

Kevin Welner: The voucher programs often start with what are called poster children, children who are perceived as more in need of other alternatives or other resources. And then once the foot is in the door, the programs expand.

Federico Waitoller: From the Division of Research of the Council for Exceptional Children, this is dived, a podcast about equity, diversity and inclusion, inclusion in special education.

I am your host, Federico Waitollerr, professor at the University of Illinois, Chicago.

Welcome, welcome, welcome to our fifth episode of the second season of Dive In. In our last episode, we talked to Mitchell and David Beckman about the implications of the Trump administration for special education.

Today we are going to delve deeper into one of those implications that we talked last episode.

Today we are going to try to better understand voucher programs and their implications for the education of students with disability.

And for that we have an amazing guest.

Today we present an interview with Kevin Wellner. Kevin is a professor at the University of Colorado Boulder School of Education and specializes in educational policy and law. He's also the director of the National Education Policy Center.

He's the author of numerous books such as Legal Rights, Local Wrongs, When Community Control Collides with Educational Equity by Sunny Press and Neo Vouchers, the Merchants of Tuition Tax Credits for Private Schools by Roman and Littlefield.

He's also the author of Of Schools Choice, How Charter Schools Control Access and Shape Enrollment by Teachers College Press. So here's the interview. Enjoy the show.

Well, thank you so much, Kevin, for being here with us. We're very excited about to learn more about voucher programs on students with disabilities.

Kevin Welner: Well, thank you for inviting me, Federico.

Federico Waitoller: Let's start from the basis. Now, for those in our audience that don't know what vouchers are, can you give like a 101 brief of what are voucher programs?

Kevin Welner: Yeah, well, it's, it's not surprising that some people might be confused because I think there's some, some intentional confusion going on. The term voucher doesn't pull very well.

So we've seen all sorts of other terminology and even Byzantine program structures to accomplish the same goal.

So you'll hear about tuition scholarships instead of vouchers. You'll hear school choice. You'll hear tax credit, scholarship programs, you'll hear education, savings accounts, et cetera.

The basic idea of what a voucher is and what a voucher isn't is a little disputed. But basically it's a public subsidy, a taxpayer subsidy for private school tuition.

So that said, there are some policies that are somewhat different and that people should discuss a bit separately. So there's Town tuitioning programs, which you see primarily in Vermont and Maine, which were originally designed to serve mainly rural schools, rural communities.

By having the state pay for tuition at the local schools, which happen to be private schools, those town tuitioning programs have been litigated and now have turned much more into traditional, what we see, what we think of as voucher programs.

And then there are also direct tax credits that are provided to private school parents to offset some of the cost of their tuition payments. They're usually, but not always for much smaller amounts than we see with voucher programs.

But those are the, with, with those exceptions, the town tuitioning and the direct tax credits, pretty much everything you hear about that's, that smells a little bit like a voucher is in fact a voucher.

Federico Waitoller: Smells like a voucher, sounds like a voucher, it's a voucher.

Kevin Welner: Yes, that's, that's certainly how I'm going to be using the term term today.

Federico Waitoller: Yeah, so just, I mean, just summarizing because I also wanted to ask you that, as you said, there are many different types of vouchers. So for what I understand there's like the traditional voucher.

Right. That a parent gets from the state and can use money to go to a private school.

There is also education savings accounts. Right.

Where the state opens a particular saving account for the parents, where they deposit money for parents to use for educational expenditure. And the other one was tax credits, correct?

Kevin Welner: Yep. Yeah. And we're now seeing, I think two states have mixed those last two. So you have tax credited donations going to voucher granting nonprofits that then grant instead of what, something that looks like a traditional voucher, they grant an esa.

So yeah, so setting aside those two, you know, the direct tax credit and the town tuitioning, I think what we see with the different types of vouchers are what you call traditional vouchers, what I call

conventional vouchers, which is when the taxpayer money comes into the state coffers, the state has a program that then provides a voucher for parents to take to a private school to pay for tuition. What I call neo vouchers are these tax credited donations. So this is sort of what I was referring to earlier as a Byzantine structure, so bear with me. But let's say you owe money, you're a business or an individual taxpayer, you owe tax money to your state.

The state in these places that have these neo voucher programs, which by the way is most of the voucher programs that have existed while I've been studying this have been this type.

So a State will forgive that tax money that you owe. Offer a 100% tax credit. In some states, it's a little bit less than 100%, but in most it's 100% tax credit.

If you donate an amount to one of these nonprofits that then pools your donation with other people's donations and then hands the money out to a parent to take to a private school to pay for tuition.

So it's essentially the same thing. It's just the state money isn't direct, it's indirect.

And then the newest program that we see that's growing quite a bit, and pretty much every new proposal uses this approach, is called an education Savings Account, or esa. Some states call like Empowerment Scholarship account, but they always use the ESA acronym.

And the idea there is fairly similar. The parent has control over the money to take to a private school to pay for tuition.

But it's even more deregulated in the sense that parents. In several senses, but mainly in the sense that parents can use that money not just for tuition, but depending on the state, they could use it for homeschooling expenses, for tutoring expenses, and for a variety of other types of expenses, not just for tuition.

Federico Waitoller: Just to clarify, even those tax credits. So when the state forgives these tax owned by a particular company, that money will come from the same money that we're funding public schools.

Kevin Welner: It comes from the state budget.

And we might get to this later, but the impact of a voucher system on the state budget can be and frequently is indirect on the public school budget. Right. So the states, most states largest, I think all states largest expense is for public schooling.

And so when you have a hit on the state budget, it places stress on everything the state does. Roads, prisons, schools, et cetera. Higher education has taken a big hit.

So yes, those are all. And by the way, it's not just businesses. Depending on the state, it might be only businesses, only individual taxpayers or both who can donate to these nonprofits.

Federico Waitoller: Wow. So it's a not so simple context as one may think. There's many different ways and hidden ways to funnel those funds.

Sometimes I think for what you were saying, to try to provide more flexibility in the use of those funds.

Kevin Welner: Yeah. Again, the people who are advocating for voucher policies very successfully, I should add, they've grown quite a bit, tend to be coming from a strong free market orientation.

And another way of saying that is that they really don't like regulations, they don't like strings attached to the money.

So I'm not sure, Federico, where you were Born, I think it was in Europe. Is that right?

Federico Waitoller: New option. Argentina.

Kevin Welner: Argentina, Okay. I was gonna, I was going to make a Europe reference. So, so, so that transition wasn't very smooth.

Federico Waitoller: But I live in Spain right now. I'm reciting.

Kevin Welner: Okay. That's why I was associated. Okay. So the.

Throughout Europe, there are a lot of programs that look a little bit like our voucher programs. They have government payments to private, to fund private school educations, but those are much, much more highly regulated programs that we see in the US and there are a lot of reasons for that.

Some of them are deal with our, our First Amendment, our Constitution. But, but a lot of them are also political.

The way that these, I'll call them voucher like programs in Europe grew up arose out of a very different historical context than the free market advocacy that we see here in the US and by the way, we've been talking about vouchers here, generally specific to students with disabilities.

A lot of our voucher programs here in the US Started as targeted only toward eligibility for students, families with students with disabilities.

Currently, I count 14 states that have programs targeted for students with disabilities specifically.

Many of those same states also have one or more additional voucher programs that reach other groups. But, and the other thing I should add is that the.

Those voucher programs that started targeting students with disabilities, those states, it's not a coincidence that they also have other programs that reach a broader range of groups.

Students with disabilities, students who are attending schools that are lowly rated, students who are foster in the foster child system, students who.

I'm trying to think of the others. There are some, I think, that use students who are children of people in the military. But basically, the voucher programs often start with what are called poster children, children who are perceived as more in need of other alternatives or other resources.

And then once the foot is in the door, the programs expand.

So you start with a small program serving a targeted community, and then you move toward a universal or near universal program to make the voucher, excuse me, the taxpayer subsidies available to all families, regardless of wealth or need.

And we now have, and this is really just over the last five years, we've seen this explosion. We have 12 states that have these universal or near universal programs.

Federico Waitoller: Wow. So really they're benefiting or using students with disabilities as a great leverage to get the ball rolling and expand voucher programs in the state.

Kevin Welner: That would be the cynical and probably accurate interpretation of what's happened. Yeah.

Federico Waitoller: Let's get about the who of this. I mean, who are using this voucher, we talked this, like 14 states. I think what I counted was like 16 programs in 14 states, kind of with the availability.

Kevin Welner: Yeah, okay.

Federico Waitoller: Yeah, but who's using it?

There's been a lot of discussion, you know, people that are against vouchers saying only wealthy families are only able to use these vouchers. Other people says, no, there's a lot of minority families who are using these vouchers, even within the group of students with disabilities.

Kevin Welner: Well, the rules matter.

And every state has its own distinctive program.

So obviously, if you have a voucher program targeted with students with disabilities, towards students with disabilities, then students who do not have disabilities are not eligible to participate and the people using it would be students with disabilities.

The same thing with the other sorts of categories I mentioned. The most common limitation that you've that we've seen historically on voucher programs are income ceilings.

So usually phrased as within a given percentage of the federal poverty level or of more commonly, free and reduced lunch eligibility, those income limits are sometimes like three or four times the free and reduced lunch eligibility, which brings the eligibility well into the middle class.

But the way that what we've seen play out is that within any given group, so within 300% of free and reduced lunch eligibility within families who have students with disabilities, within any of those groups, what we see is that the people who are most likely to take advantage of the voucher are the people who are most efficacious.

So parents with more wealth, parents with more formal education, et cetera.

And that's not surprising, because in any sort of a marketplace that's, that's at all complex, knowing how to work the system to essentially out compete your competitors is the best predictor of who's going to get access to that opportunity.

So let me switch then a little bit in responding to your answer, to thinking not so much about these targeted programs, but about the dozen programs I just mentioned that are expanded.

Right. So universal or near universal, because we've seen in the last few years, we've seen some really important data come out about who's using those programs. And key part of that answer is that the expanded programs overwhelmingly benefit parents where students are already enrolled in private school.

So in Arizona, for example, 71% of students using their ESAs in 2003 were already enrolled in private or homeschool. In Arkansas, the percentage was even higher.

Ohio and Iowa, we have reported similar findings. Now, these numbers might, I think, drop a bit as the programs mature, but I think the trend is clear and I think it's important for a few reasons.

One is that it means that the voucher programs are indeed creating another entitlement program for the wealthy.

But it also means that the programs, and this gets back to something we were just talking about.

They're inflicting a pretty big hit on state budgets. Right. Even.

Even though voucher advocates originally sold the policies as a way to save states money, the argument was that the incentives would prompt students to move from public to private schools.

But that's not happening. So someone has to pay for these new subsidies and. Yeah, so that's, I think that's an important part of the story.

I'm sorry, just go ahead.

Federico Waitoller: No, no, go ahead.

Kevin Welner: Well, I was going to say it's not really surprising that the wealthier families are using the vouchers. As I said, there's an issue of parental efficacy, knowing how to work the system. But also if you're already paying tuition and the government offers you a subsidy, why wouldn't you be the first in line to take it? Right. And then another part of the story is that parents aren't the only ones doing the choosing.

Schools choose and the schools in order to be successful, a school has incentives to enroll students who have, well, who are fairly low cost to educate, which gets to issues about students with disabilities and also students who are less likely to be disruptive, students who are more likely to have rich opportunities to learn outside of school and so are going to do well in class, go to, to these top colleges, etc.

And that helps the private school to be successful.

And then finally, I think finally in most states, parent private schools can require parents to pay tuition above the amount of the voucher.

And that means that I should say that we're actually seeing clear evidence now in states with voucher policies where private schools have responded to the changed market created by the taxpayer subsidies by as you would expect, if we accept how market forces work by raising their tuition.

So this more demand, more cost, right? Yeah. I mean, why if, if I'm paying say \$9,000 in tuition to my private school and a voucher comes along giving \$8,000 in taxpayer money to the private school, the private school can then charge me, I don't know, three, \$4,000 on top of that \$8,000, I'm still in a better situation and the school has a lot more money.

So it's a market forces issue. And again, the vast majority of policies allow the private schools to pay tuition beyond the amount of the voucher.

I think with regard to students with disabilities, this is really, my last point on that question, with regard specifically to students with disabilities, I think there are two types of barriers.

One is the one I mentioned. The private schools have a choice. And a lot of private schools simply will not accept students with particular disabilities. At least then there's also the issue of access to appropriate personnel and resources and accommodations.

And if you're a parent of a student with disabilities and you're trying to do that parental efficacy I mentioned earlier and trying to research all the different schools and opportunities, one thing you're going to confront is that a lot of depending on the disability the child has, you're going to find that a lot of the private schools simply don't have the personnel and resources and accommodations for you to want to enroll your child in that school.

So that's an important barrier. As you know, the Council for Exceptional Children put out a position statement opposing all voucher programs, including those directed specifically to students with disabilities, because of these and other concerns about the private schools, but also because if you read the statement, because of what they're concerned about in terms of the long term harm to public schools that are going to continue to serve most students with disabilities.

Federico Waitoller: Yeah, absolutely. And that happens sometimes. It happens in this similar patterns. We see also charter schools, right, that may not be directly steering out with students, but they just don't have the services and parents goes there.

And of course the parents that are savvy and as you say, doing those parents that are doing the research and being what the market will call engage consumers, they're not going to send our kid there.

They're going to send them when they have the services.

Kevin Welner: And I should add that you and I have both written books on that exact topic. Charter schools and issues of access.

Federico Waitoller: Yeah, your books. I say School's Choice and you wrote it with momandi. Is that how you pronounce your name?

Kevin Welner: Yes, yes, yes. And your book is excluded by choice.

Federico Waitoller: Yeah, yeah, yeah.

Kevin Welner: Excellent book. That really, really helps to understand the interplay between racial barriers and disability barriers and class barriers in the context again of charter schools.

Federico Waitoller: Thank you for that.

Kevin Welner: Chicago, right?

Federico Waitoller: Yeah, yeah, yeah. That was predettos. That was in Chicago. Yeah, thank you for that.

You know, one of the things, you know, I've been looking at the different arguments, you know, in favor of vouchers and there were some that are, that were very interesting to me.

One was that idea provides incentives to over identify students with disabilities. And if we have vouchers, that identification is going to come down. And there are some studies that I've seen there is at least one that looked at that with the Florida program looking at.

Indeed, with the avenue vouchers, there is less identification of students with disabilities in public schools. Do you know anything about that or do you have some opinion form around that?

Kevin Welner: So if I'm understanding correctly, I think part of the answer is that the way we identify students with disabilities in public schools is governed by overwhelmingly by idea, the Individuals with Disabilities Education Act.

And IDEA does not apply to private schools, including private schools that accept public subsidies, which is, I think an important issue we should discuss because I think that is a huge issue if we're talking about the interplay between vouchers and students with disabilities.

But the issue of.

And this, I think this overlaps with what I was just discussing in terms of whether the services are available in a given private school. So if I have a child enrolled in public school and the child has an IEP and I take that IEP with me to enroll the child in a private school, depending on the private school, they might be interested in reading it, but they certainly don't have to comply with.

Federico Waitoller: Yeah, yeah.

Kevin Welner: So identifying. Yeah. So the issue of whether a child is identified as having a disability in a private school, there's no. The formal mechanism that we think of when we talk about that is gone.

Federico Waitoller: Yeah, yeah. If a parent unilateral move their kid to a private school. Sorry. The only way to get fully identified is ask the district to identification and there is some basic service that they could serve as part of the responsibility of the district.

Kevin Welner: Services. Yes.

Federico Waitoller: Yeah. Yeah.

Kevin Welner: Yes. So you can, you can ask, you can demand the local school district assess your child and provide equitable services if the child has a disability and your child is enrolled in.

In a private school, or as you point out, you might not.

Those numbers go way down because the way IDEA applies, it doesn't apply directly to the private school. You still have some protections as a parent or some access to resources as a parent if your child is going to private school.

But it's not a demand you can make of the private school itself.

Federico Waitoller: Yeah, no. And that's very important to clarify. Once you are in a private school, IDEA doesn't apply to you. So you are not, you don't have the right of faith. The free appropriate education, the least restrictive environment, an individual educational plan, procedural safeguards, all those things are gone.

Once you choose to go to a private school, you have some protections under 504.

And if, if the schools receive federal funding, which with the vouchers, there's also discussions that.

Well, you know, I know there was a case in Arizona, if I'm not mistaken, where they say, well, it's not the state who's funneling the funds to schools, but it's the parent through the Educational Savings account using that.

So 544. That's not applied either.

Kevin Welner: I did not know about that. That doesn't surprise me, but I wasn't aware of that case.

Federico Waitoller: And the other one is ADA would be the most broader policy, but it doesn't apply to religious schools that now are part also the voucher program.

Kevin Welner: Yes. So. So here it gets a little complicated, but I think it's important to, to walk through.

Federico Waitoller: Yeah.

Kevin Welner: So private schools that receive federal funding are covered by Section 504 of the Rehabilitation act, but the application to private schools is different than to public schools. Private schools are only required to make minor adjustments, whatever that means.

Even private schools that do not receive any federal funding are covered by Title 3 of the ADA, the Americans with Disabilities act, unless, as you say, they fall under an exception for schools controlled by religious entities.

Yeah, so, yes, it's. And as we mentioned, IDEA doesn't apply to the school. It still has some protections for parents with regard to equitable services.

So there is a. Yeah, it's, it gets complicated.

Federico Waitoller: Yeah. Yeah. And there's, there's a lot of concerns with that because one of the things we're finding through, through the research is that those, those changes or those waivers are not very well communicated to parents sometimes, and they're not even in the legislature or the

information that parents are getting of how much they're losing if they're moving into a voucher program.

Kevin Welner: Yes, it depends on the state. It depends on the program. Like the new legislation introduced in Texas, it's called SB2, does include a provision about making sure parents are aware. But, but again, it depends on every. Whenever within the US as opposed to Spain or probably Argentina.

The, the rules for these policies are. We could talk about sort of in, we could use a broad brush and talk in broad terms about what a voucher policy is and what it entails.

But really, every state's policy is a little bit different. Same thing with charter schools. Right. So. And really the same thing with, with any, you know, if we move outside of education, if we're talking about, you know, higher education, for example, or roads or prisons. Every, every state has its own set of laws.

And so, yes, it's, it's important to recognize there are differences. And when we, when we speak about these, these research Findings we're also trying to generalize as best we can.

Yeah, but. But every state's going to be different.

Federico Waitoller: Yeah, maybe state specific. Absolutely. You know, one may say, you know, who cares if they don't have, they don't have all these legal protections if they are happy with the school and they have good educational outcomes?

Right. So what do we know about the educational outcomes or the experiences of parents that are using these voucher schools?

Kevin Welner: So the vast majority of voucher programs are and have been designed to be opaque regarding results, regarding academic results, regarding who's using them, all the things that researchers tend to care about.

The data are not either not collected or not made available in most voucher programs.

According to a 2018 federal government study, there is no publicly available data that allow us to examine how well private schools are in voucher programs, are serving students with disabilities specifically.

That said, we do now have some very clear evidence about how well private schools are doing in these voucher programs, and it's not good.

Several of the larger expanded programs were researched in quick succession.

Studies came out between like 2016 to 2019.

The studies focused on four programs, one in Washington D.C. one in Louisiana, one in Indiana, and one in Ohio.

And while the results from DC Started negative and ended up largely awash, the results from the other three were devastating, showing dramatically negative academic incomes. Actually academic incomes, academic results for, for mathematics learning among voucher recipients.

The results for reading also tended to be negative. But. But nothing startling. Like with, with the mathematics learning for Louisiana and Ohio. The negative results were comparable to the impact of like Katrina and Covid.

I mean, just devastating results.

There have been attempts by voucher advocates to say, well, that's not, that doesn't apply to ESAs, those were conventional programs, or that doesn't apply outside Louisiana because Louisiana had too many demands placed on schools to issue tests and schools didn't good schools didn't want to participate or I mean, all sorts of what I would call excuse making and trying to move the goalposts about, about the results.

But there's no question the results were very, very troubling.

Wow.

So it, it's large. You still do see some advocates making the, you know, we need to help these students have better academic opportunities argument. But it's, but for the most part that, that part of the advocacy argument has, has disappeared because the results are just so bad.

Federico Waitoller: So what are the strongest advocacy arguments if it's not outcomes, it's more about funding, about addressing funding issues in the state.

Kevin Welner: Well, as I mentioned, the funding is Not a good selling point either. Although it's interesting you raised that because that did used to be the argument.

ProPublica published a detailed article this past July titled School vouchers were supposed to save taxpayer money. Instead they blew a massive hole in Arizona's budget.

And it's not just Arizona, as I mentioned earlier.

Other states have this pattern of who's taking up the vouchers. Right. So it tends to be families, for example, who already are sending their kids to public, to private school.

If, if the state takes on the tuition payments for families sending their kids to private school, that's a whole new entitlement. Right. That's a whole new part of the budget.

And so what we saw in Florida was I think it was a. \$4 billion. No, 4 billion. Yeah, \$4 billion.

Just slightly. I think it was 3.9 billion for the 24, 25 school year.

That's not the hole in the budget, that's the, you know, estimated cost of the program. Yeah, in Arizona it was a billion dollars. Just maybe just short of a billion dollars.

Obviously a smaller state, but the governor of Arizona said they require that it's going to require budget cuts to other important, you know, the massive hole in the budget has to somewhere that when you're balancing the budget it's going to require cuts elsewhere.

So with regard to the impact of vouchers on funding, we really have two types of data. We have those new numbers about the impact on state budgets. And it's not just Arizona by the way, where the numbers came in much higher.

Florida and other states, they said oh no, this isn't going to cost anywhere near that amount. And then the numbers started coming in.

So with regard, that's, that's one type of data the state budgets overall. The other is trying to figure out the impact on public school budgets. In particular, there was a report put out by Public Funds Public Schools which is part of Education Law center, which I should add on chair of the board of trustees.

So I, you know, take the full disclosure.

Yeah, Public Funds Public Schools put out a report.

I want to say it was less than two years ago.

Sam Abrams was the lead author and it, it documents the correlation between massive increases in public spending on voucher programs.

They looked at Arizona and Florida as well as five other states with the largest long standing voucher programs.

So they looked at the, they document the correlation between those budget increases, those increase, the increased spending on voucher programs in those states and a decrease in the portion of those states GDP going to Public school going to public education.

And they found that that correlation, even though public school enrollment in the states generally decreased, and they found that in six of those seven states, the per pupil spending in public schools was substantially reduced or frozen after adjusting for inflation.

And meanwhile, over the same period, if you look across other states, the 43 other states, per pupil funding increased almost 11% nationally.

And so the conclusion that those researchers reached was that this, you know, the, the hit on the broader budgets was indirectly or, you know, somewhat directly hitting the public school budgets in particular.

Wow. There's another tool that your listeners might find useful. It's from the Economic Policy Institute and it was released only a month ago.

It's a calculator that you could, you can go to their website and I could give you that to add.

Federico Waitoller: Yeah, we'll put it on the, on the link with the show.

Kevin Welner: It allows anyone to estimate the cost of a voucher program to a given public school district.

Focusing on the, on the issue that of declining revenue from declining enrollment. So it's a very direct way of thinking about if you are, and this is particularly important, I think, in smaller communities that have only one or two or three schools available.

If you're, you know, in a large urban or suburban area with lots of schools available, it might not be quite as important.

But if you have a, say, a single school and you, and you're losing 20, 30% of the enrollment, you still have to maintain the building, you still have to pay teachers, et cetera, et cetera, and you end up with a real tight, difficult set of decisions about where to spend the remaining money that you have.

And it hurts the education, the argument is that hurts the education of the students who do remain in the school.

Federico Waitoller: Yeah, so, so I'm here for you. Is like educational outcomes not so good so far? At least for what we know. There's not a funding reason either. So what are the main remaining arguments to push for this legislation?

Kevin Welner: Well, I mentioned that, that the Maya advocates of vouchers are strong advocates of free market or deregulated programs. And I think that when you boil, when you boil it down, there are, there's that reason and the religion reason.

And so the, that reason is simply we don't want, we don't like government, we don't like government bureaucracy, we don't like the regulations attached to government money. And we want to free up the

free market to give parents choice and to give innovators freedom to experiment within that marketplace.

And parents decisions will then drive improvement. Right.

It's the Argument, We. We see to some extent with charter schools, and we see with pretty much everything in society. Right. Everything from airline deregulation to bank deregulation, et cetera. Right.

The religious.

The religious issue is pretty straightforward. Right.

The establishment clause has been interpreted up to now to not allow public schools to have religious instruction and proselytizing.

And if we shift the money to fund taxpayer money to fund private schools, that means that the actions of the school are not attributable to the government in the same way.

And so the schools can engage in religious instruction.

And so if you're a family who wants your child to where it's extremely important for your child to have religious instruction in school, public schools then cannot serve that purpose.

And that means you can't benefit from taxpayer subsidies in the same way. Without a voucher plan, you can't benefit from taxpayer subsidies in the same way that a less religious family could.

Federico Waitoller: Well, the Supreme Court is about to hear a case for religious charter schools, if I'm not mistaken, too.

Kevin Welner: Yes. That's the St. Isidore case out of Oklahoma that was announced just last week. Yeah. And we could discuss that. I think it's.

Federico Waitoller: Yeah.

Kevin Welner: It's important to understand what's going on in that realm as part of this. This larger story.

Federico Waitoller: Yeah. Because that. I mean, that's. That's playing within this narrative. Right. Of adding religious schools to the repertoire of school choices.

Kevin Welner: Yeah. So until 2020, there was a case from the supreme court called Espinosa vs. Montana Department of Education that the supreme court decided in 2020.

Before then, it was.

We had voucher programs around the country. Not a lot of them, but we had some that only provided the voucher to a school that provided a secular education, basically excluding religious private schools.

And the Supreme Court in Espinosa held that a private school cannot be excluded from a voucher program because of its religious status. To exclude the private school or a private school run by a church from any government program just because of its religious status is considered by the Supreme Court to be a discriminatory violation of the First Amendment's free exercise clause.

And then a couple years later, we had this case out of Maine that I obliquely referenced earlier. It's called Carson v. Macon. But he dealt with the tuition, the town tuitioning program there, and a very similar issue, but it focused not so much on religious status status, but the question of whether the state could exclude a school.

The state allowed schools to be run by churches, but still required a secular education. And again, the court said, no, that's a violation of the free exercise clause.

So now we have this case out of Oklahoma. It's a virtual charter school called St. Isidore, run by the, that would be run by the Catholic Church there.

Um, and it would be, you know, according to their, their application and according to the arguments they're making in court, they want this to be an expressly religious charter school.

So proselytizing curriculum, everything would be tied to the beliefs, the Catholic beliefs. And the school also is essentially reserving its right to, to engage in a faith based discrimination.

Yeah. And so the Supreme Court just took up that case. The state Supreme Court in Oklahoma struck down the, the, found that. Found the, the, the granting of that charter to be a violation of the state's charter school law as well as the state's constitution, essentially a separation of church and state provision in the state constitution.

And the U.S. supreme Court is going to look at that case primarily through the same lens or asking the same questions that it did in the case out of Montana and the case out of Maine.

Most people who watch the Supreme Court think that it's, it's very likely that they're going to require all charter school laws throughout the country to essentially become a type of voucher law.

In other words, to require the charter schools to require the charter granting organizations. So school districts, the state, whoever it is, to require the school districts and other charter granting organizations to allow religious institutions to apply for and receive charters and to then run the schools as religious schools.

Federico Waitoller: A follow up question I have with that because I think one of the things that the show strive to do also is not just to talk about students with disabilities, but within the group of students with disabilities look at issues of racial disparities or other forms of heterogeneity within the group.

One of the things that I see with this is, for example, that LGBTQ students with disabilities may face discrimination because of this new trend on opening religious schools.

Kevin Welner: Yes. And I, and I think that it's not just religious schools, of course, that discriminate against LGBTQ kids. But yes, that, that is a, a very real possibility. The other group that I think is most likely to be swept into that intersectionality would be children in immigrant families, particularly children whose first language isn't English.

The issues I raised with regard to students with disabilities about having the personnel and resources at would also apply, I think, to students whose first language is not English.

Federico Waitoller: Yeah. And they don't have the same protection, not the same services. Right. In private schools, they're not required to provide.

Kevin Welner: They're not required to provide the services. They aren't even required to accept the student.

Federico Waitoller: Yeah. Yeah. No, that's interesting. Intersection of LGBTQ English language learners, but also of racial minorities. I think so too. Because what we're seeing is that, and we discussed before is like the mostly within the group of students with disabilities, it seems that the profile of families that are mostly the beneficiaries of this are middle, higher income, white families of students with disabilities.

Kevin Welner: I mean, the simple answer is yes. And I think it's because of a lot of things, including the very high correlation in the US between wealth and wealth, class income and race and ethnicity.

Federico Waitoller: Yeah. So, you know, we've been talking about all these issues, you know, and we have a few questions, but I think one important one is about accountability.

What are the accountability procedures or policies that are there to keep schools that receive vouchers accountable?

Kevin Welner: Well, as I mentioned, the policies are inherently deregulatory. Right. They're promoted and designed by those who think an unregulated free market will yield the best outcomes.

So there's very little transparency or accountability.

Instead, the choices of families are supposed to hold the schools accountable.

Responding I should.

I'm trying to think of how to phrase this, but I think responding to market incentives, if you're talking about the private schools here, responding to market incentives really often means avoiding a school students, avoiding students who will yield lower test scores or more classroom disruptions and who will cost more to educate.

So that that unregulated market does create incentives, but they aren't necessarily incentives that are going to help families with disabilities.

Federico Waitoller: Yeah.

Kevin Welner: And I should add that in that sort of market, even when market forces or other forces shut down a bad actor's private school, that person or company can open up a new one and again take the taxpayer money through vouchers.

So, yes, we've seen what I was discussing earlier about the difficulty that some parents of students with disabilities have in finding a private school.

There was a study, the final official evaluation 2010 of the Washington, D.C. voucher program found that a main reason why students didn't use the voucher offered to them in D.C.

was that they were unable to find a participating school with services for their student disability.

In fact, 22% of parents who rejected a voucher in D.C.

that had been offered for their child didn't sell because the school lacked special special needs services for their child.

And I think it was all it was 12% of parents who accepted the voucher then left the program citing 12% of those who then left the program cited that of the lack of disability services at the school as the reason.

Federico Waitoller: Yeah. And I've seen another study I think was from 2016 or 17 finding that actually specialty schools are not enrolling in vouching programs. Schools that specialize in particular students or in particular subject areas, they're not enrolling.

What we have is more like a generalized school that are much more general. Right.

Kevin Welner: Yeah. Yeah. It's tough. There are trade offs a policymaker has to make because I mentioned the issue of what's called topping off or requiring parents to pay more beyond the amount of the voucher.

If you do that, you can get more schools to participate if you allow. If a school serving students with autism charges \$30,000 a year and the voucher is \$10,000, the parent then is on the hook for the 20,000.

But at least the school participates. Right. That's one argument. The school wouldn't participate if it were capped at the 10,000.

Federico Waitoller: Yeah. And probably for what you were saying before, if they open those kind of programs, probably the ones who are going to use them are the ones who already enroll on those schools, I imagine, or they're not enrolled privately in public schools because I mean, those schools are pretty expensive.

And I don't think a voucher program will go a long way providing the full tuition for a specialized school.

So, you know, I close usually with kind of the same similar question to all our interviewees.

And I know this is what I'm going to ask is kind of hard particular in these times, but I want you thinking about within the next five years, what would you like to see regarding equity and inclusion regarding students with disabilities?

You can think about voucher programs or in general. And I know that these four years may be particularly hard to dream in the current circumstances.

Kevin Welner: Yeah. With that qualification.

I think that because we're talking about not just private schools, but private schools receiving vouchers and we mentioned that the protections of IDEA don't apply to private schools. And we've discussed 504 and ADA, and we discussed other issues of discrimination.

There is absolutely nothing that says that a state's voucher program cannot attach those strings to the public money the same way the federal government does with idea. Right. So extension of protections to students attending any school that accepts taxpayer funding.

Again, I'm dreaming here. I don't. I think the problem is that the states that are most likely to consider that seriously are not the states adopting. Adopting the voucher programs in the first place.

There's A, there's not a very good Venn diagram there.

So, so with that qualification and with your qualification, I think that that is something for, for us all to think about in terms of why we're not requiring these protections to follow the money and follow the student to a private school.

The same way that European systems generally require their publicly funded private schools to comply with most of the same rules that their government run, government run, publicly funded schools are.

I would also add, and this gets, this is much broader. Years ago I wrote a, a law review piece with Dan Lawson. Do you know Dan?

Federico Waitoller: Yeah, yeah, yeah, yeah. He was in our show, let's say our artist. He was in our show like three, four episodes ago. We talk about disciplinary issues. Yeah.

Kevin Welner: Ah, okay, there you go. Well, I mean this goes back well over a decade, probably closer to two decades.

But he and I were looking at the IDEA protections in particular or lawsuits in general that were enforcing individual parents rights under IDEA, mainly under IDEA, sometimes under 504.

And you might have seen this is going to be a little bit circular, but I know when we wrote our School's Choice Access Charter School Access book, we came across situations where we spoke to advocates for parents with students with disabilities who said that when a charter school failed to comply with the law, they would contact that charter school as their, as the attorney and the charter school would almost immediately back down for that individual child and then would continue the practice and get another complaint the next year from another parent.

Right. The school is still engaging in the same behavior.

And that's not just charter schools.

There are bad actor schools in every sector.

And what I would like to see, and what Dan and I advocated in that article is for idea itself to be, and in section 504, I guess to be amended in a way that allows for protection of group rights.

So it's not just individual parent advocating for that parent's child, but mechanisms available to try to use these lawsuits to change behavior more broadly.

Federico Waitoller: Yeah, that's fascinating. I mean, because one of the things that you say that is very important that happens in regular public schools, charter schools, and vouch for is that the burden is always on the parent.

I mean the protections are there, the legislations are there, but if you don't have the resources, the time, the understanding, you're not going to be able to benefit from those because schools may not be able to comply with those.

And if you don't complain, nothing's going to happen. Right. It's always important.

Kevin Welner: And, and again, the parents who are most likely to be able to advocate for their kids are generally not the parents of kids who, who really need, need those. I mean every, every child needs resources.

But, but if you're going to try to try, try to rank them, kids who have parents who are going to be able to file those lawsuits are much more likely to be getting rich opportunities to learn in other ways in their life.

Federico Waitoller: No, that's totally true. I mean there's such a huge racial class disparities in terms of who can sue and who can raise concerns to schools. And we see that in all the legislation, for example on unilateral placement.

You mean you see the Andrew case or the prior cases that have shaped how students with disabilities unilateral place students, most of them did not come from low income families.

But yeah, that's a whole another episode. But I wanted to thank you Kevin for being here with us.

Kevin Welner: Thank you Federico. I'm speaking with you.

Federico Waitoller: Yeah, take care.

Thank you for listening to Dive in, a podcast about equity diversity and inclusion in special education research. This episode was produced by me, Federico Waitoller. We contributions of Tasia Gonzalez, Kelly Carrero and Haya Abdelatif.

I hope you enjoyed the episode and learned as much as I did. Take care and I see you next time.