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Vouchers Put Some Parents in Squeeze on Special Ed. Rights

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Bernadette Kerrigan was concerned, though not alarmed, when her daughter Emma was identified as having dyslexia and dyscalculia as a 1st grader. A mother of two, Kerrigan had stretched her budget to buy a home in an affluent suburb of Cleveland, in large part because of the quality of the school district. The teachers there would certainly be qualified, she thought, to help her daughter overcome her struggles with reading and math.

But to get the help she felt her child needed, Kerrigan said she had to make a choice she had never considered—and which would require her to give up some protections under federal education law.

In her public school, Emma repeated 1st grade, but was still behind. One school year turned into two, and then three. By 4th grade, Emma was years behind her peers academically, with the district saying that things were just about to click. Meanwhile, Emma was coming home exhausted. Homework took hours, often accompanied by tears.

"She lost a lot of confidence. She couldn't read the material. I started doing her homework just so that it would be counted," said Kerrigan, who asked that the district not be named because she has another child attending school there.

When Emma's school suggested a new individualized education program that would involve an hour daily of after-school tutoring, Kerrigan had enough. For 5th grade, she enrolled Emma in the Lawrence School, which is specifically for students with learning disabilities and attention deficit hyperactivity disorder.

In return for accepting a voucher for enrollment in private school, under Ohio's Jon Peterson Special Needs Scholarship Program, Emma's mother had to waive her daughter's individual right to special education services under federal law.

The voucher is also only available to children with a current, finalized IEP under the federal Individuals with Disabilities Education Act, meaning that families cannot access the funds if a dispute is holding up the completion of the education plan.

Kerrigan also had to come up with another \$18,000 that year to cover tuition costs that the \$5,000 part-year voucher did not meet.

Kerrigan said she is grateful for the money. Emma, who will start 6th grade in the fall, is thriving at her new school. The family expects to receive a larger voucher in future years, but it will still cover only a fraction of the school's \$23,000 tuition.

But giving up the civil rights afforded to public school students under the special education law is a sacrifice, Kerrigan said.

"Short term, [the voucher] is amazing. It helps a lot of families. I'm very appreciative of it," Kerrigan said. The 4-year-old voucher program is named after a former state representative, who championed its creation.

But, she added, "I don't think anyone should have to waive any rights whatsoever. What does it harm anyone? It's the parents' dollars that they're putting in the school."

School Choice Options

Modern-day vouchers and other school choice programs, such as educational savings accounts and tax-credit scholarships, have been in place since 1989, when Wisconsin started a program in Milwaukee. Vouchers provide state money to parents that they can then use to pay for private school. Tax-credit scholarships allow businesses or individuals to claim tax credits for donations made to approved scholarship organizations, which then distribute money to eligible students.

Education savings accounts, one of the newest types of school choice programs, provide money to families that they can use for a variety of approved expenses, including private school tuition, therapy, or tutoring.

All those programs—regardless of the state—generally have one thing in common: By accepting the funds, students with disabilities leave many protections of the IDEA behind. The law, now 40 years old, has an extensive set of rules and policies that public schools must abide by, from the timely creation of a child's education program to how—or if—a child can be removed from a school because of discipline issues.

Giving up those protections is a problem, according to the Council of Parent Advocates and Attorneys, which describes its mission as protecting and enforcing the legal and civil rights of students with disabilities. The organization released a report last month that surveyed the legal landscape of voucher and other school choice programs. (COPAA also organized a panel on the report that was moderated by Education Week.)

COPAA members had mixed views on the value of school choice options themselves: The report said that some parents see a clear benefit to the programs as a way to escape public schools that are a poor fit. Other members noted that there's little research to support that children with disabilities who use vouchers end up performing better than those who remain in traditional schools.

But whether vouchers themselves are worthwhile, the organization said that students should not be required to give up their civil rights to take them. "All civil rights need to be upheld in the state-approved construct; increased access to quality education is necessary...the options must be affordable to all; the options must be accessible to all; and, private schools of choice must be held to the same accountability requirements to which public schools are held," the report stated.

Model Legislation

Many of the state laws around vouchers and choice programs were built around model legislation drafted by the American Legislative Exchange Council, an organization that advocates free markets and limited government. Binding private schools or families to the same rules that govern public schools is second-guessing parents, said Inez Feltscher, ALEC's education and workforce director.

"Parents are choosing to waive the IDEA protections because they think the place their children are going to be will better meet their needs," Feltscher said. "I'm uncomfortable with trying to homogenize all these options."

Some evidence indicates that parents are happy with their educational options, even without federal protections. In 2013, the Friedman Foundation for Educational Choice surveyed 179 parents who participated in Arizona's educational-savings-account program. All the respondents reported various levels of satisfaction with the program, with 71 percent saying they were "very satisfied." None said they were dissatisfied.

The IDEA spells out school districts' responsibilities for children with disabilities who are enrolled both in public and private schools. Districts are responsible for evaluating every child in their jurisdiction to see if that child has a disability.

More than 90 percent of children in special education attend a public school. About 1 percent—a proportion that has held steady for the past several years—are placed by their parents in private school, according to the U.S. Department of Education.

Generally, once a student is enrolled in private school, he or she loses any individual right to special education services, no matter who is paying the tuition.

Private school students are not completely barred from any publicly provided special education support. The district in which the private school is located is responsible for using a "proportionate share" of its federal money to provide some services to private-school students. And a private school may also provide support for students with disabilities as part of its

education program. But there is no individual right for a student to receive special education as there would be if a child were enrolled in public school.

Dale McDonald, the director of public policy and educational research for the National Catholic Educational Association, said that private schools don't get all the money that public schools receive for educating students with disabilities, even with a voucher. Education money comes from local, state, and federal sources, but vouchers are usually just state funds. Without receiving the same financial support as public schools, it's difficult for private schools to be held to the same requirements, she said.

"Yes, we would like to provide more," McDonald said. "If we had more funding, it would go a long way to providing greater inclusion."

One concern is that parents may not be aware of the trade-offs that they're making when they accept a school choice option, said Rochanda Hiligh-Thomas, the director of legal services for Advocates for Justice and Education, in Washington. She represents parents and students in school discipline and special education cases.

The District of Columbia has the nation's only federally funded voucher program, called the D.C. Opportunity Scholarship Program. It is not just for students with disabilities, though students with disabilities do use it, Hiligh-Thomas said.

"Those parents go in not knowing that they're giving up rights," she said. "If federal dollars are going to be used in this way, the schools who choose to accept them should be required to provide what everyone else has to provide."

Falling Short

Jonathan Zimring, an Atlanta-based lawyer who represents parents in special education suits, says that Georgia's voucher effectively provides choice only to affluent families of children who have milder disabilities. Students who have expensive special education needs, or families who are not able to pay for the balance of special education tuition themselves, are shut out.

"More money obviously solves the issue of having a choice and access for a broader group of families. As you get closer to fully funded, the broader the group of people who could use the voucher," he said.

Ultimately, Kerrigan said that for parents like her, the school choice options weren't a choice at all—they were necessary for her child's well-being. Emma, who was present at the panel that presented the COPAA report, said that the move to a new school changed her life.

"On my first day at Lawrence, I felt several different things. I felt scared, nervous, and the feeling when you are so happy you cannot control it. I thought, finally, I will get to read, write, learn, and feel safe," Emma said in an address to the audience.

Kerrigan said she does not have any hard feelings toward the district, but she wishes that alternatives were built into the system that would have made private school unnecessary.

"I just don't understand why any parent with a dyslexic child should have to pay thousands and thousands and thousands for their child to learn how to read," she said.