in frequently asked questions documents, and as a standalone link on choice programs webpages housed on state Department of Education websites. These changes can, and should, be made without any Federal recommendation or requirement. However, given that the IDEA has federal oversight, I believe changes need to be made at the Federal level as well.

The first and quickest change at the federal level, should come from the U.S. Department of Education. A practice that the Department has turned to in the past to clarify and provide guidance of urgent policy matters is through the issuance of guidance documents (U.S. Department of Education's Guidance Homepage, 2022). While they do not carry the same legal weight that a congressional amendment to the IDEA would, they can be just as impactful. As noted by the USDOE, a guidance document is "an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue" (U.S. Department of Education's Guidance Homepage, 2022). Given those parameters, I believe it is well within the US DOE's purview to set forth a policy requiring or at least recommending that state Departments of Education provide a comparison of rights on choice program websites and as part of the application process to choice programs. Additionally, that policy should also require an annual notice of these rights with a recommendation that state Departments of Education work with LEAs to communicate this information during the equitable service consultation process. Issuing this guidance would help clarify any areas of confusion and create a level of accountability to ensure that the changes in rights were being communicated.

The second change that should occur at the federal level would be the most impactful, albeit the most prolonged of the suggestions, which would be a congressional amendment to the IDEA. Congress has iterated the importance of protecting students with disabilities for close to 50 years. First through the Education for All Handicapped Children Act and then through the creation and reauthorization of the IDEA. Amending the IDEA to including a requirement that parents are notified of the changes in rights when utilizing a voucher or ESA would be tremendously significant. It would carry the most legal weight, it would provide clarity for states, and it would ensure that parents are being provided all the information needed to make an informed decision. Congress has taken such action before in relation to parental choice, though in that instance the focus was charter schools, not voucher or ESA programs (Mead, 2002). When Congress amended the IDEA in 1997, they adopted provisions making clear how IDEA should be applied in charter schools and directing states to clarify charter schools' obligations to children with disabilities (Mead, 2002; see 20 U.S.C. §1413(a)(5)). I believe that this study, in conjunction with the GAO reports, further demonstrates the importance of Congress taking on this responsibility.

### **Implications for Future Research**

I believe that my findings highlight several avenues for future research, especially as it relates to students utilizing a voucher or ESA. One area of particular importance would be to expand this study to all new voucher and ESA programs and do a similar analysis of how parents are informed as it relates to their changes in rights. While I used GAO reports as a foundation, future research could use this study as a foundation to continue to explore whether all states are communicating this information. Since this study omitted Tax Credit Scholarships (TCS) due their funding structure being different in comparison to vouchers and ESAs, incorporating TCSs

would provide greater insight to choice programs as a whole. Additionally, some of the programs in this study were designated specifically for students with disabilities, with one program designated for students with a specific disability label. Future research into whether those programs are expanding, and who is utilizing those programs, would be another avenue that would build upon this work.

Another avenue for future research would also be to examine how many families are leaving the public school to utilize a voucher or ESA, leaving a voucher or ESA program for their public school, and how many families start in one sector, move to another, and return back. Furthermore, future research within those parameters could also seek out information as to what ultimately drove families to make those switches. This would be incredibly useful information for all stakeholders as common themes uncovered could provide insight on changes needed to improve the education for students with disabilities.

Whether embedded in the previous suggestion or done independently, I also believe future research should examine the extent to which parents who utilize a choice program are aware of their changes in rights. I believe that this study shows that public facing documents are not clearly stating those changes in rights. However, it is unknown whether parents are seeking this information out on their own and whether or not having that information impacts their decision on where their child is educated.

A final avenue for future research would be to examine how reports issued by the GAO impact federal and state policies and practice. Admittedly, this was one area this study initially sought to glean more information about. Specifically, I had posed the question: How, if at all, have federal and state agencies responded to the GAOs recommendations for vouchers and ESA programs designed for students with disabilities related to parental notification of rights and the

equitable service provision? A main component in the data collection process was to conduct interviews with both federal and state officials. After numerous attempts requesting individuals to be participants in that research went unanswered, that portion of the study was abandoned. These requests were made at the height of the COVID 19 pandemic. Although I cannot know for certain, I suspect that my inability to garner cooperation from state officials may have stemmed from the overwhelming task they faced caused by the difficulties of educational delivery during the pandemic. However, I still believe that there is tremendous value in understanding how this information is disseminated across various public agencies and future research addressing that question would provide new information in an unexplored area.

### **Conclusion**

Ultimately, the aim of this study was to answer the question: What explanations do states provide to parents or guardians of children with disabilities regarding their rights, including the equitable service provision, under the IDEA in a voucher or ESA program? It sought to provide a more in-depth analysis to follow up on recommendations made in two GAO reports. As has been previously noted, in one report the GAO stated, “Absent a requirement in IDEA that states notify parents of such changes, states are unlikely to begin providing parents with consistent and accurate information about changes that affect some our nation’s most vulnerable children” (GAO, 2017a, P. 29). Unfortunately, I believe my findings clearly indicate this statement to be true more often than not. Conversely, I also believe that my suggested remedies can be accomplished with support from those for, against, and ambivalent to choice programs. Ensuring that children with disabilities and their parents are afforded the requisite knowledge to make an informed decisions should not be a topic for debate. Especially when absent that knowledge they could unknowingly forfeit rights and protections that were specifically created to protect them



from malfeasance. Whenever a state adopts an educational program, the needs of children with disabilities should be a consideration, including the need for clear information for parents making decisions on behalf of their children. This study shows that currently operating voucher and ESA programs too often fall short of this goal. Children with disabilities and their parents deserve better.

## References

- Almazan, S., Marshall, D. (2016). *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*, Council of Parent Attorneys and Advocates.
- Arne Duncan on Education Policy in America. (2018). *Washington Journal*. broadcast. Retrieved September 10, 2022, from <https://www.c-span.org/video/?449613-3/washington-journal-arne-duncan-discusses-education-policy-america>.
- Bon, S. C., Decker, J. R., & Strassfeld, N. (2016). Special education voucher programs, reflective judgment, and future legislative recommendations. *Peabody Journal of Education*, 91(4), 503–521. <https://doi.org/10.1080/0161956X.2016.1207444>
- Beienburg, M. (2019). *The Public School Benefits of Education Savings Accounts The Impact of ESAs in Arizona* (pp. 1-16). Goldwater Institute.
- Braun, M. (2017). Little evidence and big consequences: Understanding special education voucher programs. Retrieved from <https://eric.ed.gov/?id=ED583029>
- Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686 (1954)
- Davis v. Grover, 480 N.W.2d 460, 463 (Wis. 1992)
- Danforth, S., & Gabel, S. L. (2006). Vital questions facing disability studies in education (Vol. 2). New York, NY: Peter Lang.
- EdChoice. (2019a, January 18). What ESAs in k–12 education are and how they're different from coverdell ESAs. Retrieved from <https://www.edchoice.org/blog/esas-k-12-education-theyre-different-coverdell-esas/>
- EdChoice (2019b). Education savings accounts policy handout. Retrieved from <https://www.edchoice.org/wp-content/uploads/2015/02/2016-8-EdChoice-ESAs1.pdf>

EdChoice. (2019c). Florida - john m. mckay scholarships. Retrieved from

<https://www.edchoice.org/school-choice/programs/florida-john-m-mckay-scholarships-for-students-with-disabilities-program/>

EdChoice. (2019d). Maine – town tuitioning program. Retrieved October 23, 2019, from

<https://www.edchoice.org/school-choice/programs/maine-town-tuitioning-program/>

EdChoice. (2019e). McKay scholarship program faqs. Retrieved from

<http://www.fldoe.org/schools/school-choice/k-12-scholarship-programs/mckay/mckay-faqs.shtml>

EdChoice. (2019f). Mississippi - nate rogers scholarship for students with disabilities. Retrieved

from <https://www.edchoice.org/school-choice/programs/mississippi-nate-rogers-scholarship-for-students-with-disabilities-program/>

EdChoice. (2019g). Mississippi dyslexia therapy scholarship. Retrieved from

<https://www.edchoice.org/school-choice/programs/mississippi-dyslexia-therapy-scholarship-for-students-with-dyslexia-program/>

EdChoice. (2019h). Ohio - autism scholarship program. Retrieved from

<https://www.edchoice.org/school-choice/programs/ohio-autism-scholarship-program/>

EdChoice. (2019i). Ohio - jon peterson special needs scholarship program. Retrieved from

<https://www.edchoice.org/school-choice/programs/ohio-jon-peterson-special-needs-scholarship-program/>

EdChoice. (2019j). School choice fast facts and statistics. Retrieved from

<https://www.edchoice.org/resource-hub/fast-facts/>

EdChoice. (2019k). School choice in america dashboard. Retrieved from

<https://www.edchoice.org/school-choice/school-choice-in-america/>

EdChoice. (2019l). Vermont - town tuitioning program. Retrieved October 23, 2019, from

<https://www.edchoice.org/school-choice/programs/vermont-town-tuitioning-program/>

EdChoice. (2019m). What are school vouchers?. Retrieved October 23, 2019, from

<https://www.edchoice.org/school-choice/types-of-school-choice/what-are-school-vouchers-2/>

EdChoice. (2019n). What is an education savings account?. Retrieved from

<https://www.edchoice.org/school-choice/types-of-school-choice/education-savings-account/>

EdChoice. (2019o). What is a tax-credit scholarship?. Retrieved from

<https://www.edchoice.org/school-choice/types-of-school-choice/tax-credit-scholarship/>

Education of Children with Disabilities

Education Opportunity for Every Child. (2021, October 26). *What We Do*. About Us. Retrieved

from <https://edopportunityutah.org/mission/>

ExcelinEd. (2022). About. Retrieved from <https://excelined.org/about/#approach>

Friedman, M., & Friedman, R. D. (2002). *Capitalism and Freedom*. Chicago: University of Chicago Press.

Gardner, D. P. (1983). *A nation at risk: The imperative for educational reform: A report to the nation and the Secretary of Education, United States Department of Education*. The Commission.

Gabel, S. L. (2005). Introduction: Disability studies in education. In S. L. Gabel (Ed.), *Disability studies in education: Readings in theory and method* (pp. 1–17). New York, NY: Peter Lang.

Gabel, S. L. (2016). Applying disability theory in educational policy: NIDRR’s “new paradigm of disability” as a cautionary tale. In S. Danforth & S. L. Gabel (Eds.), *Vital questions facing disability studies in education* (2nd ed., pp. 197–215). New York, NY: Peter Lang.

Gopal, S. (2004). Compensatory Education and the IDEA. *University of North Carolina School Law Bulletin*, 35(2), 14–22.

Green v. County School Board of New Kent County 391 U.S. 430 (1968)

Greene, J. P., & Marsh, R. H. (2009). *The Effect of Milwaukee's Parental Choice Program on Student Achievement in Milwaukee Public Schools. The Effect of Milwaukee's Parental Choice Program on Student Achievement in Milwaukee Public Schools* (pp. 1–19).

Fayetteville, AR: School Choice Demonstration Project

Griffin v. School Board, 377 U.S. 218 (1964)

Helen Hershkoff & Adam S. Cohen, School Choice and the Lessons of Choctaw County, 10 Yale L. & Pol'y Rev. (1992). Available at:

<https://digitalcommons.law.yale.edu/ylpr/vol10/iss1/2>

Individuals with Disabilities Education Act (IDEA). (n.d.). Retrieved from

<https://www.apa.org/advocacy/education/idea/>

Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (2004); 34 C.F.R 300 *et seq.* (2006)

Jackson v. Benson, 578 N.W.2d 602 (Wis. 1998)

Kamenetz, A. (2018, April 29). What 'A Nation At Risk' Got Wrong, And Right, About U.S. Schools. Retrieved from <https://www.npr.org/sections/ed/2018/04/29/604986823/what-a-nation-at-risk-got-wrong-and-right-about-u-s-schools>

Lee, A. M. (2019, October 4). 6 Options for Resolving an IEP Dispute. Retrieved from <https://www.understood.org/en/school-learning/your-childs-rights/dispute-resolution/6-options-for-resolving-an-iep-dispute>

Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

- Levinson, E. (1976). The Alum Rock Voucher Demonstration: Three Years of Implementation: [Https://www.rand.org/pubs/papers/P5631.html]. Retrieved October 23, 2019, from <https://www.rand.org/pubs/papers/P5631.html>
- Mead, J. F. (2002). Determining charter schools' responsibilities for children with disabilities: A guide through the legal labyrinth. *Boston University Public Interest Law Journal*, 11 (2-3), 167-189.
- Mead, J. F. (2014). Private in Name Only: A Statutory and Constitutional Analysis of Milwaukee's Private School Voucher Program. *Wash. & Lee J. Civ. Rts. & Soc. Just.*, 21, 331.
- Mead, J. F. (2017). *Fundamentals of Federal Disability Law*. In E. Shaver & J. Decker (Eds.), A Guide to Special Education Law. 97th ed. (17-28) Cleveland, OH: Education Law Association.
- Mecklenburger, J. (1972). Vouchers at Alum Rock. *The Phi Delta Kappan*, 54(1), 23-25. Retrieved from <http://www.jstor.org.ezproxy.library.wisc.edu/stable/20373373>
- Merriam, S. B. (1998). *Qualitative Research and Case Study Applications in Education*. Jossey-Bass.
- Miller, L. (2015, March 20). Wisconsin Private School Vouchers: A Short History. Retrieved from <https://millermpls.wordpress.com/2015/03/19/wisconsin-private-school-vouchers-a-short-history-2/>
- Pear, R. (1985, November 14). REAGAN PROPOSES VOUCHERS TO GIVE POOR A CHOICE OF SCHOOLS. Retrieved from <https://www.nytimes.com/1985/11/14/us/reagan-proposes-vouchers-to-give-poor-a-choice-of-schools.html>

- Perry, L. (2018). *Arizona Department of Education Empowerment Scholarship Accounts Program* (pp. 1–4). Phoenix, AZ: Arizona Auditor General.
- Pitrof, M. (2004, November 17). Milwaukee Voucher Program Turns 25: The History. Retrieved from <http://wuum.com/post/milwaukee-voucher-program-turns-25-history#stream/0>
- Railey, H. (2017, November 14). 50-State Comparison: K-12 Governance Structures. Retrieved from <https://www.ecs.org/k-12-governance-structures/>
- Rouse, C. E. (1998). Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program. *The Quarterly Journal of Economics*, 113(2), 553–602. doi: 10.1162/003355398555685
- Ryan, J. E. (2004). "Brown," School Choice, and the Suburban Veto. *Virginia Law Review*, 90(6), 1635–1647. doi: 10.2307/3202408
- Saleh, M. (n.d.). Your Child's Rights: 6 Principles of IDEA. Retrieved from <https://www.smartkidswithld.org/getting-help/know-your-childs-rights/your-childs-rights-6-principles-of-idea/>
- School Choice Report Series (Vouchers, Charter Schools). (2018, November 15). Retrieved October 23, 2019, from National Council on Disability website: [https://ncd.gov/sites/default/files/NCD\\_Choice-Vouchers\\_508\\_0.pdf](https://ncd.gov/sites/default/files/NCD_Choice-Vouchers_508_0.pdf)
- Section 1412 (a) (10) (C). (n.d.). Retrieved from <https://sites.ed.gov/idea/statute-chapter-33/subchapter-II/1412/a/10/C>
- Segregation Academies and State Action. (1973). *The Yale Law Journal*, 82(7), 1436–1461. doi: 10.2307/795573

Slee, R., Corcoran, T., & Best, M. (2019). Disability Studies in Education – Building Platforms to Reclaim Disability and Recognise Disablement. *Journal of Disability Studies in Education*, 1, 1–11. <https://doi.org/10.1163/25888803-00101002>

Southern School Desegregation, 1966-67: a report of the U.S. Commission on Civil Rights (1967). Washington, D.C. Retrieved from <https://eric.ed.gov/?id=ED028876>

Special Education Scholarship for Children with Disabilities, NC. Stat. tit. 1H, §115.C-112.5 (2021)

[https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_115c.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_115c.html)

Special Needs Scholarship Program, Wis, Stat. §115.7915 (2022)

<https://docs.legis.wisconsin.gov/document/statutes/115.7915>

Spreng, J. E. (1997). Scenes from the southside: desegregation drama in five acts. University of Arkansas at Little Rock Law Journal, 19(3), 327-412.

Stancil, W. (2018, May 30). The Radical Supreme Court Decision That America Forgot.

Retrieved from <https://www.theatlantic.com/education/archive/2018/05/the-radical-supreme-court-decision-that-america-forgot/561410/>

Statute and Regulations. (n.d.). Retrieved from <https://sites.ed.gov/idea/statuteregulations/>

Strauss, V. (2019, April 5). Analysis | 'A Nation at Risk' demanded education reform 35 years ago. Here's how it's been bungled ever since. Retrieved from

<https://www.washingtonpost.com/news/answer-sheet/wp/2018/04/26/the-landmark-a-nation-at-risk-called-for-education-reform-35-years-ago-heres-how-it-was-bungled/>

Taylor, S. (2006). Before it had a name: Exploring the historical roots of disability studies in education. In S. Danforth & S. Gabel (Eds.). *Vital questions facing disability studies in education* (pp.



xiii-xxiii). New York, NY: Peter Lang.

Taylor, S. (2006). Before it had a name: Exploring the historical roots of disability studies in education. In S. Danforth & S. Gabel (Eds.). *Vital questions facing disability studies in education* (pp.

xiii-xxiii). New York, NY: Peter Lang.

Taylor, S. (2006). Before it had a name: Exploring the historical roots of disability studies in education. In S. Danforth & S. Gabel (Eds.). *Vital questions facing disability studies in education* (pp.

xiii-xxiii). New York, NY: Peter Lang.

Taylor, S. (2006). Before it had a name: Exploring the historical roots of disability studies in education. In S. Danforth & S. Gabel (Eds.). *Vital questions facing disability studies in education* (pp. xiii-xxiii). New York, NY: Peter Lang.

Team, U. (2019, October 16). The Difference Between IEPs and 504 Plans. Retrieved from <https://www.understood.org/en/school-learning/special-services/504-plan/the-difference-between-ieps-and-504-plans>

The Closing of Prince Edward County's Schools (n.d.). Retrieved from <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/civil-rights-movement-virginia/closing-prince>

Turner, K. (2004). Both victors and victims: Prince edward county, virginia, the naacp, and brown. *Virginia Law Review*, 90(6), 1667-1692.

US Department of Education (ED). (2022, May 2). *U.S. Department of Education's Guidance Homepage*. U.S. Department of Education. Retrieved August 15, 2022, from <https://www2.ed.gov/policy/gen/guid/types-of-guidance-documents.html>

- U.S. Government Accountability Office. (2019). *Private school choice: Accountability in state tax credit scholarship programs* (GAO Publication No. 19-664) Retrieved from <https://www.gao.gov/products/GAO-19-664>
- U.S. Government Accountability Office. (2017a). *Private school choice: Federal actions needed to ensure parents are notified about changes in rights for students with disabilities* (GAO Publication No. 18-94). Retrieved from <https://www.gao.gov/products/GAO-18-94>
- U.S. Government Accountability Office. (2017b). *Private school choice: Requirements for students and donors participating in state tax credit scholarship programs* (GAO Publication No. 18-679). Retrieved from <https://www.gao.gov/products/GAO-18-679>
- U.S. Government Accountability Office. (2016). *School choice: Private school choice programs are growing and can complicate providing certain federally funded services to eligible students* (GAO Publication No. 16-712). Retrieved from <https://www.gao.gov/products/GAO-16-712>
- Welner, K. G. (2014, July 3). *Zelman v. Simmons-Harris*. Retrieved from <https://www.britannica.com/topic/Zelman-v-Simmons-Harris>
- Witte, J. F., Carlson, D., Cowen, J. M., Fleming, D. J., & Wolf, P. J. (2012). *MPCP Longitudinal Educational Growth Study Fifth Year Report. MPCP Longitudinal Educational Growth Study Fifth Year Report* (pp. 1–29). Fayetteville, AR: School Choice Demonstration Project
- Yell, M. (2019, July 20). *Brown v. Board of Education (1954) and the Development of Special Education*. SPED LAW BLOG. Retrieved November 10, 2022, from <https://spedlawblog.com/2019/07/20/brown-v-board-of-education-1954-and-the-development-of-special-education/>
- Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S. Ct. 2460, 153 L. Ed. 2d 604 (2002).

## Appendix A

Table 2: Differences in Key Provisions in the Individuals with Disabilities Education Act (IDEA) for Eligible Children with Disabilities in Public and Private Schools

Key Provisions in IDEA	Enrolled in Public School or Placed in Private School by the School District	Parentally Placed in Private School
Free appropriate public education (FAPE)	<ul style="list-style-type: none"> <li>FAPE must be made available to eligible children with disabilities. This includes special education and related services provided in conformity with an individualized education program (IEP) that meets IDEA requirements.</li> <li>Special education is specially designed instruction to meet the unique needs of the child with a disability.</li> <li>Special education and related services are provided at no cost to the parent.</li> </ul>	<ul style="list-style-type: none"> <li>No individual entitlement to FAPE or to receive some or all of the special education and related services that the child would receive if enrolled in public school.</li> <li>A child may receive "equitable services." Each school district determines the equitable services it will provide to its population of parentally placed private school students, through consultation with private schools and parents.</li> <li>If a child is designated to receive equitable services, they are provided in conformity with a services plan and at no cost to parents.</li> </ul>
Special education teacher certification requirements	<ul style="list-style-type: none"> <li>Public elementary, middle, and secondary school special education teachers must meet the special education teacher certification requirements in the law and regulations.<sup>a</sup></li> </ul>	N/A
Least restrictive environment requirements	<ul style="list-style-type: none"> <li>Children with disabilities must be educated with their nondisabled peers, to the maximum extent appropriate.</li> </ul>	N/A
Discipline procedures	<ul style="list-style-type: none"> <li>Students with disabilities are entitled to certain protections related to IDEA's disciplinary procedures.</li> </ul>	N/A
Due process rights	<ul style="list-style-type: none"> <li>Parents may request a due process hearing if they have a dispute related to the identification, evaluation, educational placement of a child with a disability, the provision of FAPE, or the implementation of IDEA's disciplinary procedures. This could include disputes regarding the development or implementation of an IEP and the location where services will be provided.</li> </ul>	<ul style="list-style-type: none"> <li>Due process rights of parentally placed private school children and their parents are limited to a school district's failure to comply with the child find requirements, including the evaluation requirements.<sup>b</sup></li> </ul>

Source: Key provisions in IDEA identified by U.S. Department of Education. | GAO-18-04

Taken from GAO Publication No. 18-94, p. 8-9

## Appendix B

State/ Program	Key Information	Accountability Mechanisms									
		Testing	Core subjects	Accreditation	Health and safety	Background checks	Teacher qualifications	Paraprofessional/ Specialist qualifications	Site visits	Fiscal soundness	Annual audit
Arkansas/ Succeed Scholarship Program	Participating students: 59 Participating private schools: 27 Student eligibility primarily based on: Disability	Yes	-	Yes	Yes	-	Yes	Yes	-	Yes	-
Arizona/ Empowerment Scholarship Account Program (ESA)	Participating students: 3,354 Participating private schools: n/a (All non- discriminatory private schools serving students with disabilities in the state are eligible) Student eligibility primarily based on: Multiple criteria, including disability	-	Yes	-	-	-	-	Yes	-	-	-
District of Columbia/ Opportunity Scholarship Program	Participating students: 1,154	Yes	-	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes

	Participating private schools: 46 Student eligibility primarily based on: Family income, residency										
Florida/ Gardiner Scholarship Program (ESA)	Participating students: 8,109 Participating private schools: 1,379 Student eligibility primarily based on: Disability	Yes	-	-	Yes	Yes	Yes	Yes	-	Yes	-
Florida/ John M. McKay Scholarships for Students with Disabilities Program	Participating students: 31,499 Participating private schools: 1,780 Student eligibility primarily based on: Disability	-	-	-	Yes	Yes	Yes	-	Yes	Yes	-
Georgia/ Special Needs Scholarship Program	Participating students: 4,185 Participating private schools: 293 Student eligibility primarily based on: Disability	Yes	Yes	Yes	Yes	-	Yes	-	Yes	Yes	-
Indiana Choice	Participating students: 34,299	Yes	Yes	Yes	Yes	Yes	-	-	Yes	-	-

Scholarship Program	Participating private schools: 313 Student eligibility primarily based on: Family income and other pathways										
Louisiana/ Louisiana Scholarship Program	Participating students: 7,110 Participating private schools: 129 Student eligibility primarily based on: Family income; attended a C, D, F or T school; attending Kindergarten for the first time	Yes	Yes	-	Yes	Yes	Yes	-	Yes	Yes	Yes
Louisiana/ School Choice Program for Certain Students with Exceptionalities	Participating students: 372 Participating private schools: 23 Student eligibility primarily based on: Disability	-	-	-	Yes	Yes	Yes	-	Yes	Yes	-
Maryland/ Broadening Options and Opportunities for Students Today	Participating students: 2,405 Participating private schools: 151	Yes	-	-	Yes	Yes	-	-	Yes	-	-

(BOOST) Program	Student eligibility primarily based on: Family income										
Mississippi/ Dyslexia Therapy Scholarship for Students with Dyslexia Program	Participating students: 165 Participating private schools: 5 Student eligibility primarily based on: Disability	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes
Mississippi/ Nate Rogers Scholarship for Students with Disabilities Program	Participating students: 0 Participating private schools: 1 Student eligibility primarily based on: Disability	-	-	Yes	-	-	-	Yes	-	-	-
Mississippi/ Education Scholarship Account (ESA)	Participating students: 425 Participating private schools: 29 Student eligibility primarily based on: Disability	-	Yes	Yes	Yes	Yes	-	-	-	-	-
North Carolina/ Opportunity Scholarship Program	Participating students: 5,624 Participating private schools: 437 Student eligibility primarily based on: Family income	Yes	-	-	Yes	-	-	-	-	-	-

North Carolina/ Special Education Grants for Children with Disabilities	Participating students: 828 Participating private schools: 238 Student eligibility primarily based on: Disability	Yes	-	-	Yes	-	-	-	-	-	-
Ohio/ Autism Scholarship Program	Participating students: 3,325 Participating private schools: 285 Student eligibility primarily based on: Disability	-	-	-	Yes	Yes	Yes	Yes	Yes	Yes	-
Ohio/ Cleveland Scholarship and Tutoring Program	Participating students: 8,088 Participating private schools: 40 Student eligibility primarily based on: Family income, residency	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	-
Ohio/ Educational Choice Scholarship Program (EdChoice)	Participating students: 22,892 Participating private schools: 450 Student eligibility primarily based on: Attending failing public school	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	-



Ohio/ Educational Choice Scholarship Expansion Program (EdChoice)	Participating students: 7,840 Participating private schools: 450 Student eligibility primarily based on: Family income	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	-
Ohio/ Jon Peterson Special Needs Scholarship Program	Participating students: 4,635 Participating private schools: 302 Student eligibility primarily based on: Disability	Yes	-	-	Yes	Yes	Yes	Yes	Yes	Yes	-
Oklahoma/ Lindsey Nicole Henry Scholarship Program for Children with Disabilities	Participating students: 542 Participating private schools: 56 Student eligibility primarily based on: Disability	-	-	Yes	Yes	-	Yes	-	-	Yes	-
Tennessee/ Individualized Education Account Program (ESA)	Participating students: 34 Participating private schools: 9 Student eligibility primarily based on: Disability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-
Utah/ Carson Smith Special Needs Scholarship Program	Participating students: 905 Participating private schools: 49	Yes	-	-	Yes	Yes	Yes	-	Yes	-	Yes

	Student eligibility primarily based on: Disability										
Wisconsin/ Milwaukee Parental Choice Program	Participating students: 27,982 Participating private schools: 121 Student eligibility primarily based on: Family income, residency	Yes	Yes	Yes	Yes	-	Yes	Yes	-	Yes	Yes
Wisconsin/ Racine Parental Choice Program	Participating students: 2,531 Participating private schools: 19 Student eligibility primarily based on: Family income, residency	Yes	Yes	Yes	Yes	-	Yes	Yes	-	Yes	Yes
Wisconsin/ Special Needs Scholarship Program	Participating students: 205 Participating private schools: 26 Student eligibility primarily based on: Disability	-	Yes	Yes	Yes	Yes	-	-	-	Yes	Yes
Wisconsin/ Wisconsin Parental Choice Program	Participating students: 3,057 Participating private schools: 121	Yes	Yes	Yes	Yes	-	Yes	Yes	-	Yes	Yes

	Student eligibility primarily based on: Family income											
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Taken from GAO Publication No. 18-94, p. 38-4

### Appendix C

State	Program Name	Program Type (Voucher/ESA)	Statute Language (Written by legislatures)	Administrative Rules/Regulations (Written by agency based on Statute)	DOE (website/pamphlets)	State Advocacy Group
Arizona	Empowerment Scholarship Account Program	ESA	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input checked="" type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Arkansas	Succeed Scholarship Program (D)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input checked="" type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE
District of Columbia	Opportunity Scholarship Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Florida	Gardiner Scholarship Program (D)	ESA	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Florida	John M. McKay Scholarships for Students with Disabilities Program (D)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE

Georgia	Special Needs Scholarship Program (D)	Voucher	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Indiana	Choice Scholarship Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input checked="" type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Louisiana	Louisiana Scholarship Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Louisiana	School Choice Program for Certain Students with Exceptionalities (D)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Maryland	Broadening Options and Opportunities for Students Today (BOOST) Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Mississippi	Dyslexia Therapy Scholarship for Students with Dyslexia Program (D)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE

Mississippi	Nate Rogers Scholarship for Students with Disabilities Program (D)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input checked="" type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Mississippi	Education Scholarship Account (D)	ESA	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
North Carolina	Opportunity Scholarship Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input checked="" type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
North Carolina	Special Education Grants for Children with Disabilities (D)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Ohio	Autism Scholarship Program (D)	Voucher	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE
Ohio	Cleveland Scholarship and Tutoring Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE

Ohio	Educational Choice Scholarship Program (EdChoice)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Ohio	Educational Choice Scholarship Expansion Program (EdChoice)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Ohio	Jon Peterson Special Needs Scholarship Program (D)	Voucher	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE
Oklahoma	Lindsey Nicole Henry Scholarship Program for Children with Disabilities (D)	Voucher	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Tennessee	Individualized Education Account Program (D)	ESA	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Utah	Carson Smith Special Needs Scholarship Program (D)	Voucher	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE

Wisconsin	Milwaukee Parental Choice Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Wisconsin	Racine Parental Choice Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Wisconsin	Special Needs Scholarship Program (D)	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input checked="" type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input checked="" type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE
Wisconsin	Wisconsin Parental Choice Program	Voucher	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE	<input type="checkbox"/> Clearly states loss to FAPE <input type="checkbox"/> References a loss to FAPE <input checked="" type="checkbox"/> No mention of loss to FAPE



## Appendix D



**For Students with Disabilities and their Parents:**

**A Comparison of Rights Under IDEA and Chapter 3323 to the Jon Peterson Special Needs Scholarship Program**

<u>IDEA and Chapter 3323</u>	<u>Peterson Scholarship Program</u>
<p>A public school district must provide a <b>Free Appropriate Public Education (FAPE)</b> to students with disabilities. A <b>Free Appropriate Public Education</b> includes special education and related services that:</p> <ul style="list-style-type: none"> <li>• Are provided at no cost;</li> <li>• Meet the standards of the Ohio Department of Education;</li> <li>• Include an appropriate preschool, elementary, or secondary school education; and</li> <li>• Are provided in conformity with an IEP that meets Ohio's standards for IEPs.</li> </ul> <p>Special education is specially designed instruction to meet the needs of a child with a disability.</p> <p>Examples of related services include transportation, speech-language pathology services, audiology services, interpreting services, physical and occupational therapy, recreation, and counseling services.</p>	<p>A child who participates in the Jon Peterson Scholarship Program is a unilaterally privately placed student, and is <b>not entitled to FAPE</b>.</p>
<p>A FAPE must be provided at no cost to the parents.</p>	<p>A participating student receives a scholarship of up to \$27,000 to pay for a special education program at a registered private provider or alternative public provider. If the program costs more than the scholarship, the parents are responsible.</p>

<p>A public school district is required to <b>EVALUATE</b> students with suspected disabilities, including students who attend private programs within the district.</p>	<p>A public school district is required to <b>EVALUATE</b> students with suspected disabilities, including students who attend private programs within the district.</p>
<p>A public school district prepares an <b>initial IEP</b> once a student has been determined eligible under IDEA.</p>	<p>A public school district prepares an <b>initial IEP</b> once a student has been determined eligible under IDEA. A student is not eligible for a scholarship until the initial IEP has been finalized.</p>
<p><b>Delivery of services.</b> The school district is required to provide all services set forth in the IEP.</p>	<p><b>Delivery of services.</b> The scholarship shall be used only for the cost to attend a special education program that implements the child's IEP. However, there is no requirement that the scholarship provider provide all of the services set forth on the IEP.</p>
<p><b>Annual review of IEP.</b> Each year, or more often if appropriate, the IEP Team reviews the IEP.</p>	<p><b>Annual review of IEP.</b> The IEP Team reviews the IEP each year.</p>
<p><b>Reevaluation.</b> The school district reevaluates the student every three years, unless the parent and district agree that reevaluation is not necessary.</p>	<p><b>Reevaluation.</b> The school district will reevaluate the student every three years, unless the parent and district agree that reevaluation is not necessary.</p>
<p><b>Independent Educational Evaluation.</b> A parent is entitled to an IEE at public expense if the parent disagrees with an evaluation, unless the school district initiates due process to defend its evaluation.</p>	<p><b>Independent Educational Evaluation.</b> A parent is entitled to an IEE at public expense if the parent disagrees with an evaluation, unless the school district initiates due process to defend its evaluation.</p>
<p><b>Mediation.</b> ODE provides mediation at no cost to resolve disputes under IDEA.</p>	<p><b>Mediation.</b> ODE provides mediation to resolve disputes between parents and the public school district surrounding the development of IEPs, but not disputes between parents and Scholarship providers.</p>
<p><b>Facilitated IEPs.</b> ODE provides facilitators to assist in the development of IEPs, if requested.</p>	<p><b>Facilitated IEPs.</b> ODE provides facilitators to assist in the development of IEPs, if requested.</p>

<p><b>Complaints.</b> ODE investigates written complaints that allege that a school district of residence has violated a requirement of IDEA or Ohio Adm. Code 3301-51-05.</p>	<p><b>Complaints.</b> ODE will investigate written complaints that a school district of residence has violated a requirement of IDEA or Ohio Adm. Code, but will not investigate allegations concerning the implementation of the IEP by a provider or whether the child has received FAPE.</p> <p>ODE will investigate written complaints that a provider has violated one of the requirements set forth in the Peterson scholarship statutes or rules.</p>
<p><b>Due Process Requests.</b> Parents and students have the right to file a due process request in order to initiate an administrative proceeding challenging decisions related to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.</p>	<p><b>Due Process Requests.</b> A parent or student may file a request for due process challenging decisions related to the identification or evaluation of a child, but cannot file a request for due process related to the services provided by the private provider or whether the child has received FAPE while enrolled in the scholarship program.</p>
<p><b>Manifestation Determination.</b> A public school district conducts a manifestation determination review when a student with a disability, because of a violation of the student code of conduct, is removed from his/her current educational setting for an extended period. The IEP team conducts this review to determine if the behavior of concern is a manifestation of the student's disability or was the direct result of the public school district's failure to implement the IEP. If the team determines that the behavior IS a manifestation, they must conduct a functional behavior assessment (FBA) and create a behavioral intervention plan (BIP) or review and modify the student's existing BIP.</p>	<p><b>Manifestation Determination.</b> Students are subject to the discipline policies of the private provider. The student may be suspended or expelled for violations of the provider's code of conduct.</p>