

CIVIL RIGHTS PROTECTIONS FOR STUDENTS WITH DISABILITIES IN
PRIVATE SCHOOL “CHOICE”
PROGRAMS IN THE UNITED STATES

by
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Abstract

There is a growing trend in the United States to privatize the public K-12 school by implementing school “choice”. This model has recently received increased attention, as it is the sole priority and policy idea for the U.S. Secretary of Education, Betsy DeVos. This paper examines privatization and its impact on students with disabilities. This model is fraught with complications including access, cost, inequities, rural issues and use of public taxpayer funds for private and sometimes religious institutions.

Although many issues exist in privatization in regards to this population, the primary problem is the loss of civil rights protections and the right to receive a free and appropriate public education, as currently mandated by federal law.

Policy action is proposed to deal with the growing number of “choice” programs broadly and those specifically designated for students with disabilities. This paper will examine policy advantages and disadvantages, as well as political implications, both positive and negative. This proposal will improve issues of educational equity and civil rights for students with disabilities. However, it should be noted that the cost of implementation may be significant, as oversight, monitoring, and technical assistance to participating private schools will be required. However, politically this proposal is extremely positive. It will either address some of the problems with regard to this student population and private school “choice”, or it will force a difficult vote on which opponents will have to publicly express their desire to capitalize and privatize the K-12 public school system with no regard for the effects on some of the most vulnerable students. In the process, the needs of these and other special populations will be highlighted and discussed.

Lastly, this proposal drives substantive changes in one segment of a problematic policy idea, but more work remains in order for privatization to be a viable option for our nation's students.

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MEMORANDUM

TO: Senator Chris Van Hollen (D-MD)

FROM: Valerie C. Williams

RE: PRIVATIZATION OF THE PUBLIC K-12 SCHOOL SYSTEM

ACTION FORCING EVENT

The recent confirmation of Education Secretary Betsy DeVos has created a period of uncertainty for the K-12 and post-secondary systems. Most notably, her desire to privatize the public school system is an idea that has been met with both strong opposition and support. Initial attempts to pass school “choice” legislation at the federal level failed. However, the tax bill passed in December 2017 includes a provision to allow college savings 529 plans to be used for K-12 expenses. Specifically, a December 2017 GAO report indicates students with disabilities unknowingly lose legal protections when they attend a private school choice program.

STATEMENT OF THE PROBLEM¹

School “choice” allows for the ability to funnel public funds to private and religious schools, without the guardrails and protections for students that are afforded in the public school system. Although there are numerous state created and implemented privatization programs, studies show no measurable gains in students attending schools through choice programs in comparison to their public school peers.²

The District of Columbia runs the only federally funded school choice program with mixed results. In some instances, the comparisons show declines in academic

¹ For clarity, this memo will discuss private school choice, not public school choice, which takes the form of charters, magnets, arts, Science, Technology, Engineering & Math (STEM), etc. Additionally, private choice has many names, including vouchers, education savings accounts and tuition tax credits.

²Carnoy, Martin. *School Vouchers are Not a Proven Strategy for Improving Student Achievement*. Report. Washington, DC: Economic Policy Institute, February 2017.

performance.³ Although parents of choice students may have a greater perception of school safety and satisfaction, these feelings are not shared by their children.⁴ Moreover, the problems with these programs are numerous. Studies point to the following:

- Lack of accountability and transparency,
- Lack of accessibility for rural areas,
- Increased segregation,
- Drain of resources on public schools, and
- Cost for low-wage families,

Most concerning, and the problem we will address is the denial of students with disabilities the right to a free and appropriate public education (FAPE), and other legal protections as mandated under the Individuals with Disabilities Education Act (IDEA). IDEA is the landmark federal education legislation that was re-authorized, renamed, and signed by George H.W. Bush in 1990. Originally it was known as the Education for All Handicapped Children Act (EHA), and was enacted in 1975. This law ensured that students with disabilities are given equal opportunity to receive the same education as their non-disabled peers.

This problem was highlighted in the November 2017 Government Accountability Office (GAO) report entitled, “*Private School Choice – Federal Actions Needed to Ensure Parents are Notified About Changes in Rights for Students with Disabilities*”. The report examined the 27 privatization programs operating in January 2017; five of the states served more than two-thirds of voucher students in the 2016-17 school year.⁵ According

³ Dynarski, Mark, Ning Rui, Ann Webber, and Babette Gutmann. *Evaluation of the DC Opportunity Scholarship Program: Impacts After One Year*. Report. Pemberton Research and Westat, June 2017.

⁴ Rui, Ning. *Evaluation of the DC Opportunity Scholarship Program*. Report. Albert Shanker Institute, September 2017.

⁵ This report only examined vouchers and education savings accounts. It did not review state tuition tax credit programs, tax credit scholarships, and other “indirect” means which function as vouchers.

to the report, over half of all programs are designed for students with disabilities, but no more than 53% of the programs reference students with disabilities on their website.

Additionally, GAO discovered that programs provided inconsistent and sometimes no information on the rights and protections that changed in moving from public to private school.⁶ A full 73% provided no information on this modification. Most concerning, there is no mandate under IDEA or in regulation to inform parents of what to expect during this transition.

In addition to information regarding accountability and transparency the report discusses:

- Few of the programs explicitly for students with disabilities have any means to provide accountability for special education and related services by school instructional support personnel,
- Two states provide a checklist to assist parents in finding the right school for their child. One refers to a lengthy Department of Education document which has not been updated since 2007 and has no acknowledgment of the recently passed K-12 legislation, Every Student Succeeds Act of 2015.⁷ The other is one page and provides little more than a brief overview of topics to consider.⁸ Neither has more than a cursory mention of special education, additional needs, or potential costs.
- Parents reported:

⁶ United States. Government Accountability Office. *Private School Choice - Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities*. GAO-18-94.

⁷ "Choosing a School for Your Child." Choosing a School. March 2005. Accessed April 8, 2018.

<https://www2.ed.gov/parents/schools/find/choose/choosing.pdf>. U.S. Department of Education

⁸ "Parent Visit Checklist." Parent Visit Checklist. January 1, 2017. Accessed April 8, 2018.

<http://education.ohio.gov/getattachment/Topics/Other-Resources/Scholarships/Cleveland-Scholarship-Tutoring-Program/Cleveland-Scholarship-Tutoring-Program-Check-Your/ParentVisitChecklist.pdf.aspx>. Ohio Department of Education

- Attempting to register their child in multiple schools before finding one that would meet their disability specific needs,
 - Being unaware that some teachers providing special education services were not trained for what they were teaching;
 - Assuming privatization programs would offer the same protections and services because they receive taxpayer dollars and are sometimes designed specifically for students with disabilities.
- Many programs lack accreditation, background checks for staff and minimal qualifications for paraprofessionals working with students with disabilities.
 - Less than half of programs provide accreditation status, staff background status, student or school performance data, or graduation rates.
 - Smaller schools and choice organizations don't always have the staff and budgets to administer standardized tests broadly, or with accommodations,
 - States ability to monitor these schools varies widely, with some officials reporting having limited time and resources to independently verify provided information or previously identified noncompliance issues.⁹
 - Only half of the programs require that private schools provide proof of financial solvency to participate, and officials have no authority to remove schools in the program based on financial criteria.

The differences between public school and private school (parental placement), are summarized in the listed table on the following page.

⁹ United States. Government Accountability Office. *Private School Choice - Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities*. GAO-18-94.

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)	<p>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.</p> <p>Special education is specially designed instruction to meet the unique needs of the child with a disability.</p> <p>Special education and related services are provided at no cost to the parent.</p>	<p>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.</p> <p>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.</p> <p>If a child is designated to receive equitable services, they are provided in conformity with a services plan and at no cost to parents.</p>
Special education teacher certification requirements	Public elementary, middle, and secondary school special education teachers must meet the special education teacher certification requirements in the law and regulations	N/A
Least restrictive environment requirements	Children with disabilities must be educated with their nondisabled peers, to the maximum extent appropriate.	N/A
Discipline procedures	Students with disabilities are entitled to certain protections related to IDEA's disciplinary procedures.	N/A
Due process rights	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 provisions 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.	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.

Figure 1. Differences in Key Provisions in the Individuals with Disabilities Education Act (IDEA) for Eligible Children with Disabilities in Public and Private Schools¹⁰

¹⁰United States. Government Accountability Office. *Private School Choice - Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities*. GAO-18-94.

The GAO concluded that a family's inability to receive accurate information in regard to utilization of privatization programs for students with disabilities has a detrimental effect on a parent's choice, student experience and consequently academic outcomes. This is particularly pronounced for this student population, as more than 50% of privatization programs are specifically for students with disabilities. As such, the GAO had the following recommendations:¹¹

- States should notify a family when their IDEA rights change as a result of moving from public to private school. The U.S. Department of Education has strongly encouraged this but not made it a requirement, claiming they do not have the authority to mandate compliance. Absent having this authority, the Department should review the information states do provide and ensure it is accurate.
- Congress should contemplate federal legislation requiring states to notify a family of this change in rights.

It should be noted that privatization programs do not make it prohibitive for all students with disabilities to gain an education. According to a state review of privatization programs, most students with disabilities who attend choice programs, are generally considered to have high-incidence disabilities. These are also referred to as cross or multi-categorical and include autism spectrum disorders, communication disorders, specific learning disabilities, mild intellectual disabilities and emotional/behavioral disabilities. These students generally attend private schools designed specifically for

¹¹ United States. Government Accountability Office. *Private School Choice - Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities*. GAO-18-94.

their disability, which are segregated settings, and there is no inclusion with non-disabled peers.¹²

Employment rates for people with disabilities has never been on par with those without disabilities. In fact, unemployment levels for people with disabilities has not regained previous highs seen prior to the recession.¹³ Employment rates for people with disabilities fell from 39.3% in 2009 to 34.5% in 2015. Although improving, it is comparatively low when looking at the general population. In March 2018 the labor force participation rate for people with disabilities was 21.5%, compared to 68.4% for people without disabilities.¹⁴ However it is particularly depressed for those with low levels of education.¹⁵ Economists Daniel Mont and Kamal Lamichhane have both completed groundbreaking research on education and children with disabilities in relation to employability.¹⁶ To date there is no research specifically on privatization and students' transition to the job market. There are a number of reasons for this, primary of which are:

- There is a delay between education and employment which requires the use of estimates of returns of education for people with disabilities in today's labor market, which includes with countless barriers to employment.
- Furthermore, measuring education returns requires finding a set of adults who received appropriate supports and services as children, in order to determine the

¹² Pratt, Timothy. "The Separate, Unequal Education of Students with Special Needs." *The Hechinger Report*, March 21, 2017. Accessed April 1, 2018. <http://hechingerreport.org/georgia-program-children-disabilities-separate-unequal-education/>.

¹³ Donnelly, Grace. "Employment for Americans with Disabilities: State by State Statistics." *Fortune*. February 28, 2017. Accessed April 05, 2018. <http://fortune.com/2017/02/28/disability-employment-rank/>.

¹⁴ "UNITED STATES DEPARTMENT OF LABOR." DOL's Seal - Home Page. April 2, 2018. Accessed April 04, 2018. <https://www.dol.gov/odep/>.

¹⁵ "Economic Picture of the Disability Community Project; Key Points on Disability and Occupational Projections Tables." Accessed April 4, 2018. <https://www.dol.gov/odep/pdf/20141022-KeyPoints.pdf>.

¹⁶ "Interview of Disability Economists - Daniel Mont & Kamal Lamichhane." E-mail interview by author. April 2018.

impact on earnings in the long run. This is challenging because most evaluation services take place right after delivery. Additionally, it is difficult to finding data on adults in the workforce who received the appropriate supports in elementary school.

However, there is international data suggesting that more schooling is associated with higher employability and better paying jobs. Additionally, returns for education of this population are significantly higher than the generally gained estimates.¹⁷

Uneducated children develop into adults unable to secure adequate or meaningful employment.¹⁸ Citizens lacking education and job skills have less disposable income to spend, thus contributing less to the Gross Domestic Product (GDP), an important economic indicator which calculates the market value for all American goods. Lastly, this decrease in unemployment by otherwise capable workers also results in fewer revenues for the federal government in the form of taxes and a higher likelihood to use, whether consistently or intermittently, federal entitlement programs.

According to the Department of Labor, the outlook for employment growth for people with disabilities improves significantly over the next decade, in high paying jobs for which many have college degrees. Additionally, with the advent of consistent technology improvements, flexible and home based work as well as needed workplace supports and accommodations are becoming common place.¹¹

¹⁷ Lamichhane, Kamal, and Yasuyuki Sawada. *Disability and Returns to Education in a Developing Country*. Scientific Research Center (Creative) - The Japan Society for the Promotion of Science. Economics Panel Discussion Paper. August 2009. Accessed April 9, 2018. http://www.un.org/disabilities/documents/events/1July2011_economics_panel_discussion_paper.pdf.

¹⁸ Berger, Noah, and Peter Fisher. *A Well-Educated Workforce is Key to State Prosperity*. Report. Washington, DC: Economic Analysis & Research Network, August 2013.

Lastly, studies of international choice programs with similar models indicate the risks outweigh the insignificant gains.¹⁹

BACKGROUND/HISTORY

In 1954 the United States Supreme Court ruled in the case of *Brown v Board of Education* that separate schools for Black and White students was unconstitutional. The Brown decision was the first step in the realization that discrimination for any reason, be it race, disability etc. was against the law and in violation of the basic right to education. In response to this decision, Virginia State Senator Harry Byrd Jr. ordered the desegregated public schools closed, for a period that lasted three years, and for some areas much longer. Simultaneously, Senator Byrd provided vouchers to parents and opened private academies that only White students could attend.²⁰

It is behind this backdrop that Milton Friedman, wrote an essay entitled, *The Role of Government in Education* in 1955. His many writings are the basis for the current school choice movement. As an economist, he espoused the belief in the primacy and importance of economic freedom and its foundational nature to democracy and capitalism. He did not agree with the concepts of forced segregation or non-segregation and advocated privatization of public education using vouchers. Although Friedman was known as the “Father of Vouchers”, earlier references to privatization can be found in the works of Tom Paine and John Stuart Mill²¹, as early as the 1790s.

¹⁹ Carnoy, Martin. *School Vouchers are Not a Proven Strategy for Improving Student Achievement*. Report. Washington, DC: Economic Policy Institute, February 2017.

²⁰ Casey, Leo. "When Privatization Means Segregation: Setting the Record Straight on School Vouchers." *Dissent*, August 9, 2017. Accessed October 3, 2017. https://www.dissentmagazine.org/online_articles/private-school-vouchers-racist-history-milton-friedman-betsy-devos.

²¹ Mill, John Stuart, and Jonathan Riley. *Principles of political economy: and chapters on socialism*. Oxford: Oxford University Press, 2011.

Paine proposed providing funding to poor children and those not of wealthier status. He believed an adequate sum would allow for six months of education per year, books and paper. This would serve two purposes. Namely, to educate children who might not otherwise receive it, and jobs to stimulate the economy.²²

Mill believed the federal government should decide that every child should receive a quality education, and as such it would be most expedient and efficient for the government to pay for these services, particularly for poor children, while allowing their parents to choose the school and method of delivery. As an economist, he also pointed out that any place void of competition is run by monopoly, which is generally counterproductive and harmful.²³

While the disagreement over equal educational opportunity was taking place, children with disabilities were typically in institutions, some being placed as early as 18 months, and left to live without proper medical care, education or parenting. One such institution, Willowbrook, became well-known after Robert Kennedy's 1965 visit to see first-hand how children and adults with disabilities were treated in these state-run facilities.²⁴

Children born to parents of means were provided for at home, largely kept out of sight, given care but not a formal education. The few who were allowed in school were not received well. Both the Massachusetts²⁵ and Wisconsin²⁶ Supreme Courts refused to

²² Paine, Thomas. *Rights of man*. London: For J.S. Jordan, 1792.

²³ Flew, Antony. "History of the Voucher Idea | Antony Flew." FEE-Foundation for Economic Education. June 01, 1995. Accessed February 2, 2018. <https://fee.org/articles/history-of-the-voucher-idea/>.

²⁴ "Remembering an Infamous New York Institution." NPR. March 07, 2008. Accessed February 10, 2018. <https://www.npr.org/templates/story/story.php?storyId=87975196>.

²⁵ Yell, Mitchell L Rogers, David Rogers, Elisabeth Lodge. "The Legal History of Special Education: What a Long, Strange Trip It's Been!" Remedial and Special Education. November 30, 1997. Accessed February 10, 2018. <https://eric.ed.gov/?id=EJ571903>.

²⁶ Esteves, Kelli J., and Shaila Rao. "The Evolution of Special Education." *Principal*, Nov. & Dec. 2008, 1-3.

educate students with disabilities based on academic performance and an unwillingness to recognize the inherent right for all to be educated.

In 1975 the Education for All Handicapped Children Act was signed into law, now known as IDEA. Under this legislation, students with disabilities (SWD) were able to access public education. Although monumental, implementation of IDEA to provide each student a free and appropriate public education (FAPE) in the least restrictive environment (LRE) based on inclusion rather than segregation, continues to be uneven in the states.

Numerous lawsuits have been filed to clarify what constitutes FAPE in LRE. In 1982 the Board of Education of Hendrick Hudson Central School District v. Rowley, was argued in the US Supreme Court. The legal brief states:

- The Act's requirement of FAPE is satisfied when the state provides personalized instruction with sufficient support services to allow the student to educationally benefit. These services must be provided at the public's expense and meet the state's educational standards, in accordance with the student's IEP (Individualized Education Plan)²⁷, and
- The Act's emphasis on procedural safeguards demonstrates the legislative conviction that adequate compliance with prescribed procedures will ensure implementation of legislative intent. In most cases assure much, if not all, of what Congress wished in the way of substantive content in an IEP.¹¹

²⁷ "Board of Educ. v. Rowley, 458 U.S. 176 (1982)." Justia Law. Accessed February 7, 2018. <https://supreme.justia.com/cases/federal/us/458/176/>.

In March 2017 in *Endrew F. v. Douglas County School District*²⁸, the U.S. Supreme court decided that students with disabilities must be provided more than *de minimus*, or minimal educational benefit. This case was initiated by Endrew's parents when over time, he made no progress on his IEP goals. They argued that according to IDEA he was entitled to instruction that would allow him to progress academically and achieve, just as his non-disabled peers.

In modern times, the choice movement continues to have implications for public school students, and specifically for those with disabilities. Most privatization programs operate under a myriad of state laws, but some features remain the same. They fail to provide equality of choice to students with disabilities, as with their non-disabled peers. SWD are frequently not admitted or counseled out of these programs based on subjective factors, such as previous academic record, behavioral history or the need for additional services.²⁹ Exclusion based on these and other considerations are legal, as the schools do not have to provide the same level of support as public schools. Furthermore, if admitted they do not provide the quantity and quality of federally mandated services in an IEP such as needed therapies (speech, physical, occupational, psychology, etc.) or adaptive services and equipment.³⁰ Most concerning is that rights and protections afforded to SWD in public schools related to a myriad of areas including discipline, restraint, LRE and accountability are not present in private schools.

²⁸ *Endrew F. v. Douglas County School District*, No. 15-287 slip op. at 1-20 (March 22, 2017).

²⁹ Almazan, S., and D. Marshall. *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*. Report. Council of Parent Attorneys and Advocates. 2016.

³⁰ "Facts." National Coalition for Public Education (NCPE). Accessed February 5, 2018. <https://www.ncpecoalition.org/facts>.

Aside from issues with entrance, appropriateness of services and supports and loss of protections, research does not indicate voucher programs have positive outcomes on academic performance. A 2017 study determined an increase in test scores was likely the result of transparency and accountability, not privatization. Moreover, Milwaukee, home to one of the oldest and largest voucher programs, can generate no specific evidence-based factors associated with student improvement. Lastly, there are improvements in high school graduation and college enrollment, however these factors are also present in public schools during the same time period. Moreover the data associated with voucher programs cannot be correlated with innovative teaching strategies or other improvements, as it was also noted that attrition rates in these schools was problematic.³¹

Specific to the state of Maryland, Governor Larry Hogan initiated a private school choice program in 2016 entitled Broadening Options & Opportunities for Students Today (BOOST) for \$5.5 million. In the second year it was expanded with the intent to increase the authorized dollars to \$10 million in three years. It is the 26th state program in the United States and exclusively provides vouchers to low income students. In the 2017-2018 school year the program has 2,659 participating students and 241 schools. The average voucher funding provided was \$2,294, with the most being \$4,400. The average provided is far below total dollars necessary to educate a child in the K-12

³¹ Carnoy, Martin. *School Vouchers are Not a Proven Strategy for Improving Student Achievement*. Report. Washington, DC: Economic Policy Institute, February 2017.

³⁴ McCann, Clare. "IDEA Funding." EdCentral. Accessed February 2, 2018. <http://www.edcentral.org/edcyclopedia/individuals-with-disabilities-education-act-funding-distribution/>.

³⁵ Dancy, Kim. "Fully Funding IDEA: A Democratic Dream or Just an Empty Promise?" *New America*. March 23, 2016. Accessed February 12, 2018. <https://www.newamerica.org/education-policy/edcentral/fully-funding-idea/>.

system. If vouchers supplanted local funds, they are still insufficient.³⁶ See per-pupil expenditure figure on the following page.

Per Pupil Funds for Public Schools - FY 2016 - State of Maryland					
Average voucher amount is \$2,294					
County	Federal	State	Local	Misc	Total
Alleghany	\$ 1,038	\$ 10,246	\$ 3,588	\$ 54	\$ 14,926
Anne Arundel	515	5,143	7,932	39	13,629
Baltimore City	1,284	12,049	3,262	118	16,713
Baltimore	677	6,564	6,974	97	14,312
Calvert	508	6,011	7,361	25	13,905
Caroline	868	10,282	2,595	88	13,833
Carroll	441	6,005	6,998	121	13,566
Cecil	567	7,505	5,281	30	13,383
Charles	610	7,211	6,521	67	14,409
Dorchester	797	9,682	4,200	179	14,858
Frederick	490	6,695	6,060	124	13,369
Garrett	859	6,465	7,222	285	14,831
Harford	595	6,310	6,228	103	13,236
Howard	351	5,320	10,138	122	15,931
Kent	854	5,924	9,117	85	15,981
Montgomery	473	5,203	9,916	71	15,663
Prince George's	835	9,276	5,433	148	15,691
Queen Anne's	673	5,451	7,083	151	13,358
St. Mary's	844	6,649	5,783	45	13,322
Somerset	1,175	11,631	3,459	38	16,304
Talbot	732	3,871	8,229	15	12,847
Washington	713	8,409	4,366	48	13,535
Wicomico	842	9,883	2,798	144	13,667
Worcester	829	4,197	12,545	36	17,606
Total	\$ 675	\$ 7,233	\$ 6,914	\$ 95	\$ 14,917
Source: Local School Budgets: Department of Legislative Services					

Figure 2. Per Pupil Funds for Public Schools in FY 2016 in the State of Maryland³⁷

³⁶ Eilenberg, Robin Clark. "Chart Shows Maryland's School Funding Per Student." Conduit Street. April 26, 2016. Accessed February 12, 2018. <https://conduitstreet.mdcounties.org/2016/04/26/chart-shows-marylands-school-funding-per-student/>.

³⁷ Eilenberg, Robin Clark. "Chart Shows Maryland's School Funding Per Student." Conduit Street. April 26, 2016. Accessed February 12, 2018. <https://conduitstreet.mdcounties.org/2016/04/26/chart-shows-marylands-school-funding-per-student/>.

In comparison to nationwide figures, the average student cost is \$7,552. However, the average cost to educate a student with disabilities in the United States is \$16,921.³⁸ The dollars needed to educate a SWD far exceed the dollars provided in the voucher program, thus serving as a disincentive for private schools to accept these students.

The Maryland law does require a small level of accountability, in requiring these schools to administer state required assessments to their voucher students, and mandates that participating schools agree not to discriminate in admissions based on race, color, national origin or sexual orientation. Additionally, they must comply with Title VI of the Civil Rights Act. However, there is no mention of discrimination based on disability or indication that federally mandated IDEA supports, services and protections will be afforded. To date there have been no lawsuits challenging the program in any manner.

POLICY PROPOSAL

This policy proposal serves a dual purpose. It will make privatization more equitable or serve as a “poison pill” to kill efforts to pass legislation in this regard. This proposal will provide a roadmap to simultaneously maintain guardrails and protections for students with disabilities, while providing a disincentive for private schools to operate choice programs utilizing public taxpayer dollars. The title of the proposed bill is *Equity Matters for All Students*.

If the free market should be allowed to rein and will always provide with limited government intervention, the theory in relation to education should be tested.

³⁸ "Background of Special Education and the Individuals with Disabilities Education Act (IDEA)." NEA. Accessed February 12, 2018. <http://www.nea.org/home/19029.htm>.

Privatization proponents should want to open their doors to all students in an effort to show their ability to innovate and be creative will result in improved academic outcomes for all students. From their perspective, the most expedient way to create more and expand choice programs with minimal opposition, should be to prove its effectiveness, for all student populations.

As noted previously, research shows that improved education is highly correlated with increased wages for persons with disabilities. In this light, all schools should want to contribute toward a better educated, more productive citizenry and society.

An additional economic matter should be considered. Although there is no research on possible correlation, it should be noted that the states which have undergone the steepest decreases in taxes and cuts in education have also seen a rise of privatization in its various forms, be it vouchers, education savings accounts or tax credit scholarships.

With the exception of Idaho and Michigan, the remaining five states (Arizona, Kansas, Mississippi, North Carolina and Oklahoma) have seen a slow erosion of public education resources and funding, primarily due to shrinking budgets and income tax rate cuts, while increasing private school choice. Moreover, Census data indicates 29 states have not recovered from recession era cuts in funding and are providing fewer dollars in 2015 than in 2008.⁴⁰ Clearly, decreasing state and local funds available for education does not move our public school system closer to providing an enriching and equitable academic experience for all students.

⁴⁰ Leachman, Michael, Kathleen Masterson, and Eric Figueroa. "A Punishing Decade for School Funding." Center on Budget and Policy Priorities. February 28, 2018. Accessed April 12, 2018. <https://www.cbpp.org/research/state-budget-and-tax/a-punishing-decade-for-school-funding>.

IMPLEMENTATION

The federal government would require religious and independent private schools who want to implement choice programs and receive federal funding, to be subject to all the same legal and reporting requirements as public schools under IDEA. The major tenants of IDEA include⁴¹:

- Free and Appropriate Public Education – The education must provide access to the general curriculum, meet state standards, be provided at the public’s expense, provide educational benefit, and be in accordance with the student’s Individualized Education Program.
- Appropriate Evaluation – The State Education Agency must have and provide an evaluation process to determine the necessity of special education services, which must avoid cultural, racial or other biases.
- Individualized Education Program (IEP) – Legal document created by the public school system which outlines what services, strategies, accommodations and modifications are needed to advance a student’s level of performance. It is created by the IEP Team, a group comprised of teachers (special and general educators), specialized instructional support personnel⁴², school administrators and parents. The law specifically indicates the IEP should state present academic levels, how the disability affects educational involvement and progress, and the unique needs that arise from the disability that impact progress in the general curriculum.

⁴¹ United States. 105th Congress 1st Session. Senate. *Individuals with Disabilities Education Act Amendments of 1997*. Report 105-17. 1-61.

⁴² Ex: Nurses, Occupational, Physical or Speech Therapists, Psychologists, Psychiatrists, Adaptive Physical Educators, etc.

- Least Restrictive Environment – The effort made to ensure that students with disabilities are educated, to the maximum extent possible, in the same settings as their non-disabled peers, rather than in segregated settings.
- Procedural Safeguards – Safeguards protecting the rights of students with disabilities such as parent participation, prior written notice of meetings, pertinent happenings and educational arrangements, mediation and due process, and paths to dispute resolution.

In short, under IDEA, public schools are required to demonstrate the ability to provide education and related services and supports in a manner that is accessible, accountable and transparent. In adhering to IDEA, private choice programs will ensure adherence to the above listed tenants, and on a practical level that results in:

- Equal access to these programs as their non-disabled peers,
- A financial package that ensures all costs are covered by the voucher or private school (ex: uniforms, tuition, books, etc.),
- Offering of needed services and supports such as transportation and therapeutic services,
- Students taking academic performance tests to track mastery of grade level content and outcomes,
- Transparency of how funds are spent by local education agencies (LEAs).

Subsequent to the federal mandate, state education agencies will ensure compliance at the state level. With the trend toward a smaller federal footprint in the states and more flexibility, comes an increase in responsibility. The federal government will allow states to tailor their programs and structure, but require certain elements such as:

- A move more toward performance monitoring⁴³ and less compliance, in an effort to ensure academic outcomes, financial solvency and needed administrative procedures and protocols,
- An initial and periodic needs assessment to determine strengths and identify gaps in academics, finances or administration,
- A focus on the ability to blend and braid funding, knowing how to allocate resources and reorganize,
- Use of federal technical assistance as needed or deemed necessary, and
- Outreach and collaboration with local stakeholders and families.

Please note, this proposal is only for those private schools who choose to take public taxpayer funds to run privatization programs. It does not apply to those private schools whose funding is from donations or other sources of non-governmental funds.

Participating private schools who through typically submitted compliance data or oversight activities, are found to not be adhering to IDEA, could be subject to:

- Fines and/or penalties,
- Loss of accreditation,
- Withholding of federal funds,
- Revocation of the ability to receive federal funds.

Guidance will be provided by the federal government regarding penalties and enforcement structure, which will be created by the states and approved at the federal level by a peer review group. Lastly, the U.S. Department of Education will provide

⁴³ Weiss, J., & McGuinn, P. (2017). The Evolving Role of the State Education Agency in the Era of ESSA and Trump: Past, Present, and Uncertain Future. CPRE Working Paper #WP 2017–1. Philadelphia: Consortium for Policy Research in Education.

additional matching funds up to a cap, which will be determined based on the number of private schools requiring monitoring.

The cost to the federal government cannot be fully quantified as of yet, as no other proposals similar to this have been given consideration. In the interim, I recommend requesting a score from the Congressional Budget Office (CBO) for a specific figure. However, the largest cost would likely be an expansion of staff at the U.S. Department of Education that would be responsible for providing technical assistance (TA), support and oversight to participating private schools. Currently, there are at least eight divisions in the U.S. Department of Education that provide some level of TA, support or oversight to the states. These offices are diverse and range from the office of Special Education and Rehabilitative Services, to the Office of Civil Rights.⁴⁴ These divisions administer funding, evaluate, monitor and report on the implementation of federal policy and programs that deal with many facets of K-12 education such as disability, English language acquisition, rural schools, Impact Aid, and much more. There are hundreds of employees in charge of these efforts, which does not include those at the 17 regional offices across the country. These teams are nimble and extraordinarily small based on the depth of work necessary to fulfill their missions. It should be noted, that the Department of Education has the smallest staff of the 15 cabinets.⁴⁵ Approximately 9% of the Department's budget is not dispersed to states for student loans or grants. As such, I estimate that 1%, or about \$1.98 billion (based on FY15 funding) would be needed to

⁴⁴ "Operating Structure - U.S. Department of Education." Home. June 30, 2017. Accessed April 14, 2018. <https://www2.ed.gov/about/offices/or/index.html>.

⁴⁵ "Federal Role in Education." Home. May 25, 2017. Accessed April 14, 2018. <https://www2.ed.gov/about/overview/fed/role.html>.

double the number of resources currently in use.⁴⁶ The specific amount needed would likely start small and ramp up as needed, based on the states with substantial privatization programs. Although not insignificant, these dollars in comparison to recent commitments to the National Institutes of Health and the overall federal budget are modest.

Initially, the Department could utilize existing staff to provide additional state-level oversight, and supplement as appropriate. Additionally, Department funded TA centers can assist in providing services to states. Long-term, the Department could consider funding one or numerous grants to enable a university or experienced organization with the opportunity to run regional TA centers specifically for this purpose. Note that the 2019 President's Budget requests \$1 billion dollars for a new voucher program, that as of yet has no details or associated plan. These funds can be diverted to assist participating private schools in developing models of inclusion for students with disabilities.

The primary cost for this plan will be to the participating private schools who current do not have:

- Sophisticated data collection systems or personnel,
- Educators and school instructional support personnel with experience in providing services and supports to students with disabilities, or
- Administrative procedures or guidelines that currently allow for the education, transparency or accountability of a student population with which there is no familiarity.

⁴⁶ "Federal Spending: Where Does the Money Go?" National Priorities Project. Accessed April 2, 2018. <https://www.nationalpriorities.org/budget-basics/federal-budget-101/spending/>.

If enacted, this policy should be fully implemented in the 2020-2021 school year. This timeline provides approximately two years to build internal administrative capacity and develop or contract with personnel who will be responsible for evaluating and educating the students. For those private schools (receiving public tax dollars), whose readiness doesn't require waiting till the 2020-21 school year for full inclusion, they may begin the process sooner. Models currently exist of states and local education agencies who are implementing IDEA and educating students well. Moreover, there is a plethora of research on achievement, successful practices and inclusive education. These strategies are not new and have been increasingly successful as they have been more refined over time. Major sources of research can be found at the Department of Education, Institute of Education Sciences (IES) and the American Educational Research Association, to name a few organizations.

AUTHORIZATION

The policy authorizing tool will be legislation. Stand-alone legislation would be optimal, however if this effort must be rolled into another piece of legislation, the result would be the same. Ultimately, this mandate should be included in IDEA re-authorization, however, opening IDEA for amendment in the current political climate would likely not result in an improved piece of legislation.

POLICY ANALYSIS

This proposal is good and would benefit students with disabilities because it:

- Promotes equity and reduces barriers for students with disabilities to attend participating private schools via the public voucher programs. If enacted, students

would be given an equal opportunity to attend any K-12 public or private participating school without the possibility of being excluded based on discrimination or counseled out during the entry process, as has previously been the case.^{47 48} A U.S. Department of Education report found that in the District of Columbia, 21.6% of parents did not accept a voucher because the desired schools lacked special services required to appropriately educate their child. Furthermore, 12.3% of voucher recipients who attended private schools later left due to lacking special education services.⁴⁹

- Promotes inclusion and diversity. A recent study on the DC voucher program indicates that private schools have been a source of increasing segregation on the educational landscape of the city. Although private schools serve only 15% of the total student population, their make-up is 60% of the White students in the District.⁵⁰ Additionally, private schools are shown to stratify students by race, socio-economic status and disability.^{28 51} When people with disabilities are included in the classroom setting, and the community more broadly, studies have shown there is increased comfort and awareness, improved social cognition, improvements in self-concept, development of personal principles and greater likelihood of forming warm and

⁴⁷ Nir, Sarah Maslin. "At Private Schools, It's Keep Up, Catch Up or Pack Up." *The New York Times*, January 6, 2011, NY Edition ed., Region sec. January 5, 2011. Accessed March 5, 2018. <http://www.nytimes.com/2011/01/06/nyregion/06private.html>.

⁴⁸ Curtis, Aaron. "Access Denied? A Civil Rights Perspective on School Vouchers." Lawyers' Committee for Civil Rights Under Law. July 19, 2015. Accessed March 5, 2018. <https://lawyerscommittee.org/2013/09/access-denied-a-civil-rights-perspective-on-school-vouchers/>.

⁴⁹ Wolf, Patrick, Babette Gutmann, Michael Puma, Brian Kisida, Lou Rizzo, Nada Elssa, Matthew Carr, and Marsha Silverberg. *Evaluation of the DC Opportunity Scholarship Program - Final Report*. Report no. NCEE-2010-4018. U.S. Department of Education. June: Institute for Education Sciences, 2010. 1-214.

⁵⁰ DiCarlo, Matthew, and Kinga Wysienska-DiCarlo. *Public and Private School Segregation in the District of Columbia*. Research Brief. Albert Shanker Institute. September 2017. Accessed March 2, 2018. https://docs.google.com/viewerng/viewer?url=http://www.shankerinstitute.org/sites/shanker/files/DCSEGfinal_2.pdf.

⁵¹ Kahlenberg, Richard D., Halley Potter, and Kimberly Quick. "Why Private School Vouchers Could Exacerbate School Segregation." The Century Foundation. December 19, 2016. Accessed March 11, 2018. <https://tcf.org/content/commentary/private-school-vouchers-exacerbate-school-segregation/>.

caring relationships.⁵² Moreover, special education placement has not shown to have significant improvements over the general education setting. This finding takes into account smaller class sizes and specialized instruction. Furthermore, special education has not proven to have any academic or social advantages over general education, particularly when strategies such as Universal Design for Learning are utilized.⁵³

- Shows transparency, accountability and good stewardship of taxpayer dollars.

Currently, there is no mechanism to ensure that participating private schools adhere to basic standards such as employing teachers with degrees or proper credentials, providing academic rigor for students or testing to determine scholastic progress.³¹ In Florida, the McKay Scholarship, specifically designed to be used by students with disabilities, paid over \$2.1 million in voucher funds and \$236,000 in state tuition tax credits to a school which frequently changed locations and eventually had their space condemned. Additionally, they had no materials, curriculum, and utilized corporal punishment. When returning from a field trip, a student and staff member were killed in a car accident under conditions which spurred a lawsuit from the families and the

⁵² "The Power of Letting Children Learn Together." Open Society Foundations. October 2015. Accessed March 3, 2018. <https://www.opensocietyfoundations.org/explainers/value-inclusive-education>.

⁵³ Blessing, Carol, Barbara LeVitz, and Mitchell LeVitz. *Establishing a New Standard for Inclusion in the Classroom*. Issue brief. Cornell University. 1-7. May & June 2003. Accessed March 4, 2018. <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1106&context=edicollect>.

³¹ U.S. Government Accountability Office. "School Choice: Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students." U.S. Government Accountability Office (U.S. GAO). September 12, 2016. Accessed March 13, 2018. <https://www.gao.gov/products/GAO-16-712>.

insurance company.³² Similar problems have been documented in voucher programs in Wisconsin⁵⁴, the District of Columbia⁵⁵ and Indiana.⁵⁶

- Private schools unwilling to comply would self-select out of the system and continue to run strictly from private dollars. This endeavor is going to be costly for participating private schools, who only educate approximately ten percent of the nation's elementary and secondary school students.⁵⁷ The manpower and resources needed to establish identification, evaluation and education programs for students with varying learning abilities is going to require a significant investment. Short of contracting with a third party to provide these supports and services, the outlay necessary may not be worth the return in dollars to overhaul current academic systems, particularly for smaller schools and those running on budgets with small margins. Furthermore, after set-up, student transportation, dispute resolution, ongoing data collection and compliance with IDEA will require additional work. If this is, in fact the case, the proposal will have succeeded in acting as a "poison pill".

Despite the fact that this legislation would provide some basic rights and guarantees, there are significant pitfalls.

³² Garcia-Roberts, Gus. "McKay scholarship program sparks a cottage industry of fraud and chaos." Miami New Times. June 23, 2011. Accessed March 2, 2018. <http://www.miaminewtimes.com/news/mckay-scholarship-program-sparks-a-cottage-industry-of-fraud-and-chaos-6381391>.

⁵⁴ Linnane, Rory. "Voucher Schools Don't Always Take Special Needs Students." Madison.com. July 08, 2013. Accessed April 11, 2018. http://host.madison.com/wsj/news/local/govt-and-politics/voucher-schools-don-t-always-take-special-needs-students/article_ed6d5e54-03a4-5e3b-8454-1176f39fd993.html.

⁵⁵ Strauss, Valerie. "Report Slams DC's Federally Funded School Voucher Program." *Washington Post*, November 16, 2013. Accessed April 8, 2018. https://www.washingtonpost.com/news/answer-sheet/wp/2013/11/16/report-slams-d-c-s-federally-funded-school-voucher-program/?utm_term=.7d12dd694fe7.

⁵⁶ Turner, Cory, Eric Weddle, and Peter Balonon-Rosen. "The Promise and Peril of School Vouchers." NPR. May 12, 2017. Accessed April 9, 2018. <https://www.npr.org/sections/ed/2017/05/12/520111511/the-promise-and-peril-of-school-vouchers>.

⁵⁷ The Condition of Education - Participation in Education - Elementary/Secondary - Private School Enrollment - Indicator January (2018). January 2018. Accessed March 5, 2018. https://nces.ed.gov/programs/coe/indicator_cgc.asp.

- Historically, the U.S. Department of Education has not always had the resources to properly monitor the states. Additionally, the Department has committed errors that directly and negatively impacted the education of students with disabilities. There exists the very real possibility that even with additional resources, the duty to monitor and provide technical assistance and oversight, may be a formidable task. Critics may question if the Department can monitor the private sector with any more effectiveness or efficiency than has been shown in the public sector. In 2004, Texas instituted a state law which capped the number of students allowed to receive special education services at 8.5%. Typically, the nationwide percentage for students receiving these services is 13%, sometimes higher, and the rate in Texas at that time was 12%.⁵⁸ The state later indicated it was a “benchmark”, which was misunderstood by the local educational agencies. Regardless of the intent, it is estimated that hundreds of thousands of students who were mandated under federal IDEA law to be found, evaluated and receive services had their rights violated, and did not receive the free and appropriate public education they were entitled to. These students included those who were blind, had mental health illnesses, physical and intellectual disabilities, autism spectrum disorder and English Language Learners (ELL) who also had disabilities, to name a few. Only after an expose in the *Houston Chronicle*⁵⁹, and advocacy from parents and the state disability rights network⁶⁰, did the U.S. Department of Education act.

⁵⁸ Samuels, Christina A. "Ed. Dept. Finds Texas Suppressed Enrollment of Special Education Students." *Education Week*. February 28, 2018. Accessed January 16, 2018. <https://www.edweek.org/ew/articles/2018/01/11/ed-dept-finds-texas-suppressed-enrollment-of.html>.

⁵⁹ Rosenthal, Brian M. "Denied-Investigative Series." *Houston Chronicle*, September 10, 2016. Accessed February 2, 2018. <https://www.houstonchronicle.com/denied/>.

⁶⁰ Rosenthal, Brian M. "Disability Advocates Threaten to Sue Texas Over Special Education Cap." *Chron*, January 30, 2017. Accessed February 2, 2018. <https://www.chron.com/news/politics/texas/article/Disability-advocates-threaten-to-sue-Texas-over-10894185.php>.

Over forty current and former local educators and Texas education agency (TEA) employees were interviewed by the paper, as well as a multitude of parents, some of whom eventually left the state in search of educational services for their children. After the Department of Education's February 2017 investigation, complete with a monitoring visit, a review of TEA officials and local school staff, document reviews, and public comment and listening sessions across the state, it was determined that the 8.5% indicator was in violation of federal law.⁶¹ Prior to this review, no in-depth monitoring had occurred in a number of years, and cursory reviews uncovered no discrepancies. The Texas law which was the impetus for this period was just reversed in 2017. As such, if this proposal is implemented and not monitored with any level of fidelity, it will contribute toward the worsening of segregation, stratification and academic inequalities in the public school system.

- Unintended consequences could include improving a bad and far from perfect system which would still be fraught with problems, many still in the realm of rights for other marginalized populations, which the disabled have typically stood in solidarity with.

From a budgetary perspective, the typical voucher provides significantly less than the actual cost to educate a student at a private institution. Consequently, one could claim a cost benefit, however, earlier referenced research indicates the academic outcomes for voucher students range from no change to negative impact. If quality and academic rigor

⁶¹ *Texas Part B 2017 Monitoring Visit Letter*. U.S. Department of Education. 1-14. January 11, 2018. Accessed January 11, 2018. <https://www2.ed.gov/fund/data/report/idea/partbdmsrpts/dms-tx-b-2017-enclosure.pdf>.

is lacking, the funding not spent on education would likely be spent in the future on further education, supports and possible the use of entitlements.

From an international perspective, although data exists on the various forms and levels of effectiveness and utility of vouchers in other countries such as India, Chile, Sweden, Bangladesh, Columbia and Denmark to name a few,⁶⁴ there exists no data on foreign countries and students with disabilities. Barriers include data collection efforts, common definitions and methodology. Largely speaking, children with disabilities are significantly less likely to be in school than their non-disabled peers. When they are present, absentee rates are higher, and they are more likely to leave school prior to the completion of primary or secondary school.⁶⁵ This is primarily due to the lack of a government mandate to educate students with disabilities in other countries. Additionally there are fewer resources, trained educators, physical barriers, and policies supporting the academic advancement of this student population.⁶⁶

On the legal front, last year a landmark special education case was fought before the U.S. Supreme Court, *Endrew F. v Douglas County School District*.⁶⁷ A boy with autism attended public school from pre-school through fourth grade and was not doing well. When the school proposed a fifth grade Individualized Education Plan (IEP) that resembled the previous plan, he was parentally placed in a private school that specifically served students with autism spectrum disorder.⁶⁸ Subsequently, Endrew showed

⁶⁴ Weidrich, Eva. "Education Vouchers: Is There a Model for India?" Education. Accessed March 16, 2018.

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.132.3686&rep=rep1&type=pdf>.

⁶⁵ "Children with Disabilities Are More Likely to Be Out of School." UNESCO UIS. April 27, 2017. Accessed March 14, 2018.

<http://uis.unesco.org/en/news/children-disabilities-are-more-likely-be-out-school>.

⁶⁶ "World Report on Disability." UNICEF. 2011. Accessed March 3, 2018.

https://www.unicef.org/protection/World_report_on_disability_eng.pdf.

⁶⁷ *Endrew F. v Douglas County School District*, No. 15-827 slip op. at 1-20 (March 22, 2017).

⁶⁸ Parental placement is a family's unilateral decision to remove a child from public school and place them in private school at their own expense.

significant and marked improvement in short order and his parents sued, in an effort to be reimbursed for their private school tuition payments under IDEA. In a unanimous decision the U.S. Supreme Court found that schools must offer an academic program that will enable a student to receive more than a minimal educational benefit. Additionally, the program must be “appropriately ambitious” and offer every student the chance to meet challenging goals. As such, students with disabilities have the right to receive “substantially equal opportunities afforded to children without disabilities”. The degree to which IEP teams create appropriately ambitious goals may be disputed, and may vary, but this decision mandates that school systems make the effort to be rigorous.

The implications of this legal decision on the proposed policy are enormous. If enacted, participating private schools would not only be subject to the same compliance as public schools, but would have to act and have proof that the educational benefit is more than *de minimus*. This ruling would assist in further promoting that participating private schools have the same reporting requirements and a degree of transparency and accountability that has not been present.

POLITICAL ANALYSIS

The significance of the political implications of this proposal must be underscored and given deliberate analysis and consideration. Although the idea of privatization is old, efforts to enact it on a widespread scale are relatively new. Advocacy which has enabled the advancement of privatization has seen mixed results on the state level, and no results on the federal level. The success it has enjoyed was made possible by Conservative state

legislators and governors, as well as funding from the wealthy and supportive organizations such as the Koch brothers⁶⁹ and DeVos family⁷⁰.

Nevertheless, there is widespread support amongst the general public and in the political realm to protect the rights of special populations.

Public stakeholders on this issue are numerous, including: students, parents, public teachers, unions, local and state public school administrators, disability advocates, governors, the religious community, and those who desire to run private schools. Their opinions are varied and the only apparent similarity is that all want students to obtain a quality education. Those who tend to be in favor of privatization are less concerned about what has been characterized as minor issues in which the benefits outweigh the flaws.⁷¹

Broadly speaking, parents, public school teachers, unions, and local and state administrators are in opposition to privatization and any effort to divert public funding to private schools, thus requesting that they serve more students with fewer resources. Additionally, unlikely bedfellows have been found in those who favor the separation of church and state. The American Association of School Superintendents (AASA) states, “Privatization of public education funding undermines our nation’s public-school system, denies equitable educational opportunity and represents failed federal policy.”⁷²

⁶⁹ Hefling, Kimberly, Darren Samuelsohn, Michael Grunwald, Jeff Greenfield, David Freedlander, Eric Scigliano, and Jack Shafer. "How the Kochs Are Trying to Shake up Public Schools, One State at a Time." POLITICO. October 30, 2017. Accessed March 24, 2018. <https://www.politico.com/story/2017/10/30/kochs-public-schools-shakeup-244259>.

⁷⁰ Livengood, Chad. "Dick and Betsy DeVos." Crain's Detroit Business. June 01, 2017. Accessed March 24, 2018. <http://www.craindetroit.com/article/20170602/NEWS/170609993/dick-and-betsy-devos>.

⁷¹ Editorial. "Benefits of School Vouchers Outweigh the Negative Aspects." PennLive.com. February 08, 2011. Accessed March 26, 2018. http://www.pennlive.com/editorials/index.ssf/2011/02/benefits_of_school_vouchers_ou.html.

⁷² 2018 Legislative Agenda. American Association of School Superintendents. December 2017. Accessed March 19, 2018. <http://www.aasa.org/uploadedFiles/2018-AASA-Legislative-Agenda.pdf>.

In support of the value of public education broadly for all students, a recent national survey of 1200 public school parents noted the following⁷³:

- Parents believe public schools help their children reach their fullest potential,
- A good neighborhood school is more desired than a choice of more schools,
- Parents want to invest in traditional public schools rather than redirect dollars to vouchers.
- Parents have minimal confidence in Donald Trump or Betsy DeVos to innovate and lead the public schools and are critical of DeVos' work as Secretary of Education.

The following graph depicting the above listed survey findings illustrate the extent to which the public believes the current Administration is off base in its efforts to privatize the K-12 public school system. Once again, if used as a poison pill, this data will support a new vision of public schools.

⁷³ *Public School Parents on the Value of Public Education*. Report. Hart Research Associates and American Federation of Teachers. 1-10. September 2017. Accessed October 2017. https://www.aft.org/sites/default/files/parentpoll2017_memo.pdf.

Parents Reject the DeVos "Choice" Agenda

Preferred approach for improving education, key subgroups

	Invest in Neighborhood Schools	More Charters/ Vouchers		Invest in Neighborhood Schools	More Charters/ Vouchers
Mothers	84%	16%	Major City	72%	28%
Fathers	76%	24%			
			Urban	76%	24%
Age 18-34	83%	17%	Suburban	81%	19%
Age 35-49	79%	21%	Small Town/Rural	82%	18%
Age 50+	79%	21%			
			2016 Clinton voters	84%	16%
Whites	82%	18%	2016 Trump voters	74%	26%
African Americans	76%	24%	2016 nonvoters	82%	18%
Hispanics	78%	22%			
			Reg pub school parents	81%	19%
Income Under \$45K	81%	19%			
Income \$45K-\$75K	79%	21%			
Income over \$75K	80%	20%	Very/fairly satisfied with schools	81%	19%
Democrats	84%	16%	Less/not satisfied with schools	78%	22%
Independents	79%	21%			
Republicans	76%	24%			

Figure 3. Parents Reject the DeVos "Choice" Agenda⁷⁵

Polling on parents indicates they want safe schools that enrich the academic experience.

Parents of students with disabilities and disability advocates are strongly opposed not only to the idea of privatization but a construct that does not allow for the maintenance of civil rights protections afforded under federal law. The Council of Parent Attorneys and Advocates (COPAA), published a 2016 report in which it performed a state-by-state

⁷⁵ *Public School Parents on the Value of Public Education*. Report. Hart Research Associates and American Federation of Teachers. 1-10. September 2017. Accessed October 2017. https://www.aft.org/sites/default/files/parentpoll2017_memo.pdf.

analysis of voucher programs, and outlined a multitude of problems for students with disabilities including:⁷⁶

- A loss of special education, related services and rights,
- Negative consequences when IDEA rights are terminated such as:
 - Problems with evaluation and diagnosis,
 - Lack of parental recourse to determine additional student needs and resolve disputes, and
 - Wasting away of academic time. When students' needs aren't met they return to public school and begin the process of evaluation and planning, which erodes valuable time during determinative developmental years.
- Loss of services such as transportation, which can cause logistical problems and financial hardship.

These are but a few of the conclusions, which are echoed by many organizations including the National Association of State Directors of Special Education, National Disability Rights Network, the National PTA, the Arc, and other opponents of privatization.

Governors are divided on the issue, primarily by political party. Republican governors and red states are moving legislation to create and expand voucher programs. Just this year, Arizona and Iowa have advanced plans for vouchers, both states having Republican majorities and governors. Although this proposal would not impact the creation of these state programs, it would prohibit the revocation of rights and remove any negative

⁷⁶ Almazan, S., and D. Marshall. *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*. Report. Council of Parent Attorneys and Advocates. 2016.

incentives to not educate students with disabilities, as currently mandated under federal law for public schools.

Proponents include religious schools, particularly Catholic ones, and those who want to restore Biblical teachings to the academic experience. The current Secretary of Education, Betsy DeVos is on record stating, “There are not enough philanthropic dollars in America to fund what is currently the need in education...Our desire is to confront the culture in ways that will continue to advance God’s kingdom.”⁷⁷ Additionally, the 1994 Catechism of the Catholic Church states that parents are not only entitled to school choice but the government should guarantee this right.⁷⁸

The political and public perception has strengths and weaknesses, both of which can work to your advantage. You have a long and distinguished history of being a disability rights advocate, both from your time in the House of Representatives and the Senate. State and national groups have hailed you as a champion on many issues affecting this community including attempts to dismantle Medicaid, the Affordable Care Act, the Americans with Disabilities Act, and much more. This proposal would further your reputation in this regard, highlighting this area to be one of your priorities. Your supporters will recognize this proposal as a “poison pill”, or a monumental step toward minimizing inequities in the privatization model. A recent poll indicates 58% of parents rated the following as top goals for their schools:⁷⁹

⁷⁷ Rizga, Kristina. "Betsy DeVos Wants to Use America's Schools to Build "God's Kingdom." She's about to Get Her Chance." Mother Jones. June 23, 2017. Accessed March 24, 2018. <https://www.motherjones.com/politics/2017/01/betsy-devos-christian-schools-vouchers-charter-education-secretary/>.

⁷⁸ Church, Catechism of the Catholic. *Catechism of the Catholic Church*. Liguori, 1994.

⁷⁹ *Public School Parents on the Value of Public Education*. Report. Hart Research Associates and American Federation of Teachers. 1-10. September 2017. Accessed October 2017. https://www.aft.org/sites/default/files/parentpoll2017_memo.pdf.

- Protecting all students from discrimination in schools, including students of different races, religions and sexual orientations, and
- Making sure students with disabilities and special needs have equal access to the quality education they need.

Lastly, this proposal could be vital in influencing state-level privatization, both in other states but particularly in Maryland where efforts are relatively new and limited. Impacts include slowing the pace of existing efforts or eliminating any perceived benefits of expansion without full consideration of all student populations, including those with disabilities.

Political drawbacks include:

- Most assuredly, you will be painted as a politician in opposition to parental choice, educational opportunity and insensitive to those families for whom public schools have been less than effective.
 - You are in good company, as evidenced by the lengthy list of those not in favor of privatization,
 - This is the time to emphasize that privatization is not in fact choice for the families in search of academic fortune, but choice for the schools, who can pick students who fit the profile of those they would like to educate. To date, this has typically been middle or upper class students with an average or above average scholastic record, and no history of emotional or behavioral issues, mental health needs or disabilities.
 - Secretary DeVos' home state of Michigan where she began her experiment to privatize public schools, has a fairly lengthy history, and on

most accounts both in research and opinion of residents, been detrimental to their public schools.⁸⁰

- There is little question that the public school system is in need of improvement and every students' encounter with it has not been positive. Despite that fact, elected officials must legislate for the masses, not for the few. Hence the small percentage of students who are or could be inclined to attend private school must not achieve benefits that cannot be afforded to all. Additionally, efforts should be re-doubled to improve the public schools, rather than diverting essential resources from an already under-resourced system.
- It is likely you'll receive negative press from Catholic and other religious private schools and entities in favor of expanding their business model.
- In order for this proposal to be effective, the reach and footprint of the federal government, i.e. the United States Department of Education would need to be expanded to provide technical assistance, monitoring and oversight responsibilities. This could be politically untenable and a non-starter for Conservatives, as there has been discussion for numerous years of eliminating this agency. Although problematic, through the hearings, lobbying and messaging needed to explore the proposal, awareness of the inherent discrimination and loss of rights for students with disabilities will be raised and social and civic pressure

⁸⁰ Kaffer, Nancy. "School Choice Not the Right Choice for Our Kids." Detroit Free Press. October 02, 2016. Accessed March 25, 2018. <https://www.freep.com/story/opinion/columnists/nancy-kaffer/2016/10/02/choice-schools-michigan/91240656/>.

could become enough to either pass the legislation or ensure that no private schools are legally able to accept public taxpayer dollars.

Other considerations include:

- This proposal has little to no chance of passing under the current Administration, whose #1 agenda item under education is privatization. Nonetheless, it provides an opportunity to bring attention to and discuss the issue. Additionally it affords the opportunity to message the pitfalls of privatization and its effects on student populations frequently forgotten.
- The momentum for “choice” is currently at the state level. As noted previously, this proposal would not eliminate these efforts, but could be very extremely successful in hindering expansion.

If enacted, the primary trade-off legislators must accept is that fundamentally “school choice” is bad policy for many reasons previously outlined. This proposal is extremely helpful, but in no way makes privatization good policy or even palatable for that matter. Crafting legislation clearly requires compromise, however one must consider if advancing bad policy is worth the time, energy, effort and political capital.

To date, no other substantive alternatives to educating America’s students have been attempted, other than the creation of charter schools. Although not without controversy themselves, charter schools are public schools and required to provide the same levels of accountability, transparency and protections to all students, while still allowing a level of innovation not always seen in public schools.

Typically, it wouldn't be politically advisable to engage in an adversarial relationship with the Catholic Church and wealthy backers. However, public support for privatization is inappreciable, and almost non-existent in rural areas, where the local public school is the only educational option as well as the primary employer.⁸¹

RECOMMENDATION

I recommend adopting this policy proposal. It will legislatively improve a relatively bad policy idea, gain the support of your constituents and cement your standing as a champion for disability rights. If the proposal advances but doesn't ultimately pass, it will force Conservatives and choice proponents to pick a side and vote on whether they're in agreeance with not providing an appropriate education for and leaving behind vulnerable students. The optics of such a vote are bad and could force negotiations to improve any federal choice policy that is subsequently introduced. Allowing privatization to proceed and grow unimpeded is problematic for all students, particularly for those with disabilities. If this Administration and Conservatives more broadly, are determined to pass federal choice policy, it should be done in a thoughtful process with the sole intent of improving educational access, equity and outcomes for all groups and subgroups of student groups.

This proposal does not address the conservative disdain for increasing the federal footprint and instituting private sector mandates. In short, allowing the free market to reign and meet the needs of a capitalist society. However, this is the United States of

⁸¹ "Don't Work in Rural Areas." National Coalition for Public Education (NCPE). Accessed March 24, 2018. <https://www.ncpecoalition.org/ruralvouchers>.

America. The academic opportunities, employment outcomes and ability to pay taxes and be a contributing member of society should not be determined by one's zip code, class, race or disability. This "pull yourself up by your bootstraps" mentality ceases to be realistic and practical when it impinges on the on the freedoms of our children and the economic viability of our nation's future. Moreover, a country shows a profound lack of awareness or sensitivity when it elects to minimize and exclude a group of people based on their differences and abilities.

This proposal would ensure:

- That disabled students will receive an appropriate education in privatization programs without giving up their rights, while simultaneously having the opportunity to be educated alongside their non-disabled peers, the benefits of which have already been noted.
- That families of disabled students would have access to privatization programs for which they are already contributing tax dollars.
- That disabled students would have access to the same innovation and creativity private schools claim to be utilizing in educating other students.

In reference to the question about the federal footprint, should participating private schools be held to all of the same federal mandates and public schools? Definitely those that address access, equity, accountability and transparency. Are there drawback to these mandates in the eyes of private and religious schools? Absolutely, as noted previously the cost and expertise required may be prohibitive. However, I submit that conversations

should be had to discuss the issues and ramifications of mandates or lack thereof. In short, there should be bi-partisan discussion and agreement, otherwise known as the elusive process that should be utilized to pass any piece of legislation. If we fail to address the inherent problems in privatization for students with disabilities, the hostilities and polarization surrounding the issue will continue to grow. Previously cited research illustrates that under privatization there is increased segregation in all schools (by race, class and disability), discrimination, lower educational benefit and a slow erosion of civil rights to vulnerable populations. Perhaps it is time to have a larger conversation about the best ways to educate students and the various methods to do so.

Curriculum Vitae

Since graduating from the University of California at Berkeley with a degree in Political Economy of Industrial Societies, Valerie accumulated nearly two decades of experience in financial management and program operations with federal government contracts and private corporations. Concurrently, she pursued her passion for helping others through work with non-profits focused on children, health and underserved populations.

After the birth of her son, who happens to have Down syndrome, she decided to turn her passion into a new career. After much activity on the grassroots level, she was asked to serve in numerous volunteer and board capacities for disability organizations, both local and state.

Continued work and advocacy earned her numerous awards and the Joseph P. Kennedy, Jr. Foundation Public Policy Fellowship. In this capacity she worked with Senator Patty Murray (D-WA) on the Health, Education, Labor and Pensions (HELP) Committee, primarily on disability policy and civil rights.

In her current role, Valerie is the Director of Government Relations for a nationwide special education association, in which she is a federal lobbyist for general and special education issues that affect students with disabilities in the K-12 system. She resides in Maryland with her husband and seven year-old son.