The Council of Parent Attorneys and Advocates, Inc.
Protecting Rights. Creating Opportunities. Changing Lives

November 16, 2026

Kevin Salinger
Acting Assistant Secretary for Tax Policy
U.S. Department of the Treasury
Washington, DC 20220

RE: IRS and REG-117199-25

Dear Acting Assistant Secretary Salinger:

As a leading authority on special education law and policy and a preeminent voice for our nation's children with disabilities and their families, the Council of Parent Attorneys and Advocates (COPAA) writes to comment on the U.S. Department of the Treasury (Treasury) temporary regulations and the proposed regulations, titled "Federal Scholarship Tax Credit (FSTC or voucher program)." We also preemptively wrote to the Treasury with advocacy partners on November 6, 2026, to highlight significant clarifications that should be explicitly addressed in the forthcoming guidance.[1]

For more than a decade, COPAA has researched, analyzed, reported, and advocated about the impact of vouchers and similar programs on educational access and opportunity for students with disabilities.[2] Given what we know about the disproportionately negative effects of these programs on students with disabilities, we oppose the FSTC. However, because the program is moving forward, we submit these comments to delineate and underscore the key provisions that raise our deepest concerns and to request that Treasury address them in regulation and guidance.

Outline of Key Concerns and Recommendations

I. Flawed Safe Harbors: Program Creates Ambiguity with Use of Vague and Undefined Terms "Special Needs Services" and "Special Needs Beneficiary"

The Federal statute (25F) and regulations (§1.25F-3(c)(6)) cross-reference "special needs services" as an eligible expense under the FSTC. Further, Treasury has included a specialized safe harbor allowing Scholarship Granting Organizations (SGOs) to direct awards for academic tutoring or for "special needs services." The regulations clarify qualifying students are those attending schools

[1] See: Letter to Salinger, (November 6, 2026), https://cdn.ymaws.com/www.copaa.org/resource/collection/FB227BDB-B917-408A-9993-E58A6F069478/Treasury_FSTC_Guidance_Letter_on_Special_Education.pdf

[2] *Private School Choice Programs Is There a Seat for Students with Disabilities?* (2025), COPAA, https://cdn.ymaws.com/www.copaa.org/resource/resmgr/pdf/2026-01-24_private_school_.pdf, and, *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice* (2016), COPAA, https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/Policy_Docs/COPAA_Voucher_paper_final_R6.pdf

located in low-income areas where 80% of students reside in low-income areas (as defined by the U.S. Department of Housing and Urban Development).[3]

COPAA urges Treasury to clarify the following for SGOs and schools: that any use of FSTC funds for "special needs services" must not interfere or conflict with a K-12 student's eligibility for or access to early intervention, services, supports, accommodations or other related services as required to be provided by a school district under the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), or Section 504 of the Rehabilitation Act of 1973 (504). No provision of the FSTC or use of the funds therein should differ or contradict the Federal requirement that States are responsible for ensuring that districts conduct Child Find to identify students with disabilities, provide students with disabilities a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE), and ensure every eligible child receives the services outlined in their Individualized Education Program (IEP) or 504 plan.

The ambiguity of the undefined term "special needs services" and its opaque use in tax code (26 U.S.C. §530–aka Coverdell) raises questions that we believe an SGO will be unprepared to address if Treasury does not act. Specifically, it is concerning that Coverdell's definition only notes,

> "qualified elementary and secondary education expenses" means— (i) expenses for tuition, fees, academic tutoring, special needs services in the case of a special needs beneficiary, books, supplies, and other equipment which are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school student at a public, private, or religious school special needs beneficiary, books, supplies, and other equipment…[4]

It is also troubling that if the Treasury wants the term "special needs services" to be interpreted in the FSTC consistent with Coverdell, then why is the regulation silent on the definition and who is eligible to be considered for these services?

Given what's at stake for millions of students with disabilities who may qualify to receive FSTC awards, it is unsatisfactory that Treasury has consistently failed to issue regulations that answer these two questions: 1) who a "special needs beneficiary" is, and 2) what are "special needs services"? There is ample precedent and support for the Treasury to do so. To that point, and to guide taxpayers and tax preparers in determining who qualifies to receive "special needs services" and who "special needs beneficiaries" are, the Internal Revenue Service (IRS) continues to point to Coverdell[5] and relies upon a joint agreement when that program was placed in the law where the Congressional Committee said, "The conferees intend that Treasury regulations will define a special needs beneficiary to include an individual who because of a physical, mental, or emotional condition (including learning disability) requires additional time to complete his or her education."[6]

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[3] See: A Proposed Rule, Federal Scholarship Tax Credit, (October 2026), §1.25F-3(c)(6) and §1.25F-3(c)(6)(iii)(C), https://www.federalregister.gov/documents/2026/10/02/2026-20277/federal-scholarship-tax-credit

[4] See: 26 U.S.C. §530(b)(3)(A), https://www.govinfo.gov/content/pkg/USCODE-2024-title26/pdf/USCODE-2024-title26-subtitleA-chap1-subchapF-partVIII-sec530.pdf

[5] See: *Topic no. 310, Coverdell education savings accounts*, Internal Revenue Service, https://www.irs.gov/taxtopics/tc310, and *Publication 970 Tax Benefits for Education for use in preparing 2025 Returns*, Internal Revenue Service, (2025), https://www.irs.gov/pub/irs-pdf/p970.pdf

[6] See: H.R. Conf. Rep. No. 107-84, at 169–170 (2001), https://www.congress.gov/committee-report/107th-congress/house-report/84/1

COPAA and allies are gravely concerned about the confusion the FSTC will cause for parents of children with disabilities as public school districts and education service providers (e.g., tutoring, digital/education technology, other) scramble to provide services to K-12 students. One of parents said it this way:

> "My son with Down syndrome receives many supports and services for free under an Individualized Education Program (IEP) that we carefully negotiated with his neighborhood public school. He has an assistive technology device, hearing aids, a touch screen Chromebook, related services, a 1:1 paraeducator in school and during after-school sports, and Extended School Year programming. In order for public schools to take advantage of the scholarship money they will have to start charging parents a fee for services or activities that the scholarship money covers. Because the regulation makes just a mere reference to another part of the tax code that loosely defines allowable expenses for special needs services as 'supplemental,' the new regulation exposes my child and millions of others to great risk." -parent, Colorado

COPAA believes that the rollout of this massive K-12 experiment that may touch the educational lives of millions of Americans absolutely demands that Treasury define these terms consistent with 25F and the prior law to which it is hinged.

Recommendations:

- Amend §1.25F-1
  - Define the term "special needs beneficiary."
  - Define the term "special needs services."
- Provide clarifying guidance to reinforce that any "special needs services" provided to a "special needs beneficiary" are supplemental and not connected in any way to those a student may access through IDEA or 504.

To ensure that SGOs and all potential K-12 students (beneficiaries) are provided with accurate information about who may qualify for an award, Treasury must do the following:

1. Define the term "special needs beneficiary" consistent with Congress' intent.[7] The definition is:

   > Special Needs Beneficiary: an individual who, because of a physical, mental, or emotional condition (including learning disability) requires additional time to complete his or her education.

   It should be clear that the definitions of "Special Needs Beneficiary" and "Special Needs Services" are not in conflict and both encompass applicable Federal or State laws including the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq), Section 504 of the Rehabilitation Act (29 U.S.C. §794), or other applicable laws.

[7] See: H.R. Conf. Rep. No. 107-84, at 169–170 (2001)

2. Define the term "special needs services" consistent with tax law[8], education law[9],[10] and aligned with Congressional intent.[11] The definition is:

> Special Needs Services: (A) The term is consistent with the term 'qualified elementary and secondary expenses.' (B) Special needs services are not services to which a student is entitled nor should they interfere with those provided under applicable Federal or State laws including the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq), Section 504 of the Rehabilitation Act (29 U.S.C. §794), or other applicable laws.

It should be clear that the definitions of "Special Needs Beneficiary" and "Special Needs Services" are not in conflict and both encompass applicable Federal or State laws including the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq), Section 504 of the Rehabilitation Act (29 U.S.C. §794), or other applicable laws.

3. Provide guidance clarifying that directs SGOs to ensure that any award provided for "special needs beneficiaries" who qualify for "special needs services" must not interfere with a child's access to FAPE in the LRE as required under IDEA and 504.

4. Reinforce in both regulation and guidance that States are responsible for ensuring that districts conduct Child Find to identify students with disabilities, provide students with disabilities a FAPE in the LRE, and have access to the early intervention, services, supports, accommodations or other related services as required in the student's Individualized Education Program (IEP) or 504 plan, consistent with IDEA and Section 504.

II. Access & Equity: Program Eliminates Civil and Educational Rights for Students with Disabilities

While the FSTC is presented as giving families more choices, the reality for some students is that few choices actually exist because most private schools will not admit students with disabilities and actively discriminate against them. Parents may also struggle to find tutors or supplementary service providers who will accept students with disabilities and are caught unaware when services are reduced or fees apply.

Most troubling is that by design, the FSTC delegates decisions directly to private, unregulated Scholarship Granting Organizations (SGO) while stripping States of their ability to develop and enforce local protections, create mechanisms for public accountability, or provide civil rights oversight.[12]

Our research in State-funded voucher and Educational Savings Accounts (ESA) programs indicates that:

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[8] 26 U.S.C. §530(b)(3)(A), https://www.govinfo.gov/content/pkg/USCODE-2024-title26/pdf/USCODE-2024-title26-subtitleA-chap1-subchapF-partVIII-sec530.pdf

[9] *Questions and Answers on Serving Children with Disabilities Place by Their Parents in Private Schools*, (rev. 2022), U.S. Department of Education, https://sites.ed.gov/idea/files/qa-parentally-placed-private-schools-12-2020.pdf

[10] See: 20 U.S.C. §1400 et seq. and 29 U.S.C. §794

[11] See: H.R. Conf. Rep. No. 107-84, at 169–170 (2001)

[12] See: A Proposed Rule, Federal Scholarship Tax Credit, (October 2026), §1.25F-5(e)(2) https://www.federalregister.gov/documents/2026/10/02/2026-20277/federal-scholarship-tax-credit

- Depending on where a family lives and the nature of their child's disability, they may have few or no options for their child to attend a private school.
- Schools often deny admission, counsel out, or expel students on the basis of their disability.
- Families too often are drawn to a private school believing all of the child's services provided by a school district under IDEA will also be honored by the new private school when, in fact, only a subset of services, or no services at all, may be offered.
- The extra hidden costs of attending a private school can also surprise parents when they are required to pay out of pocket for school activity fees, transportation, meals, assistive technology/technology, or educational programming that school districts may provide to a child with a disability as part of their IEP.
- The FSTC will embolden and support private and religious schools that are known to robustly discriminate against families whose children have overlapping identities including the significance of their disability, zip code, race or ethnicity, and/or LGBTQ+ status.[13]

Finally, as we noted in our example, too many families whose children have intellectual disabilities, health or behavior disorders, or other complex needs are often not eligible for any of the services the FSTC promises to provide. Where is the access to choice in that?

We know that a small percentage of students with disabilities use State-funded voucher-like programs[14] and typically understand that they may lose their rights under IDEA or have access to limited services with their use. What we are most concerned about are the families who enter into these arrangements *without realizing they are sacrificing fundamental legal protections that come through IDEA and 504*[15] and that the program provides no protections against discrimination of students.[16]

It is alarming that the Treasury has provided implementing and proposed regulations designed to promote an outright loss of civil and educational rights that also prohibit States from monitoring the uses of funds to prevent fraud, to create accountability measures for student outcomes, and most importantly to protect students from systemic inequity that will leave students with disabilities vulnerable to losing services. Millions of students with disabilities are being placed at significant risk of losing access to an enforceable IEP, to the guarantee of FAPE, and to important procedural safeguards guaranteed by IDEA.

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[13] *Private School Choice Programs Is There a Seat for Students with Disabilities?* (2026), COPAA, https://cdn.ymaws.com/www.copaa.org/resource/resmgr/pdf/2026-01-24_private_school_.pdf

[14] Ibid. (pg. 4)...Among private choice programs that target students with disabilities, nine states offered 12 different programs in 2024-25, serving 135,025 participants. Participation rates among those students eligible under their state program rules hover around 2 percent in most states, with Florida being a clear outlier, with more than 1 in 4 eligible students participating in their program. Similarly, among states with programs open to all student populations, participation rates among students with disabilities generally lag those of non-disabled students, with the exception of Arizona, where 19 percent of all awards were made to students with disabilities in 2025, despite making up approximately 15 percent of the overall student population. https://cdn.ymaws.com/www.copaa.org/resource/resmgr/pdf/2026-01-24_private_school_.pdf

[15] Ibid. and *Parents of students with disabilities find private school vouchers come with a catch, Federal protections for students in special education don't apply to private schools, but parents aren't always informed,* (Stetler, September, 2026), Hechinger Report, https://hechingerreport.org/parents-of-students-with-disabilities-find-private-school-vouchers-come-with-a-catch/

[16] *A Proposed Rule, Federal Scholarship Tax Credit,* (October 2026) §1.25F-3, https://www.federalregister.gov/documents/2026/10/02/2026-20277/federal-scholarship-tax-credit

Although the regulation briefly notes that "[n]othing in section 25F or these proposed regulations would alter States' obligations to comply with all other applicable Federal and State law, for example, the requirements under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.,"[17] this statement is poorly positioned within the text. Accordingly, COPAA believes it fails to go far enough to fully inform and protect millions of students with disabilities.

Because the regulations prohibit States from establishing any measures to monitor SGOs (and how funds are awarded and used by its K-12 population), COPAA is quite concerned about the inherent conflict the regulations create in the case that a family may use FSTC funds to leave a public school only to find their child's IEP will not be upheld or there is a reduction in needed services and supports. Therefore, we make the following recommendations that we believe will help families make the best-informed choice for their child.

Recommendations: Provide guidance clarifying to:

- Direct SGOs to ensure that any award provided for "special needs beneficiaries" who qualify for "special needs services" must not interfere with a child's access to FAPE in the LRE as required under IDEA and 504.
- Reinforce that States are responsible for ensuring that districts conduct Child Find to identify students with disabilities, provide students with disabilities a FAPE in the LRE, and have access to the early intervention, services, supports, accommodations, or other related services, as required in the student's Individualized Education Program (IEP) or 504 plan, consistent with IDEA and Section 504.

III. Fiscal Threat: Program Drains Resources from State and Public School District Budgets

With more than 95 percent of students with disabilities attending a publicly funded school[18], we wish to raise our concerns about the impacts of the FSTC on State and school district budgets. Our research and that of others has documented that in States with expansive state-funded private choice systems (such as Arizona and Florida), declining public school enrollment directly tied to private choice expansion has led to budget shortfalls and school closures. There are also widespread reports of misuse and abuse of funds with no accountability for student progress and/or known uses of public funds.[19] These programs are known to undermine the local educational infrastructure relied upon by more than 90% of the nation's students.

Recommendation: Establish clear guardrails in §1.25F-3(c)(5) to reinforce current federal laws—specifically that FSTC funds are supplementary and that no FSTC funds received by a State Education Agency or a Local Education Agency may be used to supplant[20] federal education funds. Additionally, require mandatory audits of SGO fund usage to verify compliance and prevent the misuse of funds.

COPAA is deeply concerned that if public school districts become eligible to receive or utilize FSTC funds, that in addition to causing confusion regarding how those funds are intended to be used in support of students with disabilities in those schools, there is the potential of

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[17] Ibid. E. State Administrative Requirements

[18] *Annual Report and Information, Students with Disabilities*, (May 2024), National Center for Education Statistics, U.S. Department of Education, https://nces.ed.gov/programs/coe/indicator/cgg/students-with-disabilities

[19] *Private School Choice Programs Is There a Seat for Students with Disabilities?* (2026), Council of Parent Attorneys and Advocates, https://cdn.ymaws.com/www.copaa.org/resource/resmgr/pdf/2026-01-24_private_school_.pdf

[20] See: 20 U.S.C. §6321(b)), 20 U.S.C. §1412(a)(17) (for states) and 20 U.S.C. §1413(a)(2) (for school districts)

mismanagement due to a lack of understanding—or even misconduct—in how those funds are used.

In addition to clarifying that FSTC funds are *supplementary* and do not conflict with IDEA or Section 504 (as we recommend above), the regulations must also clarify that any such resources are strictly intended to *supplement, rather than supplant*, existing federal funding streams under the Elementary and Secondary Education Act, IDEA, or other federal education statutes. This clarification, paired with mandatory audits of SGO fund distribution and usage, is necessary to prevent misuse and preserve the additive resources that ESEA, IDEA and other Federally appropriated funds provide. Federal regulations must explicitly prohibit using FSTC revenues to backfill State or district local maintenance-of-effort obligations or offset baseline budgets.

We urge you to consider our recommendations in support of all children and families. Clear, unambiguous regulations and guidance are essential to ensure that no child with a disability is left more vulnerable or unintentionally stripped of fundamental rights by a program ostensibly designed to expand educational choice. We appreciate the opportunity to comment.

Sincerely,



Denise Marshall
CEO

COPAA is an unparalleled peer-to-peer network that enables parents, family members, attorneys, special education advocates, and related professionals to engage in protecting the legal and civil rights of students with disabilities and their families. As the nation's leading authority on special education law, we support parents and mentor those who defend students' educational rights. Our members are also a proud part of the disability community. We provide knowledge exchange, research, training, mentoring, community building; elevate all voices to ensure equitable access to an education; help parents participate as meaningful partners in their child's education, and ensure the laws are implemented; provide legal opinions that open doors for students and shape laws; and, we influence policies that support children and their families.

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