

NEPC Review: Thousands Served: Students with Disabilities in Wisconsin's Parental Choice Programs (School Choice Wisconsin and the Wisconsin Institute for Law & Liberty, January 2025)



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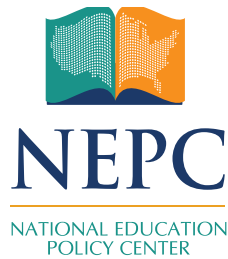
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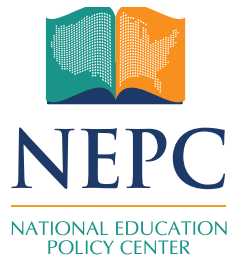
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Summary

Scholars, advocates, and policymakers have long expressed concern that programs subsidizing private education with a taxpayer-funded voucher would not serve children with disabilities in similar proportions as public schools. The Wisconsin Institute for Law and Liberty in collaboration with School Choice Wisconsin published a report in January 2025 to challenge those concerns. Specifically, the report asserts that Wisconsin Department of Public Instruction (DPI) data underestimates the number of students with disabilities in the state's school choice programs. The report argues that over 14% of students participating in the state's voucher programs "likely have a disability." This figure is substantially higher than the 8.9% reported by the DPI when counting students who have or have had an Individualized Education Program (IEP) or were enrolled in the state's Special Needs Scholarship Program. The report's primary analysis relies upon survey data gathered from private school leaders participating in the state's choice programs. Although the details of the survey remain unclear, respondents were asked to estimate the number of students in their schools who would be considered a student with a disability if enrolled in a public school. As such, the survey results amount to conjecture and cannot reasonably be compared to DPI data that relies upon a legal definition of a student with a disability and comports with the law's procedural requirements to make that determination. Given the report's flawed methods, the utility of its findings and analysis for policymakers is significantly limited.



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I. Introduction

Scholars, advocates, and policymakers have long expressed concern that publicly funded voucher programs would not serve children with disabilities in proportions similar to public schools.¹ In fact, the first legal challenge to Wisconsin's original voucher program, the Milwaukee Parental Choice Program (MPCP), raised the issue of private schools' treatment of children with disabilities.² These concerns grew as Department of Public Instruction (DPI) data documented the relatively small number of students with disabilities participating in the program.³

Wisconsin now offers four voucher programs: the MPCP, the Racine Parental Choice Program (RPCP), the Wisconsin Parental Choice Program (WPCP), and the Special Needs Scholarship Program (SNSP).⁴ The programs collectively serve 58,623 students and cost taxpayers an estimated \$623,376,635. Even with the creation of the SNSP,⁵ a voucher program designed for children with disabilities, critics continue to highlight the differences between public schools' obligation to serve all children with disabilities and those of private schools participating in the voucher programs.⁶

The Wisconsin Institute for Law and Liberty, in collaboration with School Choice Wisconsin, published a report in January 2025 to challenge those concerns. The report, *Thousands Served: Students with Disabilities in Wisconsin's Parental Choice Programs*, seeks to shed light on "what actually occurs with respect to enrollment of students with a disability in choice program schools."⁷ Data published by DPI shows that the MPCP, RPCP, and WPCP enroll children with disabilities in proportions significantly lower than Wisconsin's public

schools.⁸ The report then cites survey data for what it contends are more accurate estimates of the enrollment patterns of the participating private schools. The report and its conclusions appear designed to inform a general audience, including both policymakers and members of the media.

II. Findings and Conclusions of the Report

In service of its stated purpose to counteract purported misconceptions about Wisconsin's voucher programs, the report identifies five main "highlights," two of which are grounded in their 2024 survey results.

1. Based on survey data gathered from private school leaders participating in the programs, the report asserts that over 14% of students participating "likely have a disability."
2. The report argues that this finding demonstrates that DPI's data underestimate the number of students with disabilities served by the state's voucher programs.

The report's remaining three conclusions seek to provide further insight into the Wisconsin policy context regarding students with disabilities:

3. Private choice schools are prohibited from denying admission based on a student's disability and the decision on whether a school can meet a student's needs is ultimately up to the parents.
4. There is "widespread" disability discrimination in the state's public school open enrollment program.⁹
5. Claims asserting that schools participating in the Special Needs Scholarship Program (SNSP) receive 90% reimbursement for costs are inaccurate.

III. The Report's Rationale for Its Findings and Conclusions

The report bases its first two takeaways on a survey of 205 educational leaders representing 240 of the 403 private schools participating in Wisconsin's voucher programs. These leaders reportedly represented schools that enrolled 74.1% of participating students. While the details of the survey are not described, the report offers insight into some of the questions posed to leaders. Survey respondents were initially asked about the total number of program participants enrolled in their school and how many of these students have or have had an Individualized Education Program (IEP)¹⁰ or service plan¹¹ created by a public school. The report does not provide additional details regarding specific wording of related questions and any additional questions posed in the survey.

The report claims that DPI's count, which is based on eligibility criteria under the Individuals with Disabilities Education Act (IDEA),¹² underestimates the number of students with disabilities in the state's choice programs. To provide what the authors believe to be a more

accurate estimate, respondents were asked to “identify approximately how many of their choice students (not SNSP) they thought would be classified as having a disability if they were enrolled in a public school.”¹³ Relying on their responses, the authors estimate that 14.76% are students with disabilities, as opposed to 8.9% who have or had an IEP or were enrolled in the Special Needs Scholarship Program (SNSP).

To support the assertion that private schools do not discriminate against students with disabilities, the report reviews applicable federal laws, including Section 504 of the Rehabilitation Act and Title III of the Americans with Disabilities. The report also offers the following quotation from a leader:

Our school does not discriminate against students who have a disability. We have an open and honest discussion with families about what our school is able to offer, with assistance from the local public school, in order for the family to decide if our school is the best school to meet their child’s needs, wants, and desires.¹⁴

The report acknowledges that private schools may sometimes find it challenging to meet the needs of students with disabilities. This reality, they argue, is not unique to choice schools. In support of this argument, the report offers data on public school open enrollment denials based on special education considerations.

The report also discusses how students are funded under the SNSP. It notes that students enrolled in the SNSP may receive different voucher amounts: (1) the standard SNSP voucher; (2) a voucher based on actual costs; (3) the standard elementary school voucher; or (4) the standard high school voucher.¹⁵ Of these four categories for 2023-24 school year, the majority of SNSP students received the standard SNSP voucher and only 11 students received a voucher based on actual costs of the special services provided by their private school that may provide 90% reimbursement of costs. Based on estimates of the number of children with disabilities from the survey responses, the report claims the majority of children with disabilities enrolled in the programs receive no additional funds related to their disability.¹⁶ The report cites these data to support the conclusion that, “School choice opponents wrongly claim that schools in the Special Needs Scholarship Program (SNSP) receive reimbursement for 90% of costs.”¹⁷

IV. The Report’s Use of Research Literature

The report cites only one research study, a paper presented to the Annual Meeting of the American Political Science Association.¹⁸ The report accurately notes that this 2012 study, from the School Choice Demonstration Project, estimated a disability rate in the Milwaukee Parental Choice Program (MPCP) between 7.5% and 14.6%.¹⁹ However, the report does not acknowledge a major limitation of the study, one identified by the researchers themselves. As they explained:

We readily acknowledge that our measures of student disability are not identical across the private and public sectors. Our private school measure is whether or not the student has a disability, in the opinion of private school administrators. Our public school measure is the official MPS [Milwaukee Public Schools] indicator for whether or not a child is in special education . . . When we say “disability classification” we mean administrator opinion in the case of MPCP and formal special education designation in the case of MPS.²⁰

In other words, the study compared apples to oranges. As will be discussed more fully below, the report suffers from the same defect.

V. Review of the Report’s Methods

The report’s primary data is derived from survey methods. While the survey response rate was high, leaders’ estimates regarding how many of their students they believe would qualify for special education in a public school is not a reliable indicator of the true number of students with disabilities. Specifically, the survey data is flawed for at least three reasons: a lack of methodological transparency, inconsistencies in disability definitions, and overlooking the Individuals with Disabilities Education Act’s (IDEA’s) procedural requirements related to evaluation and identification.

The report relies on a proprietary survey. The specific questions are not disclosed beyond three data points: the overall number of students enrolled, how many have or have had an IEP or service plan, and how many students would be considered to have a disability in a public school.²¹ This last statistic is particularly noteworthy since it is not clear how, if at all, participants were instructed to define a student with a disability.²² This presents a significant flaw because participants may have had multiple populations of students in mind: 1) students who they believe would qualify under IDEA,²³ 2) students who may meet the definition under Section 504, but not the IDEA,²⁴ or 3) students who have a disability but would not qualify under either law.²⁵ In contrast, DPI straightforwardly uses the legal definitions from the IDEA.

From a procedural standpoint, the survey circumvents IDEA’s explicit requirements regarding special education eligibility, particularly who must participate in the decision-making process and what information must be considered.²⁶ As opposed to a single school leader’s opinion, IDEA requires that decisions be made by a team, including parents and teachers.²⁷ Furthermore, IDEA requires this team to “use a variety of assessment tools and strategies . . . and not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability.”²⁸

In the absence of these definitional and procedural requirements, it is unproductive to compare conjectures to Wisconsin Department of Public Instruction (DPI) data entered in accordance with IDEA’s requirements. While the report acknowledges the data is an estimate, it nonetheless substitutes individual speculation for a robust special education identification process.²⁹

VI. Review of the Validity of the Findings and Conclusions

Each of the report's five conclusions suffers from omission of important information, thereby presenting an incomplete and misleading account of children with disabilities in Wisconsin's voucher programs.

The central claim of the report estimates 14.76% of the students enrolled in the voucher programs are children with disabilities, a number comparable to that of public schools. As noted above, the problem with this claim is that it equates estimates by school leaders to data using a formal legal definition. Comparing a broad estimation of disability with a statutory definition will always result in a higher number for the former when compared to the latter. In fact, it is likely that if public school leaders were asked to estimate the number of children with disabilities in their schools, their estimate, too, would exceed the Wisconsin Department of Public Instruction (DPI) count that uses a strict legal definition.

To the extent the strict IDEA definition of disability results in an undercount of children with disabilities in the voucher programs, the same would be true for public schools. Whether enrolled in public schools or private schools, some children with disabilities do not meet the definition used by the state's data system.³⁰ In fact, directions for data input list a number of children who have a disability in the dictionary sense of the word, who cannot be counted as such by public schools because they do not meet the IDEA definition.³¹ In addition, the report neglects to inform the reader that some Special Needs Scholarship Program (SNSP) children counted as children with disabilities no longer meet the IDEA's definition, but are allowed to continue in the program.³² When that happens, the voucher amount reverts to the amount the child would receive if enrolled in the Milwaukee Parental Choice Program (MPCP), Racine Parental Choice Program (RPCP), or Wisconsin Parental Choice Program (WPCP). As the report indicates, 41 high school students and 359 elementary school students participated in the SNSP in this school year even though they no longer had a disability as defined by the IDEA.³³ In other words, they no longer need special education and related services "by reason" of their disability.

To counter "baseless assertions" that the voucher program excludes children with disabilities, the report discusses the legal obligations private schools owe children with disabilities.³⁴ But the laws that determine when a private school may lawfully exclude a child with a disability do not mirror the obligations public schools have for the same population.³⁵ Private voucher schools must comply with Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act as indirect recipients of federal funds. As such, they need only provide "minor adjustments" to existing programs to accommodate a child with a disability.³⁶ As the report correctly notes, "Private schools may consider the nature of the program provided and the expense of accommodations sought."³⁷ Or to phrase it another way, private voucher schools may lawfully exclude a child with a disability without it constituting legal discrimination. It is beyond argument that federal law defines "discrimination" differently in public and private spaces and that public schools may not exclude the child a private school may.³⁸

In the same way a child might shout, "but he did it, too" to excuse some behavior, the report cites the open enrollment program and the permissible public school transfer denials

to justify the exclusion or inability to meet the needs of some students in voucher schools.³⁹ Characterizing the open enrollment denials as “widespread” discrimination⁴⁰ is particularly specious because the report’s authors, the Wisconsin Institute for Law and Liberty, challenged these provisions in a lawsuit they lost in 2019.⁴¹ While it is true that the rules of the open enrollment program permit consideration of special education services, the appellate court made clear such consideration did not constitute discrimination as “[t]he program only permits applicants to transfer if the nonresident district has excess capacity.”⁴² Ironically, the report depends on the legal distinctions for what is and is not discrimination in private schools to rationalize private schools’ treatment of children with disabilities, while criticizing the public school open enrollment program for reliance on a similar legal distinction. It is both misleading and inappropriate to use the term “discrimination” in two different ways. If it is not “discrimination” for private schools to leverage the legal differences in their obligations, it likewise is not “discrimination” for public school districts to abide by the legal rules that control open enrollment.

This lack of nuance also provides a misleading account of funding available under the SNSP. Recall that the report takes issue with public school advocates’ complaint that SNSP schools may, under certain circumstances, receive 90% reimbursement for costs of educating children with disabilities.⁴³ While it is true that few students benefit from the 90% provision in the SNSP,⁴⁴ there is never an instance where public schools can receive 90% reimbursement of costs. In fact, the public schools’ reimbursement rate for this school year is only 29.16%.⁴⁵ The 90% reimbursement rate occurs when a SNSP school elects to provide actual costs to DPI and those costs exceed 150% of the standard SNSP voucher (\$23,113.50).⁴⁶ A telling detail omitted from the report is that only 10 of 204 participating schools elected to use the actual costs method.⁴⁷ That means most schools receive the standard voucher and do not have to justify any actual expenditures to receive their funds.⁴⁸ In fact, there are many differences in SNSP funding in comparison to public schools funding for special education, all of which privilege the SNSP schools.⁴⁹

VII. Usefulness of the Report for Guidance of Policy and Practice

Any discussion of the education of children with disabilities is complicated. Comparison between public schools and private schools in the context of publicly funded private school choice magnifies those complexities. Accordingly, to be useful, that treatment must provide accuracy and nuance. *Thousands Served: Students with Disabilities in Wisconsin’s Parental Choice Programs* provides neither and is therefore of limited value to policymakers, the media, or the public.

Notes and References

- 1 Almazan, S. & Marshall, D.S. (2016, June). *School vouchers and students with disabilities: Examining impact in the name of choice*. The Council of Parent Attorneys and Advocates. Retrieved February 25, 2025, from https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/Policy_Docs/COPAA_Voucher_paper_final_R6.pdf

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Welner, K., Orfield, G., & Huerta, L.A. (Eds.). (2023). *The school voucher illusion: Exposing the pretense of equity*. New York, NY: Teachers College Press.
- 2 Davis v. Grover, No. 90-CV-25765 (Dane Cty. Cir. Ct. 1990). This issue of what obligations private schools owed children with disabilities was heard at the trial court level. Judge Susan Steingass found that the schools, as indirect recipients of federal funds, only needed to make minor modifications to existing programs when serving a child with a disability. Although the case was appealed to the Wisconsin Supreme Court on other grounds, the trial court holding with regard to students with disabilities was not appealed. Davis v. Grover, 480 N.W.2d 460 (Wis. 1992).
- 3 For a discussion of a complaint alleging disability discrimination filed by the American Civil Liberties Union (ACLU) and Disability Rights Wisconsin with the United States Department of Justice, see Mead, J.F. (2015). Private in name only: A statutory and constitutional analysis of Milwaukee’s private school voucher program. *Washington and Lee Journal of Civil Rights and Social Justice*, 21(2), 331-382. Retrieved February 27, 2025, from <https://scholarlycommons.law.wlu.edu/crsj/vol21/iss2/6/>
- 4 The following table provides facts and figures regarding each program for the 2024-25 school year as reported by the Wisconsin Department of Public Instruction.

Table 1: Facts and Figures for Wisconsin's Voucher Programs

Program Name & Year Enacted	Voucher Amount	# of Students Participating	# of Private Schools Participating	Estimated Cost of the Program for 2024-25 School Year
Milwaukee Parental Choice Program (MPCP) (1990)	\$10,237 (K-8 student) \$12,731 (9-12 student)	29,732 (28,937.4 full-time equivalent)	136	\$313,328,860
Racine Parental Choice Program (RPCP) (2011)	\$10,237 (K-8 student) \$12,731 (9-12 student)	4,185 (4,073.2 full-time equivalent)	36	\$44,300,000
Wisconsin Parental Choice Program (WPCP) (2013)	\$10,237 (K-8 student) \$12,731 (9-12 student)	21,638 (21,056.8 full-time equivalent)	344	\$227,200,000
Special Needs Scholarship Program (SNSP) (2015)	\$15,409 [∞]	3,068 (3,001.4 full-time equivalent)	204	\$38,547,775* (* figure for 2023-24; current year costs not yet calculated)
Total Cost of All Programs				\$623,376,635

- ∞ The standard SNSP voucher is \$15,409 per student for the 2024-25 school year. However, if the participating private school elects to submit actual costs of special services provided to the child, the school can receive up to 150% of that amount (\$23,113.50). If actual costs exceed 150% of the voucher amount, the school receives 90% of any additional costs. If a child admitted to the SNSP is later found through re-evaluation to no longer qualify as a “child with a disability” under the Individuals with Disabilities Education Act, the student may continue in the program, but the voucher amount would revert to the amounts used in the MPCP, RPCP, and WPCP (\$10,237 for a K-8 student and \$12,731 for a student in Grades 9-12).

Sources for Table 1:

Wisconsin Department of Public Instruction. (2024, October). *MPCP facts and figures for 2024-25*. Retrieved February 24, 2025, from https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Data_and_Reports/2024-25/2024-25_mpcp_facts_and_figures.pdf

Wisconsin Department of Public Instruction. (2024, October). *MPCP facts and figures for 2024-25*. Retrieved February 24, 2025, from https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Data_and_Reports/2024-25/2024-25_rpcp_facts_and_figures.pdf

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Wisconsin Department of Public Instruction. (2024, October). *Special Needs Scholarship Program membership and payment history, in total, 2016-17 to 2024-25*. Retrieved February 14, 2025 https://dpi.wi.gov/sites/default/files/imce/parental-education-options/SNSP/SNSP_Payment_History_Oct_2024.pdf

- 5 While there are similarities, eligibility requirements for each voucher program vary slightly. The MPCP, RPCP, and WPCP each have income eligibility requirements for the first year of enrollment (though a child is permitted to remain in each program should the family's income exceed those limits in subsequent years). The SNSP does not. The MPCP and RPCP require residence in each city as the program names imply. Finally, the RPCP and WPCP have previous enrollment standards. Table 2 summarizes program eligibility requirements.

Table 2: Voucher Program Eligibility Requirements

Program	Eligibility Requirements
MPCP Wis. Stat. §119.23 (2024).	Family income not to exceed 300% of the federal poverty level the first year admitted to the program Reside in the City of Milwaukee
RPCP Wis. Stat. §118.60 (2024).	Family income not to exceed 300% of the federal poverty level the first year admitted to the program Reside in the City of Racine (1) be applying to Grades K4, K5, 1, or 9, OR (2) meet one of the following requirements for the 2024-25 school year: (a) attended a public school in Wisconsin; (b) attended school in another state; (c) were not enrolled in school (including homeschool for the entire 2024-25 school year); (d) participated in the MPCP, RPCP or WPCP; (e) are on a MPCP, RPCP or WPCP waiting list
WPCP Wis. Stat. §118.60 (2024).	Family income not to exceed 220% of the federal poverty level in the first year admitted to the program Reside in Wisconsin but outside Milwaukee or Racine (1) be applying to Grades K4, K5, 1, or 9, OR (2) meet one of the following requirements for the 2024-25 school year: (a) attended a public school in Wisconsin; (b) attended school in another state; (c) were not enrolled in school (including homeschool for the entire 2024-25 school year); (d) participated in the MPCP, RPCP or WPCP; (e) are on a MPCP, RPCP or WPCP waiting list, OR (3) are applying to the WPCP and are on any prior year WPCP waiting list in 2015-16 or later due to a school district enrollment cap.

SNSP	Resides in Wisconsin
Wis. Stat. §115.7915 (2024).	<p>The student has an Individualized Education Program (IEP) or services plan that meets program requirements:</p> <p>The student's IEP or services plan is currently being implemented, or</p> <p>The student's IEP or services plan was developed no earlier than 3 years prior to September 15th of the school term for which the student is submitting an application AND there has not been a more recent reevaluation that determined the student no longer had a disability.</p>

- 6 Juhnke, J. (2023, June 14). *Our students can't afford another state budget failure*. Disability Rights Wisconsin. Retrieved February 24, 2025, from <https://disabilityrightswi.org/press-release/our-students-cant-afford-another-state-budget-failure/>

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Wisconsin Board for People with Developmental Disabilities. (n.d.). *What are the issues? Education: Quality, equity, accountability*. Retrieved February 24, 2025, from <https://wi-bpdd.org/index.php/what-are-the-issues/>
- 7 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 3). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
- 8 Table 2 of the report lists the following enrollment statistics for children with disabilities for each program for the 2023-24 school year: MPCP (1.20%); RPCP (0.50%); WPCP (3.30%). In contrast, Milwaukee Public Schools enrolled 19.30% and Racine Unified Public Schools enrolled 17.60%. The statewide figure, excluding Milwaukee and Racine, was reported as 14.80%.

School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 5). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
- 9 The open enrollment program allows a student to enroll in a nonresident school district when excess space is available. Wis. Stat. §118.51 (2021).
- 10 IEP stands for an Individualized Education Program, developed for a child with a disability pursuant to the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. §1414(d) (2016).
- 11 Under the Individuals with Disabilities Education Act (IDEA), a service plan is developed for a child with a disability parentally enrolled in a private school. 34 C.F.R. §§ 300.130 - 300.144 (2016).
- 12 A child with a disability is defined in the Individuals with Disabilities Education Act as follows:

The term "child with a disability" means a child--

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services. (20 U.S.C. §1401(3)(A) (2016))

IDEA's regulations clarify that the disability must "adversely affect[] a child's educational performance." (34 C.F.R. §300.8 (2017)).

Putting both the statutory and regulatory language together, IDEA defines a child with a disability as a child who (1) has a mental or physical impairment that (2) adversely affects educational performance (3) such that special education and related services is needed.

For an explanation of the disability codes used in DPI's data system see: Wisconsin Department of Public Instruction. (n.d.). *Disability: WISEdata*. Retrieved February 14, 2025, from <https://dpi.wi.gov/wise/data-elements/disability>

- 13 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 6). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
 - 14 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 6). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
 - 15 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 9). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
- See Table 1 in Endnote 4 above for a breakdown of the voucher amounts for each of Wisconsin's voucher programs, including when different amounts are used in the SNSP.
- 16 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 9). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
 - 17 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 2). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
 - 18 Wolf, P.J., Witte, J.F., & Fleming, D.J. (2012). *When rights, incentives, and institutions all clash: The case of school vouchers and special education in Milwaukee*. Paper presented to the Annual Meeting of the American Political Science Association, August 2012. Retrieved February 20, 2025, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107763
 - 19 Wolf, P.J., Witte, J.F., & Fleming, D.J. (2012). *When rights, incentives, and institutions all clash: The case of school vouchers and special education in Milwaukee* (p. 2). Paper presented to the Annual Meeting of the American Political Science Association, August 2012. Retrieved February 20, 2025, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107763
 - 20 Wolf, P.J., Witte, J.F., & Fleming, D.J. (2012). *When rights, incentives, and institutions all clash: The case of school vouchers and special education in Milwaukee* (p.16-17). Paper presented to the Annual Meeting of the American Political Science Association, August 2012. Retrieved February 20, 2025 from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107763
 - 21 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 6). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
 - 22 In support of a table with DPI data, the report states that "according to DPI, 'a child with a disability is a child who needs special education and related services.'" However, it is not clear how this particular definition re-

lates to the survey data.

School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 4). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>

23 IDEA defines a child with a disability as follows:

The term “child with a disability” means a child--

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services. (20 U.S.C. §1401(3)(A) (2016)).

24 Section 504 of the Rehabilitation Act defines a person with a disability as: “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.” 34 C.F.R. 104.3(j) (2017).

25 Prior research notes similar concerns related to the Wolf Report. Mead, J.F. (2015). Private in name only: A statutory and constitutional analysis of Milwaukee’s private school voucher program. *Washington and Lee Journal of Civil Rights and Social Justice*, 21(2), 331-382. (footnote 219). Retrieved February 27, 2025, from <https://scholarlycommons.law.wlu.edu/crsj/vol21/iss2/6/>

26 The importance of the procedural aspects of the identification procedures has been central to the IDEA since its inception. As explained in the Senate Report accompanying the passage of the Education for All Handicapped Children Act (what is now IDEA):

That Act added important new provisions to the Education of the Handicapped Act which require the States to: establish a goal of providing full educational opportunities to all handicapped children; provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children;

Senate Report Regarding PL 94-142, Education for all Handicapped children Act of 1975, 1975 USCCAN 1425, at 1432 (1975).

27 IDEA defines the necessary team as follows:

The term “individualized education program team” or “IEP Team” means a group of individuals composed of-

(i) the parents of a child with a disability;

(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;

(iv) a representative of the local educational agency who-

(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(II) is knowledgeable about the general education curriculum; and

(III) is knowledgeable about the availability of resources of the local educational agency;

(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special exper-

tise regarding the child, including related services personnel as appropriate; and
(vii) whenever appropriate, the child with a disability.

20 U.S.C. 1414(d)(1)(B)(2016).

28 20 U.S.C. §1414(b)(2)(2016).

29 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 6). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>

30 The state uses IDEA's definition of a child with a disability. A child with a disability is defined in the Individuals with Disabilities Education Act as:

The term "child with a disability" means a child--

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services. (20 U.S.C. §1401(3)(A) (2016)).

The use of this definition is not surprising since the system collects and reports this data to the U.S. Department of education as part of the state's IDEA Part B Annual Performance Report.

Wisconsin Department of Public Instruction. (n.d.). Disability: WISEdata, Uses. Retrieved February 14, 2025, from <https://dpi.wi.gov/wise/data-elements/disability>

31 The WISEdata instructions provide a list of children who would not be marked as a child with a disability:

A non-IDEA-eligible student would include:

- A student who does not meet the criteria for a disability or does not have a need for specially designed instruction.
- A student between the ages of birth and three or age 22 and older who is receiving special education and related services from the school district.
- A student with a disability who is not receiving special education and related services, as specified in the IEP.
- A student with a disability who has received a high school diploma but is still receiving services.
- A student enrolled in home-based private education (home schooling) who is receiving special education/related services from a public school.

The directions further counsel that: "Students identified as eligible for protection under Section 504 of the Rehabilitation Act (34 CFR 104) who are not IDEA-eligible should be assigned a reporting/primary disability code of N [no]."

The directions for Private Schools in the same system read as follows:

IDEA Eligibility for Choice Schools: In order to be identified as a student with a disability for WISEdata purposes, a private school student must either be actively receiving services from a LEA through a current services plan or have previously met the IDEA eligible requirements listed below as reported by a LEA in Wisconsin. A 504 plan is not sufficient to meet this requirement.

- IDEA Eligible: An "IDEA-Eligible" student must meet ALL of the following requirements:
 - Be a child age 3-21 years of age who has not graduated with a diploma from high school,
 - Be a child who meets the criteria for a disability category and needs specially designed instruction as determined by a current evaluation and a current individualized education program

- (IEP) or a services plan for a student parentally-placed in a private school,
- The student is attending and receiving the services specified in the IEP/service plan, and
- The student is receiving a free appropriate public education (FAPE) or is a parentally-placed private school student receiving special education or related services that meet state standards under a service plan (34 CFR 300.452--300.462).

Wisconsin Department of Public Instruction. (n.d.). *Disability: WISEdata*. Retrieved February 14, 2025, from <https://dpi.wi.gov/wise/data-elements/disability>

- 32 The SNSP statute provides the following for children found not to be a child with a disability upon re-evaluation:
1. If an individualized education program team, upon reevaluation of a child as required under sub. (2) (h), determines that a child receiving a scholarship under par. (a) is no longer a child with a disability, all of the following apply:
 - a. The child's resident school district shall notify the parent or guardian of the child of the procedural safeguards in place for the child under 20 USC 1415.
 - b. The child is not eligible to receive a scholarship under par. (a) beginning in the school term following the determination.
 2. If a child who has been determined to be ineligible under subd. 1. continues to attend the private school he or she attended under a scholarship awarded under par. (a), for each school year the child attends the private school beginning with the school year following the determination under subd. 1., the department shall pay, from the appropriation under s. 20.255 (2) (az), to the private school, on behalf of the child's parent or guardian, an amount equal to the appropriate per pupil amount paid to a private school participating in a parental choice program under s. 118.60 or 119.23 in that school year. The department shall make scholarship payments under this paragraph in accordance with the payment schedule specified in s. 119.23 (4) (c).

Wis. Stat §115.7915(4m)(e)(2024).

- 33 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 9). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
- 34 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 3). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
- 35 For a discussion of the differences in these laws and how they relate to discrimination, see: Mead, J.F. & Eckes, S.E. (2018). *How school privatization opens the door for discrimination*. Boulder, CO: National Education Policy Center. Retrieved February 26, 2025, from <http://nepc.colorado.edu/publication/privatization>
- 36 Section 504's regulations read:
- A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in § 104.33(b)(1), within that recipient's program or activity.
- 34 C.F.R. § 104.39 (2017).
- 37 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 6). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>
- 38 Mead, J.F. & Eckes, S.E. (2018). *How school privatization opens the door for discrimination*. Boulder, CO:

National Education Policy Center. Retrieved February 26, 2025, from <http://nepc.colorado.edu/publication/privatization>

- 39 Criteria for acceptance of transfer applications is spelled out in Wis. Stat. §118.51(5) (2021). The issue of the propriety of denying an application based on the availability of the child's special education programming was considered by the United States Seventh Circuit Court of Appeals. Upholding the program against allegations that it violated Section 504 of Rehabilitation Act and the Americans with Disabilities Act, the court also commented on the fact that the majority of applications are accepted, whether the child has a disability or not. As the court explained.

Most applications are accepted, including those submitted by students with IEPs. In 2013–2014, districts approved 3,718 out of 5,822 transfer applications for students with IEPs, or roughly 64%. The same year districts approved 71% of transfer applications for students without IEPs.

P.F. by A.F. v. Taylor, 914 F.3d 467, at 470 (7th Cir. 2019).

- 40 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 2). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>

- 41 P.F. by A.F. v. Taylor, 914 F.3d 467 (7th Cir. 2019).

- 42 P.F. by A.F. v. Taylor, 914 F.3d 467, at 472 (7th Cir. 2019).

- 43 School Choice Wisconsin and Wisconsin Institute for Law & Liberty. (2025, January). *Thousands served: Students with disabilities in Wisconsin's parental choice programs* (p. 2). Retrieved February 14, 2025, from <https://will-law.org/wisconsin-school-choice-programs-serve-thousands-of-disabled-students>

- 44 Wisconsin Department of Public Instruction. (October 2024). *Special Needs Scholarship Program (SNSP) actual costs payment data*. Retrieved February 14, 2025, from https://dpi.wi.gov/sites/default/files/imce/parental-education-options/SNSP/SNSP_Actual_Costs_Sept_2024.pdf

- 45 Wisconsin Department of Public Instruction. (n.d.). *Special education and school-age parents aid*. Retrieved February 22, 2025, from <https://dpi.wi.gov/sfs/aid/special-ed/sped-sap/overview>

- 46 Wis. Stat §115.7915(4m)(cm)(3)(2024).

- 47 Wisconsin Department of Public Instruction. (October 2024). *Special Needs Scholarship Program (SNSP) actual costs payment data*. Retrieved February 14, 2025, from https://dpi.wi.gov/sites/default/files/imce/parental-education-options/SNSP/SNSP_Actual_Costs_Sept_2024.pdf

- 48 In fact, although a child must have an IEP or a service plan to be eligible for SNSP, the private school is under no obligation to provide the services outlined. Rather, the school and the child's parent need only agree on what special services, if any, will be provided. Wis. Stat §115.7915(6)(h)(1)(2024).

- 49 Table 3: Comparison of Wisconsin State Funding for Special Education in Public Schools vs. the Special Needs Scholarship Program (SNSP)

	Public Schools	SNSP
Basis for funding	Sum Certain ^a	Sum Sufficient ^a
Current school year funding for special education	There are no provisions for current year funding for public schools	\$5,172/year (k-8) \$2,678/year (9-12) ^b
School must delineate costs in order to receive funding	Yes	No, unless applying for actual costs exceeding the standard SNSP voucher amount (\$15,409).

	Public Schools	SNSP
Reimbursement for special education costs	29.16% reimbursement of prior year costs for 2024-25 school year. ^c	Reimbursement for actual costs up to 150% (\$23,113.50) of the standard SNSP voucher and 90% of any costs exceeding \$23,113.50.
Cost limit threshold access to additional funds for students requiring high costs	\$30,000	\$23,113.50
Percent reimbursement for students above the high cost threshold	No guaranteed percentage. The amount a district receives depends on the number of claims made in any given year. ^d	90%
Schools must verify special education credentials for any staff claimed	Yes	No
All staff must hold valid DPI licensure	Yes	No
Limitations on some school staff	Yes, Limits on portion of salary that can be entered for reimbursement calculation for: School Nurses (29%) School Social Workers (59%) School Psychologists (84%) School Counselors (10%) ^e	No

- ^a For expenditures made on a “sum certain” basis, “the Legislature has provided a specific amount of funding that cannot be exceeded except by a statutory change or a supplement approved by the Joint Committee on Finance.” In contrast, “Sum sufficient appropriations are not limited and allow an agency to expend whatever amounts are necessary to fund a specific program.”

Wisconsin Legislative Fiscal Bureau (2023, May 2). *2023-25 estimates of current law sum sufficients and debt service on appropriation obligation bonds*, Paper #106 (p. 1). Retrieved February 26, 2025, from https://docs.legis.wisconsin.gov/misc/lfb/budget/2023_25_biennial_budget/bpbd/100_may_2/106_2023_25_estimates_of_current_law_sum_sufficients_and_debt_service_on_appropriation_obligation_bonds

- ^b This figure represents the difference between the SNSP voucher amount and the MPCP/RPCP/WPCP voucher amount.
- ^c Wisconsin Department of Public Instruction. (n.d.). *Special education and school-age parents aid*. Retrieved February 22, 2025, from <https://dpi.wi.gov/sfs/aid/special-ed/sped-sap/overview>
- ^d “The FY2023-24 high cost appropriation was \$13,032,000. The average reimbursement rate in 2023-24 for LEAs was 24.23% of each student’s eligible costs above \$30,000.” Wisconsin Department of Public Instruction. (n.d.). *High cost special education aid*. Retrieved February 22, 2025, from <https://dpi.wi.gov/sfs/aid/special-ed/high-cost>
- ^e Wisconsin Department of Public Instruction. (2022, February 3). *Wisconsin Act 221 - LEA implementation guidelines*. Retrieved February 22, 2025, from <https://docs.google.com/document/d/1J8oWGjnojfwXYInYb-SenOWSgpJjj6oTBp7bHwX8Assk/edit?tab=t.o#heading=h.hx462cfggyuy>