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Welcome to the American Federation for Children’s Myth Busters, a weekly brief setting the educational choice record straight.

MYTH:

“Parents of special needs children lose their IDEA rights and guarantee of a free appropriate public education by accepting a special needs scholarship.”

AMERICAN FEDERATION FOR CHILDREN MYTH BUSTERS:

Parents who currently choose to enroll their special needs children in private schools also choose not to exercise their federal Individuals with Disabilities Education Act (IDEA) rights. IDEA is a federal law that does not apply to private schools, and the special needs scholarship does not (and cannot) change federal law. Parents never “lose” their IDEA rights—they simply choose whether they wish to exercise them.

Most parents of special needs children are happy with their local public school, but for a *small number of families*, they feel as if their current “guarantee” to a free appropriate public education (FAPE) under IDEA is frustratingly unobtainable.

This week’s myth insinuates that the right to FAPE is always delivered in public schools. It fails to acknowledge that parents, who feel the “appropriate” part of FAPE is missing, must tread through government bureaucracy mired in red tape to have any chance of enrolling their children in their chosen school. A closer look at some existing processes reveals how a FAPE guarantee isn’t always a guarantee for special needs children:

* Open Enrollment – 2012-13 DPI data reveals that 42.12% of open enrollment applications submitted by special needs parents are denied by either the nonresident or resident public school district. Over half of denied applications are denied specifically for special education reasons (special education space is not available, special education programming not available, “undue financial burden”, etc.).
* Due Process Hearings – From [*Special Education in Plan Language*](http://dpi.wi.gov/files/sped/pdf/spec-ed-plain-lang-english.pdf): “The due process hearing includes witnesses, questioning and cross-examination, and presentation of evidence by both the parents and the school…Parents pay for their own attorneys.”

So, parents who believe that the public school district they help fund is not providing their child the guaranteed “free appropriate public education”, must hire specialized attorneys to fight their school district. In fact, the rules place the burden of proof on parents in these cases. Those who have been through these expensive and contentious hearings say it is almost as if they are on trial for daring to stand up for their child.

Why would any parent put herself through this? [They typically don’t](http://watchdog.org/78866/wi-mother-of-autistic-child-the-system-doesnt-work/). The process that has been set up is so intimidating and costly that it is seldom used. Low-income and working class parents, especially, just do not have the means to hire attorneys or the time to file appeal after appeal.

Most guarantees promise consumers happiness no matter what. In this case, however, parents are expected to go through time-consuming and costly process after process, and often are still not given the education they feel is best for their special needs child.

Parents facing these obstacles are the reason that nine states so far have created 11 special needs scholarship programs. Governor *Walker*’s special needs scholarship proposal features some of the most stringent accountability and transparency measures in the nation.

Three weeks ago, we addressed the myth that private schools accepting special needs scholarships do not have to implement a student’s individualized education program (IEP). Under Governor Walker’s budget, they do and DPI can kick them out of the program if they fail to deliver on that or over a dozen other provisions.

Under the budget, DPI must also include a comparison of rights—under laws governing public and private schools—in the scholarship application packet (p. 809, lines 14-18):

*(2) DEPARTMENT DUTIES. (a) 1. The department shall develop, for inclusion with an application under sub. (1m) (e), a document, and revise it as necessary, comparing the rights of a child with a disability and of his or her parent under this subchapter, other than this section, and 20 USC 1400 to 1482, with the rights of a child with a disability and of his or her parent under this section and 20 USC 1400 to 1482.*

Private schools must also do the following (p. 813, lines 8-12):

*(g) Provide to each applicant under sub. (1m) (e) a profile of the private school’s special education program, in a form prescribed by the department, that includes the methods of instruction that will be used by the school to provide special education and related services to the child and the qualifications of the teachers and other persons who will be providing special education and related services to the child.*

Amazingly, opponents say that parents of special needs children would enroll their children in a school ill-equipped to serve their children’s needs. *The Progressive* even said that “unsophisticated parents” would be the ones using these scholarships.

Hear from parents like [Sandy](http://www.youtube.com/watch?v=k-pqKir5LmI) [Krause](http://www.youtube.com/watch?v=xkzW5TV-I7s), [Susan Giaimo](http://www.youtube.com/watch?v=JrIPckRrsE4), [Dani Rossa](http://www.youtube.com/watch?v=4xTud9lPEbw), and [Erin](http://www.wiseye.org/videoplayer/vp.html?bmid=4151588674) [Beres](http://www.wiseye.org/videoplayer/vp.html?bmid=1383126647), who testified at the Joint Finance Committee public hearings in support of the special needs scholarship. Ask yourself if the current system is working for everyone, and ask yourself if they seem “unsophisticated” or incapable of knowing what’s best for their children.