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Comments on Education Savings Accounts (ESA) for Students with Disabilities

Introduction

The Coalition of Texans with Disabilities (CTD) is the largest and oldest member-driven, cross-disability organization in Texas. We focus on governmental advocacy, public awareness activities, and professional disability consulting to achieve our mission of building a society where Texans with disabilities can live, work, learn, play, and participate in the communities of their choice.

CTD appreciates the invitation to provide testimony to the Texas Commission on Special Education Funding. Our organization is committed to supporting access to a free appropriate public education (FAPE) for all eligible Texas students with disabilities. To that end, CTD focuses on policies that give community public schools the resources they need to provide the full array of services and supports based on each student's individual academic and functional strengths and needs. This includes the funding of service intensity rather than physical educational placement. We appreciate the Commission's focus on this model solution, and caution against considerations that distract from this substantive step forward, including Education Savings Accounts for students with disabilities, which is outside the statutory charge of the Commission.

Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA)

The federal IDEA ensures that students with disabilities are provided access to a free appropriate public education (FAPE) based on individual strengths and needs, and that services are provided in the least restrictive environment (LRE). Additionally, parents and adult students participate in the development of the Individualized Education Program (IEP), and have due process protections when the IEP team can not reach agreement. These educational rights and protections do not extend to private schools or vendors. Additionally, Section 504 prohibits any recipient of federal funding from discriminating against an individual based on disability. Finally, the ADA, with limited exemptions, provides additional protections from discrimination regardless of whether the entity receives federal funding. One of those exemptions is for religious entities, which include religious private schools or service providers.

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Unfortunately, many families are unaware that they relinquish these important rights by accessing an ESA. CTD opposes any initiative that would diminish or completely eliminate these protections for students with disabilities.

Other Considerations

In addition to waiving federal protections for people with disabilities, families would also face significant barriers to access such as:

- **Reconciling the ESA amount with the actual cost of private services:** The average private school tuition in Texas is \$10,087 for elementary schools and \$11,638 for high schools, with additional costs for application and enrollment fees, adaptive equipment, related services like therapy and resource, evaluation fees, and specialized instruction and materials.
- **Availability of private schools and providers:** Private school availability varies widely in Texas and those that do exist can establish very selective program enrollment criteria such requiring certain performance on entry assessments, establishing IQ thresholds, and denying access based on diagnosis, discipline history, or religious adherence.
- **Specialized programs:** Private schools do not necessarily serve all grade levels or genders. Some others hold themselves out to be “special education” schools which negates any opportunity for meaningful inclusion with non-disabled peers or LRE.
- **Lack of accountability:** Private schools are not required to employ certified teachers or conduct criminal background checks. They are also not required to be accredited, meaning a student who returns to public school may have to recover credits.
- **Source of tuition discrimination:** Private schools may perceive accepting ESAs as a risk in the event that a family may be unable to pay the difference out of pocket, or absorb future tuition increases.
- **Confidentiality:** The federal Family Educational Rights and Privacy Act (FERPA) ensures that public schools maintain educational records, parents have a right to access educational records, and those records may not be released without written parental consent. Most elementary and secondary private schools do not receive federal funding and therefore are not required to comply with this safeguard.
- **Additional limitations** include waitlists and maintaining enrollment once a student is accepted.

CTD appreciates the opportunity to provide comments to the Commission. We thank the Commission for doing the important work of considering improvements to funding special education in public schools. Please reach out to us if we can be a resource on special education or any other disability related issues.

National Center for Learning Disabilities <https://www.nclld.org/wp-content/uploads/2017/10/SV-ESA-TI-White-Paper.pdf>
National Council on Disability https://ncd.gov/sites/default/files/NCD_Choice-Vouchers_508_0.pdf
Texas Private School Accreditation Commission <http://www.tepsac.org/app/index.html#/legal>
Texas Private School Review <https://www.privateschoolreview.com/texas>
US Department of Education <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

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