

# Shadow School Choice: How Public Education Spending Fails Special Needs Students

## OVERVIEW

Despite year-after-year increases to special education funding, too often, students with special needs are left behind.

The U.S. Department of Education guarantees a [free appropriate public education](#) (FAPE) to special education students as part of the [Individuals with Disabilities Education Act](#) (IDEA),<sup>1</sup> and [federal grants](#) and [state appropriations](#) cover a portion of Pennsylvania's special education expenses,<sup>2</sup> with the remainder funded by local school districts.

However, guaranteed funding does not ensure that districts comply with a student's Individualized Education Plan (IEP). Despite historic spending on education, hundreds of school districts across Pennsylvania spend millions of dollars to outsource the special education needs of nearly 10,000 students to private schools at the district's expense.

Kids identified with special education needs often [wait months or years](#) to receive the IEP services to which they are legally entitled.<sup>3</sup> Low-income families, who are less likely to [sue the school district](#) for non-compliance than affluent families, are at greater risk when districts fail to provide vital services and the student's needs go unmet.

Current practices perpetuate this economic disparity that traps Pennsylvania's most vulnerable students in schools that can't or won't meet the child's special education needs.

Special education battles, notes an August report in the *Philadelphia Inquirer*, "are playing out behind closed doors, waged by lawyers. Critics say school districts are spending millions of dollars to place children in private schools and compensate families for insufficient programs—but often without remedying the deficiencies that led parents to sue in the first place."<sup>4</sup>

## KEY FACTS

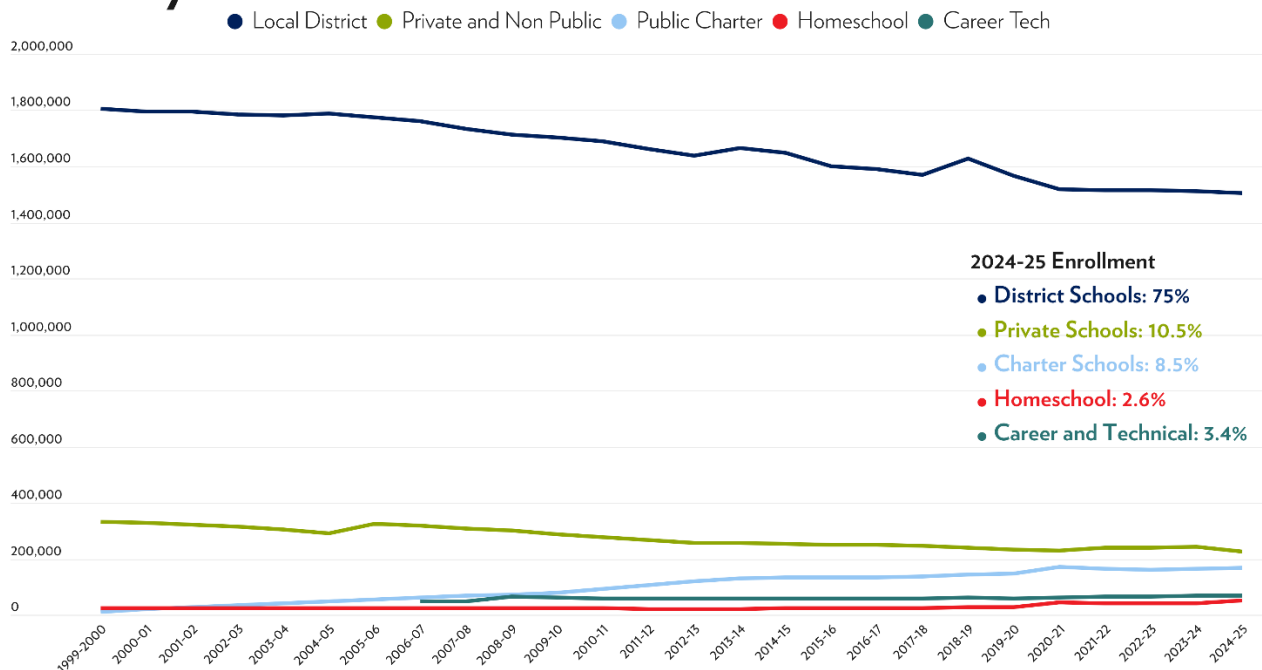
- Since 2013, state support for public schools grew a whopping 84 percent to more than [\\$17.7 billion](#) in the [2025–26 Pennsylvania budget](#). The Special Education appropriation, alone, is up 48 percent, topping \$1.5 billion.<sup>5</sup>
- The Pennsylvania Department of Education (PDE) [states](#) that the cost of educating special education students is the responsibility of the local school district.<sup>6</sup>

- In the 2023–24 school year, 8,447 Pennsylvania K–12 public school students outside of Philadelphia attended non-district schools, at a cost of \$371,557,430, an average of \$43,987 per student, according to Right to Know (RTK) data requested by the Commonwealth Foundation.

### FAST STATEWIDE EDUCATION NUMBERS:

- State support for K–12 public school students, over the last dozen years, grew 84 percent to \$17,732,122,000 in [the 2025–26 budget](#).
  - The Special Education appropriation—a component within this spending—increased a cumulative 48 percent since 2013, reaching \$1,526,815,000 in the 2025–26 state budget. Two state budgets, those in [2022–23](#) and [2024–25](#), bumped funding \$100 million, representing respective year-to-year increases of 8.1 percent and 7.2 percent.<sup>7</sup>
- In the 2023–24 school year, there were [nearly two million](#) school-aged students in Pennsylvania.<sup>8</sup>
- Twenty percent ([336,850](#)) of students in Pennsylvania are special education students with disabilities.<sup>9</sup>
  - Of these, nearly 300,000 were enrolled in their local public school district.
- Based on RTK data, approximately 3 percent of public school special education students attended private schools.

## Pennsylvania PreK-12 School Enrollment Trends



Source: Pennsylvania Department of Education, accessed November 15, 2025, <https://www.pa.gov/agencies/education/data-and-reporting/enrollment>.

## SPECIAL EDUCATION OPTIONS IN PENNSYLVANIA

There are 500 school districts in Pennsylvania serving regular and special education students. Students are assigned to and attend schools based on their home address. When a district school fails to meet a child's special education needs, low-cost options are limited, which contributes to families taking legal action to force public schools to meet their child's special education needs.

**Intra-district transfer.** Pennsylvania's Public School Code of 1949 allows transfers between neighboring school districts, though cross-district enrollment is not guaranteed, which is why the Reason Foundation's [Public Schools Without Boundaries 2025](#) gives Pennsylvania a grade of "F" for its open-enrollment policies.<sup>10</sup>

- Student transfers between districts require the consent of both districts, with the home district paying tuition to the district providing the educational services.

**Career and Technical Education (CTE).** CTE offers classes and hands-on education to students attending multiple school districts, with each district paying tuition to the CTE for student enrollment. CTE is open to special education students, even though the designs of these programs are not specifically for them.

**Charter and Cyber Charter Schools.** Charter and cyber charter schools educate regular education and special education students and receive tuition payments from school districts for each student in attendance.

- There are 158 brick-and-mortar charter schools located in 45 school districts, and there are 14 cyber charter schools in Pennsylvania.

**PA Chartered and Approved Private Schools (APS).** There are [37 schools](#) (four PA Chartered and 33 APSs) for the deaf and blind across the state. These schools receive funding from local school districts and the commonwealth to serve the unique needs of deaf and blind students.<sup>11</sup>

**Private Education.** When a student requires special education services that don't fit into the above schooling options, parents may opt to traverse an arduous, time-consuming, and often costly [Equitable Participation](#) process to force the school district to pay tuition to a private school that meets their child's special education needs.

- This process is expensive for families and the school district, as both sides utilize lawyers to determine the best educational environment for each special education student.
- Families can opt to bypass the school district by paying tuition directly to a private school for special education services. The average tuition is [\\$38,113](#) per student, a cost that is unaffordable for most families.
- [Private schools](#) have the flexibility to meet students' special education needs in ways public schools cannot.

## LEGAL PRECEDENT FOR PRIVATE SCHOOLS EDUCATING PUBLIC STUDENTS

- IDEA [stipulates](#) that special education students receive their FAPE in the Least Restrictive Environment (LRE).
  - The Code of Federal Regulations defines LRE requirements as: [Public agencies](#) must "to the maximum extent appropriate" ensure "children with disabilities ... are educated with children who

are nondisabled; and [s]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”<sup>12</sup>

- [According to PDE](#), a school district can place a student with disabilities in a private school or agency only after the IEP team decides the district cannot adequately meet the student’s special education needs.
- When transferring a special education student to a private school, the district must ensure the private program can fully implement the student’s IEP, meet all state and federal special education standards, and use state-certified teachers.<sup>13</sup>
- This year, the U.S Supreme Court unanimously [sided with families](#), agreeing that, under the existing law, families had to demonstrate an unfairly high burden to prove that a school is failing to meet a child’s special education needs. The [June 2025 decision](#) is a win for families because it requires that students’ claims against schools are now subject to the same standards that apply in other disability discrimination claims.<sup>14</sup>

## THE COST OF PRIVATE SCHOOLS EDUCATING PUBLIC STUDENTS

- The RTK data from direct requests to the districts reveals there were 8,447 Pennsylvania public school students educated at non-district schools during the 2023–24 school year, at a cost of \$371,557,430.<sup>15</sup> An earlier analysis found 681 students assigned to the School District of Philadelphia attended non-district schools.<sup>16</sup>
- The average tuition paid by school districts to educate special education students at private schools in 2023–24 was \$43,987 per student.
- Because the public school district is legally responsible for providing a FAPE, the district must pay all costs associated with the private school education and must continue to monitor and oversee the placement just as they would in a public-school setting.

## POLICY SOLUTIONS

**Fund Students Directly.** Pennsylvania tax dollars should follow all students—including special education—to the school of their choice, whether to public, private, charter, career and technical, or home education programs.

- Public school districts already shift a significant portion of their education spending to private schools to educate special education students. If state funding followed students to the school of their choice, the burden on public schools would ease, and students would be able to have their needs met without delay and costly legal battles.
- Private schools are [able to meet the needs](#) of special education students. Allowing state funding to follow the student to the school that best fits their needs would provide kids with educational opportunity while taking no existing options away.

- Funding students directly would be a step towards fulfilling Pennsylvania’s [Commonwealth Court](#) ruling, which states that lawmakers should work to ensure “every student receives a meaningful opportunity to succeed.”<sup>17</sup>

**Enact Lifeline Scholarships.** The [Lifeline Scholarship Program](#),<sup>18</sup> if funded at \$300 million annually, would provide scholarships for approximately 40,000 students across Pennsylvania to attend the private school of their choice.

- Each participating special education student child would receive funds appropriated by the Commonwealth of Pennsylvania in the amount of \$15,000 per year, regardless of grade level.

**Allow Open Enrollment.** Pennsylvania is one of the most restrictive states in the nation when it comes to public school choice. Most school districts assign public school attendance based on a student’s home address, a practice based on the discriminatory practice of [red-lining](#), resulting in discrimination by zip code.

- Allowing families to choose which public school their child attends through open enrollment, which [21 states have](#)<sup>19</sup>—regardless of home address or socioeconomic status—would ensure that public schools are [truly open to every child](#) in Pennsylvania.

**Support the Federal Tax Credit Scholarship, also referred to as the Educational Choice for Children Act (ECCA).** Shapiro must opt in to this [federal tax credit scholarship program](#) by December 31, 2026. The ECCA will provide millions of dollars in tax credit scholarships that Pennsylvania [families could use](#) to offset educational expenses, including special education services and tuition.<sup>20</sup>

<sup>1</sup> U.S. Department of Education, “Free Appropriate Public Education,” December 22, 1980, (Reviewed January 14, 2025), <https://www.ed.gov/laws-and-policy/individuals-disabilities/free-appropriate-public-education>; U.S. Department of Education, “Individuals with Disabilities Education Act (IDEA): Guidance, resources, and technical assistance related to IDEA,” August 6, 2025 (last reviewed) <https://www.ed.gov/laws-and-policy/individuals-disabilities/idea>.

<sup>2</sup> Pennsylvania Department of Education, “Special Education: Funding and Fiscal Guidelines,” accessed November 10, 2025, <https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/special-education/funding-and-fiscal-guidelines>; U.S. Department of Education, Grant approval letter for Pennsylvania’s application for fiscal year (FY) 2024 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B), signed by Valerie Williams, the director of the Office of Special Education Programs, July 1, 2014, <https://www.ed.gov/sites/ed/files/2024-11/pa-2024b-letter.enclosures.pdf>.

<sup>3</sup> Rebecca Redelmeier, “Philadelphia’s Youngest Learners Aren’t Getting Support Services They’re Legally Entitled To,” *Chalkbeat*, October 20, 2025, <https://www.chalkbeat.org/philadelphia/2025/10/20/kids-experience-early-intervention-delays-in-elwyn-program/>.

<sup>4</sup> Maddie Hanna, “Secretive Special Education Settlements Are Costing School Districts Millions. Parents Say Districts Aren’t Fixing Their Programs,” *Philadelphia Inquirer*, August 5, 2025, <https://www.inquirer.com/education/special-education-programs-philadelphia-region-deficiencies-due-process-settlements-20250805.html>.

<sup>5</sup> Nathan Benefield, “What You Need to Know About Pennsylvania’s 2025-26 State Budget,” Commonwealth Foundation, November 12, 2025, <https://commonwealthfoundation.org/research/2025-2026-pennsylvania-state-budget-analysis/>; Pennsylvania Department of Education, School Finances: Education Budget “2025–26 Summary of State Appropriations,” accessed November 15, 2025, <https://www.pa.gov/agencies/education/programs-and-services/schools/grants-and-funding/school-finances/education-budget>.

<sup>6</sup> Pennsylvania Department of Education, “Special Education FAPE and One-to-One Support Obligations for Students with Disabilities,” Bureau of Special Education, Basic Education Circular, August 2015 (Review 2024), <https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-beecs/federal-code/special-education-fape-and-one-to-one-support-obligations-for-students-with-disabilities>.

<sup>7</sup> Pennsylvania Office of the Budget, Commonwealth Budget – Past Budgets, accessed November 20, 2025, <https://www.pa.gov/agencies/budget/publications-and-reports/commonwealth-budget#accordion-8641fc0006-item-70db1b6eaf>.

<sup>8</sup> Pennsylvania Department of Education, Enrollment: Public School Enrollment Reports, “Public School Enrollments 2023–2024,” accessed November 15, 2025, <https://www.pa.gov/agencies/education/data-and-reporting/enrollment>.

<sup>9</sup> Pennsylvania Department of Education, Special Education Data Reporting: Additional Reports, “Special Education Summary – Special Education Data Book: 2023 –2024,” accessed November 15, 2025, <https://penndata.hbg.psu.edu/Additional-Reports>.

<sup>10</sup> Jude Schwalbach, “Public Schools without Boundaries 2025,” Reason Foundation, October 2025, <https://reason.org/wp-content/uploads/public-schools-without-boundaries-2025.pdf>.

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<sup>11</sup> Pennsylvania Department of Education, “Approved Private Schools and Chartered Schools for the Deaf and the Blind, accessed November 10, 2025, <https://www.pa.gov/agencies/education/programs-and-services/instruction/elementary-and-secondary-education/special-education/nonpublic-schools/approved-private-schools-deaf-blind>.

<sup>12</sup> 34 C.F.R. §300.114 LRE requirements (2025).

<sup>13</sup> Pennsylvania Department of Education, “Placement Options for Special Education,” Bureau of Special Education, Basic Education Circular, September 1, 1997 (Review July 2024), <https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-beccs/pa-code/placement-options-for-special-education>.

<sup>14</sup> A.J.T. v. Osseo Area Schools, Indep. School Dist. No 279, 605 U.S. \_\_\_\_ (2025); Mark Walsh, “Supreme Court Decision Lets Students Sue Schools More Easily for Disability Bias,” *Education Week*, June 12, 2025, <https://www.edweek.org/policy-politics/supreme-court-decision-lets-students-sue-schools-more-easily-for-disability-bias/2025/06>.

<sup>15</sup> Researchers at the Commonwealth Foundation submitted RTK requests to 498 districts, of which 66 denied or partially filled the request, 80 did not issue a final response, and 352 districts returned records on both the number of kids served by private schools and the tuition paid to those schools.

<sup>16</sup> Commonwealth Foundation, “Shadow School Choice: When Public Schools Turn Students Away,” March 19, 2025, <https://commonwealthfoundation.org/research/shadow-school-choice-philadelphia/>.

<sup>17</sup> William Penn School District et al. v. Pa. Department of Education et al., No. 587 M.D. 2014, (Pennsylvania Commonwealth Court, February 7, 2023), 773–78.

<sup>18</sup> Commonwealth Foundation, “PASS/Lifeline Scholarship Program,” May 5, 2025, <https://commonwealthfoundation.org/research/lifeline-scholarship-program-pass/>.

<sup>19</sup> Jude Schwalbach, “Public Schools without Boundaries 2024: Ranking Every State’s Open Enrollment Laws,” Reason Foundation, October 29, 2024, <https://reason.org/open-enrollment/2024-public-schools-without-boundaries/>.

<sup>20</sup> ECCA Credit, “The Education Choice for Children Act,” accessed November 10, 2025, <https://eccacredit.com/>; Commonwealth Foundation, “Educational Choice for Children Act,” July 4, 2025, <https://commonwealthfoundation.org/research/educational-choice-for-children-act/>.