

Serving All: Students with Disabilities in Wisconsin's Parental Choice Programs

Executive Summary

The extent to which Wisconsin's school choice programs serve students with disabilities has been in the news media in recent months. Lacking sound data, many reports have relied on rumor and speculation.

The Wisconsin Institute for Law & Liberty partnered with School Choice Wisconsin to provide a more accurate assessment. Our work includes a survey responded to by schools enrolling 40% of students in the state's school choice programs. We find that schools in those programs serve far more students with disabilities than the media or the Department of Public Instruction (DPI) report.

Among the highlights of this report:

Current identification requirements guarantee undercounting. Only students who have received services in a public school previously or who have a service plan being implemented by a public school are counted as having a disability. This means that even many students in the Special Needs Scholarship Program are not counted as having a disability.

More than 10% of students in choice schools likely have a disability, a finding consistent with a respected academic study conducted in 2012. This is five times greater than DPI reports. The agency's apples-to-oranges protocol is guaranteed to understate disability enrollment in private schools.

Private schools in the choice programs may not deny admission based on disability status. As is the case in many public schools, schools in the choice programs are not equipped to serve all students with disabilities. Ultimately, the decision on whether a choice program school can meet a student's needs is up to the parents after consultation with the school.

In contrast, disability discrimination is widespread in Wisconsin's public school open enrollment program. Under the program, Wisconsin statutes explicitly let school districts disallow admission due to disability status (along with other exclusionary provisions). More than 1,400 students were denied for this reason in the 2021-22 school year.

Introduction

Opponents of Wisconsin's school choice programs long have alleged that participating schools serve far fewer students with disabilities than do public schools. The media outlets *Wisconsin Watch* and *Wisconsin Examiner* claimed earlier this year—without specific evidence—that schools in the choice programs expel students because of disabilities.¹ *Wisconsin Watch* quoted a DPI spokesperson who falsely claimed that a student with a disability could be enrolled "in a private school one minute and be expelled the next." Such media reports and agency claims provided a foundation for unsubstantiated assertions by legislators in public hearings this year.

In this report, we present findings on what actually is occurring with respect to enrollment of students with a disability in

choice program schools. Consistent with scholarly work from a decade ago, we find that choice schools serve students with disabilities at a far higher rate than DPI reports.

We explain why DPI underreporting of disability rates in private schools is a certainty given the way data is collected. We also present results of a survey responded to by schools enrolling 40% of students in the state's choice programs, and we demonstrate the high probability that this substantial response is representative.

Significant underreporting by DPI is likely because many students who would be classified as having a disability were they in a public school, are not so classified at schools in the choice program. There are a number of reasons for this that we will explore in this study.

Existing Research

As part of broader research on the Milwaukee Parental Choice Program, scholars led by John Witte from the University of Wisconsin and Patrick Wolf at the University of Arkansas examined the issue.ⁱⁱ Their study had the significant advantage of direct access to student-level records for students who switched from public to private schools.

Coupled with a survey of parents, Witte and Wolf estimated a disability rate of students in the Milwaukee program of between 7.5% and 14.6%. This rate greatly exceeded the 1.6% rate which was reported on the DPI Report Card at that time.

The SCDP research notes that private schools often lack the incentive to identify students as having a disability because they do not receive the extra funding that public schools get when a student is diagnosed. There were also differences in the "organizational culture" of many private schools which might discourage diagnosis.

Our new research builds on the Witte and Wolf findings.

Important developments in recent years warrant a reexamination of those findings. First, the Special Needs Scholarship Program (SNSP) began enrolling students in 2016-17. From an enrollment of 205 in 2016, the program has grown to serve more than 2,000 students. Second, the statewide expansion of school choice beyond Milwaukee has opened school choice program to areas with different demographics.

Defining Disability

According to DPI,ⁱⁱⁱ "A child with a disability is a child who needs special education and related services...The law has criteria for each category below to help... decide if a child has a disability." There are a number of categories of disability for which percentage estimates are available in public schools. These are listed below. In this table, "Count" represents the number of students classified as having this type of disability, and the "Percentage" column represents the percentage of all public-school students—including those without disabilities. Note that some data is missing due to privacy concerns for small numbers of students in the group.

Category	Count	Percentage
Autism	15,207	1.80%
Deaf/Blind	Missing	Missing
Emotional Behavioral Disability	10,041	1.20%
Deaf or Hard of Hearing	1,657	0.20%
Intellectual Disability	5,828	0.70%
Specific Learning Disability	24,850	3.00%
Other Health Impairment	25,457	3.10%
Orthopedic Impairment	693	0.10%
Significant Developmental Delay	11,432	1.40%
Speech or Language Impairment	26,926	3.20%
Traumatic Brain Injury	271	0.00%
Blind and Visually Impaired	453	0.10%
Unspecified Primary Disability	Missing	Missing

DPI Data

As of the third Friday in September, during the 2021-22 school year, 357 schools participated in the state's four school choice programs (Milwaukee, Racine, Statewide, and Special Needs). The Milwaukee, Racine, and Statewide programs enrolled 47,135 students. The Special Needs program enrolled an additional 1,759 students.

Table 1 below shows the percentage of students classified by DPI as having a disability across different subsets of private school choice and public schools. This data is from the state's report cards that are released every Fall. Please note that in 2019-20 due to the COVID-19 pandemic, there were no report cards published, therefore there is no data for that year on the chart. As we will demonstrate, the DPI data substantially undercounts disability enrollment rates in private choice schools.

Table 1. Percent of Students with Disabilities-District vs. Private Choice

	16-17	17-18	18-19	19-20	20-21	21-22
Milwaukee Choice	2.37%	1.56%	1.50%	No Data	1.55%	1.28%
Milwaukee Public	20.14%	18.84%	19.80%	No Data	19.67%	19.33%
Racine Choice	1.98%	2.05%	2.61%	No Data	0.57%	0.47%
Racine Public	17.43%	17.43%	17.19%	No Data	17.86%	17.74%
Statewide Choice	3.70%	3.88%	3.83%	No Data	3.29%	3.30%
Statewide Public	12.45%	13.31%	13.48%	No Data	16.64%	14.02%

Outside of Milwaukee and Racine, approximately 14.02% of all public-school students in 2021-22 were classified as having a disability (the statewide number in Table 1 excludes Milwaukee and Racine accounting for the difference). By comparison, DPI calculates that the disability enrollment rate in the choice program was 1.28% in the MPCP, 0.47% in the RPCP, and 3.30% in the WPCP. Relying on this data alone, one would assume that the rates of disability in the state's choice programs were extremely low. However, these report-card figures exclude many students who would be classified with disabilities if they were in public schools.

Responding to our survey, a school leader explained one reason this occurs:

"According to DPI, we are only allowed to count students that have been previously identified with a disability and received services in a public school as having a disability in our ...student database. So, if a student was identified with a disability while attending our private school but has never received public school special education services, we cannot mark them as having a disability, even if they are in the [Special Needs Scholarship Program]. This skews our demographic data."

To explain further, a student is only counted as having a disability if they have ever had an Individualized Education Plan (IEP) or Individualized Services Plan (ISP) implemented by a public school district. While there are additional nuances, an IEP is a plan for special education services developed

for students enrolled in a public school. An ISP is for special education services provided by the district in private schools.

Compared with public schools, fewer students attending a private school are evaluated for disabilities. This could be for a number of reasons—including because the families of said students did not wish to seek an evaluation and the labeling that comes with it. A further explanation involves the unduly long and arduous process for private schools to get a public school district to provide an evaluation. Even at the end of the process, the extent of services offered is at the discretion of the district, and may not fully encompass the needs of students who have multiple disabilities. Each of these reasons is a disincentive and demotivates parents from seeking student evaluations.

There are also differences in the culture of private and public education when it comes to special education services that are important to note here. Returning again to the work of John Witte and Patrick Wolf, they note that things are, in general, handled far more informally in private education:

"Most elements of the [federal disabilities law] do not apply to private schools, so such schools are not required to follow formal procedures in diagnosing or serving students with special educational needs. Student IEPs have no legal force in the private sector and bring no additional public funds...The formal structure of special education, including explicitly labeled students, exists primarily and almost exclusively in the public sector."

The Legal Obligation of Choice Schools

Wisconsin law includes obligations of private schools participating in the choice program regarding the education of students with disabilities. As an initial matter, in terms of accepting applications, Wisconsin Statute section 119.23(3) (a)^{vi} specifies that private schools in the choice programs may only give preference to existing students and their siblings. No mention is made of consideration of the disability status of the student in this section. If more students apply than there are seats available, the school must use a random lottery to determine who is admitted, and may not use any criteria involving disability status.

Under federal law, private schools must meet a different legal standard than public schools when it comes to serving students with disabilities. Section 504 of the Rehabilitation Act and Title III of the Americans with Disabilities Act (ADA) set forth requirements for private schools. Private schools subject to the ADA are required to make "reasonable modifications" to access the facility and are prohibited from discriminating based on disability. Changes may not fundamentally alter the nature of the goods and services provided by the private school or impose an undue financial or administrative burden. Section 504 requires private schools to make "minor adjustments" to access the facility. Private schools may consider the nature of the program provided and the expense of accommodations sought.

Furthermore, private schools participating in the Special Needs Scholarship Program, to specifically serve students with disabilities, must meet with families to complete an agreement to discuss the educational needs of each student and to explain special education resources available at the school. Participating schools are also required to provide quarterly reports to parents about student process.

One school leader summed up the process for us in this way:

"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."

It is well-established that choice schools accept and serve students with disabilities. Beyond this, any claims that private schools may "discriminate" after enrollment are false. If a choice school is ever in a position involving potential removal of a student with a disability, the school follows the guidelines and procedures in its handbook. Disabled and non-disabled students alike may engage in conduct that constitutes grounds for expulsion, and guidelines establishing that

conduct apply equally to all students.

Before funding increases enacted this year, choice schools received less than 60 percent of public school per pupil funding, and budgets can understandably make it challenging for private schools to meet the needs of some students with disabilities. Some may argue that the SNSP program allows for a higher reimbursement rate if student costs exceed the voucher amount, but private schools only used this process in 9 instances during the 2022-23 school year. The reality is that most schools make an effort to serve all students with disabilities, and they make it clear to families what they are and are not able to do before the family makes the final decision on whether or not to attend, or continue attending, the private school.

Survey: Preliminary Notes

We sent the survey to 373 schools that participated in the Milwaukee, Racine, and Wisconsin Parental Choice Programs, as well as schools participating in the Special Needs Scholarship Program during the 2022-23 school year. The survey took place from July 18th to August 4th, 2023. We received responses from 112 schools, (30%) of the total schools; they enroll nearly 40 percent of choice students.

Respondents were first asked to provide the overall number of students enrolled in choice programs in their schools. They were then asked if they had an exact figure for the number of students enrolled in their schools that had an Individualized Education Plan (IEP) from a public school. An IEP serves as identification of students that would be receiving specialized services for a disability if they were in the public school.

Schools that did not have that information on hand were asked to provide an estimate for the percentage of students in their school that would be likely to have an IEP were they to attend a public school. We recognize that the second data point is just that, an estimate, and we will present our results both with and without those schools included. A number of schools did not have the information on hand to provide an estimate. Our results are based on the 91 schools that did have the data.

As noted, responding schools enrolled 40% of students in the choice programs. While this is a sizable share of the total enrollment, it is not evidence that the respondents are representative of the program as a whole. To explore that issue, **Table 2** shows the results of a statistical analysis predicting the likelihood that a school would respond to our survey based on several demographic factors pulled from Wisconsin's state report card for all choice-participating schools.^{vii}

Table 2. Prediction of Survey Response

VARIABLES	(1) Log Likelihood of Response
School Enrollment	0.00116 (0.000718)
Percent African American	-0.0976 (0.569)
Percent Hispanic	-0.207 (0.603)
Percent Low Income	0.306 (0.441)
Percent with Disabilities (DPI Metric)	-3.335 (3.546)
Percent Choice Enrollment	0.284 (0.651)
Constant	-1.211*** (0.357)
Observations	317

Standard errors in parentheses

*** p<0.01, **p<0.05, *p<0.1

Stars on any of the variables would indicate that schools that responded to our survey were significantly different from most schools in the choice program on that variable. For instance, a positive coefficient on "Percent Hispanic" would mean that schools with more Hispanic students were more likely to respond. That is not the case here, however. Indeed, the results show that all of the included factors are insignificant. The variable that comes closest to marginal significance ($p < .1$) is enrollment, suggesting that schools with more participating students were slightly more likely to respond. This increases our belief that the results are representative of all schools participating in the state's choice programs.

Survey: Results

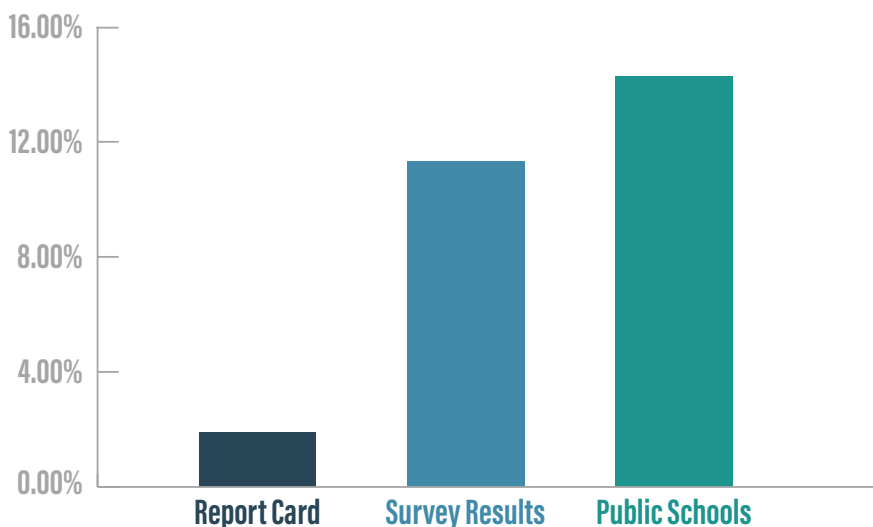
The results for schools that had exact data on the number of students that had an IEP in their school are reported in column 1 of **Table 3**. The results including schools that provided estimates are included in column 2.

Table 3. Disability Status at Choice Participating Schools

Actual IEP	Estimated with Disability
11.60%	10.70%

First, it is noteworthy that the reported percentages in both the group with exact data and the group that includes estimates are within about 1.0 percentage point of each other. This is a credible indicator that the estimates received from schools are valid. It appears that between 10.70% and 11.60% of students in choice schools likely have some form of disability. **Figure 1** below compares the share of students reported as having a disability in choice schools on the state report card with the middle ground between these two numbers, as well as public school disability rates.

Figure 1. Reported & Estimated Real Disability Rates in Private and Public Schools Schools



While the share of students with disabilities in choice-participating schools likely is below the share of such students in traditional public schools, the gap is far closer than what one would be led to believe by the report card or by recent media reports. As was found by the SCDP a decade ago, the number of students who would be classified as having a disability in private choice schools appears to remain underreported.

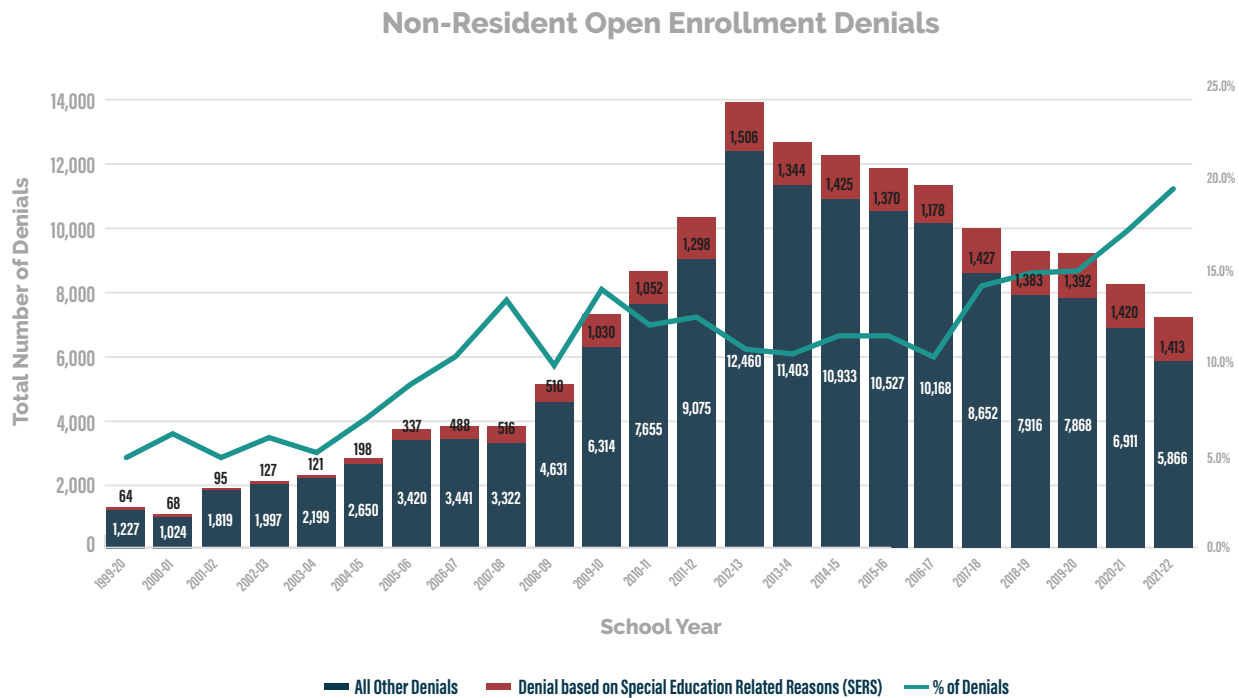
Discussion

The claim made by some that private choice schools don't serve students with disabilities—or serve only a small number—is unequivocally wrong based on the evidence presented here. Based on virtually no evidence of students

actually being removed from schools because of a disability, a misleading narrative has been built around the limited legal obligations of private schools in these matters. But the evidence here supports what most of us have long believed: most private schools see it as their mission to meet the needs of as many students as they can.

It is worth pointing out that it is not only private schools that may, in some instances, struggle to meet the needs of students with disabilities. As seen in **Figure 2** below, public school districts either deny or do not open any seats for students with disabilities during open enrollment.

Figure 2. Open Enrollment Denials for Special Needs Students



Limitations, of course, remain in this analysis. While we have shown evidence that our sample is similar to the schools in the choice program more broadly, it remains possible that the schools that chose to participate differ from those who didn't participate. Secondly, we cannot capture the extent of disability among students in the choice program relative to public schools. It may still be the case that public schools have a higher share of students with more profound disabilities. Nonetheless, one final quote from a school leader sums up the findings of this report:

"Many citizens and public-school advocates assume schools that participate in Choice don't accept and support students with disabilities. This is not true. For decades, many private schools have provided support for thousands of students with different types of disabilities. Historically schools have

provided support for reading, writing, and math deficits; they have provided accommodations for students with a variety of disabilities. While they may not have called the support and accommodations 'Special Education,' they have provided the services and specialized instruction."

In the coming years, options like the SNSP are likely to continue to grow. Higher funding for the traditional voucher passed during the 2022-23 budget cycle will make it easier for schools to accommodate students even in the absence of an SNSP scholarship. This will hopefully provide even more opportunities for students with disabilities to enjoy educational options beyond their assigned public school. But even without further growth, the findings here strongly refute the notion that the private school door is closed to students with disabilities.

References

ⁱ <https://wisconsinwatch.org/2013/07/in-some-choice-schools-disabilities-are-liability/>
<https://urbanmilwaukee.com/2023/09/08/op-ed-the-truth-about-school-choice/>

ⁱⁱ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2107763

ⁱⁱⁱ <https://dpi.wi.gov/sites/default/files/imce/sped/pdf/spec-ed-plain-lang-english.pdf>

^{iv} <https://www.lovespeaksautisminc.org/iep-vs-isp>

^v <https://docs.legis.wisconsin.gov/statutes/statutes/119/i/23> Note that this applies to the MPCP, but the language is the same for the other non-special needs choice programs.

^{vi} https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0030_private_school_choice_and_special_needs_scholarship_programs_informational_paper_30.pdf

^{vii} This is a logit model where "1" represented a respondent and "0" represented a non-responding school