

**HB**

**5**

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION

### OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

GOLDBELT PLACE  
801 WEST 10TH STREET, SUITE 200  
JUNEAU, ALASKA 99801-1894

(907) 465-2800  
FAX (907) 465-4156

February 23, 1999

The Honorable John Coghill, Jr., Co-Chair  
House Health, Education and Social Services Committee  
State Capitol, Room 416  
Juneau, AK 99801-1182

Dear Representative Coghill, Jr.:

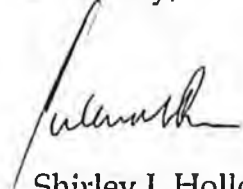
At the February 16 the Health, Education and Social Services Committee hearing on vouchers, questions were asked of Department of Education staff that I would like to answer.

- 1) Representative Brice asked how Sec. 14.31.020 (d) might be implemented, and how much direction from the legislature would be necessary to regulate and implement the bill. Sec. 14.31.020 (d) reads "the department may adopt regulations necessary to administer the education voucher program under this section." Therefore, assuming the program is constitutional, the only way to ensure program quality or accountability for this voucher system would be in Department of Education regulation.
- 2) Representative Whitaker asked if federal funding and local funding would also be provided for students participating in the voucher program. The answer is no. Only state aid would be made available for students participating in the voucher program.
- 3) Representative Kemplen asked if the legislature appropriated funds that were not equal to the amount applied for by parents with students in the voucher program, what would be the result? The bill states that if the legislature appropriates insufficient funds, the department would distribute the available funds on a pro rata basis.

Letter, Representative Coghill, Jr.  
February 23, 1999  
Page 2 of 2

As you know, the State Board of Education is opposed to any voucher plan that would take public money from public schools and give it to private schools. As the Board considers the topic of choice within the public school system, we hope to continue this constructive dialogue with the legislature. We certainly share the same goal to improve student learning.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shirley J. Holloway".

Shirley J. Holloway, Ph.D.  
Commissioner

cc: The Honorable Fred Dyson

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

# Legal Forum

By Allen B. Dyal,  
Assistant Professor  
Educational Leadership  
Auburn University at Montgomery

## Court Allows Use Of Public Funds In Private Schools For Title I Services

The debate over public funds being used in religious K-12 schools has persisted for many years. However, in most instances, the establishment clause of the First Amendment to the Constitution has been interpreted to prohibit financial support for religious schools.

In 1965, the U.S. Congress passed legislation intended to provide full educational opportunities to economically-disadvantaged children. Title I of the Elementary and Secondary Education Act of 1965 provided funds to local schools for the specific purpose of providing remedial education, guidance services and job counseling.

The city of New York, as well as many other cities, developed programs that not only met the needs of public school students, but also provided services to students enrolled in private schools. In 1971, the court developed a three-pronged test to evaluate whether practices of schools and individual laws violated the First Amendment. The standard requires that the law has a secular purpose, neither promotes nor inhibits religion and avoids excessive governmental entanglement. I have often looked at this standard in previous Legal Forum articles.

Title I programs provided by many urban school systems to children in parochial schools were finally challenged in *Aguilar v. Felton*. The question the court considered was whether it was permissible for a school system, in this case the city of New York, to place public school teachers in private parochial schools to provide Title I remedial services to students. The Supreme Court found the program created an excessive entanglement of church and state. The court indicated that remedial services



Allen B. Dyal

could be provided to a religious school, but the services must be provided at a neutral site. Strict guidelines have since been created which relate to these programs.

Many school systems provided

mobile classrooms off campus to satisfy the ruling. You may ask, "Why would a public school system want to provide such services to religious schools?" Clearly, the programs helped economically-disadvantaged children. For large urban districts, the program provided a significant amount of funding to the district.

Since 1985, school systems have carefully provided appropriate remedial services at neutral sites. The common sense question that has surfaced in the educational community concerns how a neutral site could really make a difference. The petitioners in *Agostini v. Felton* sought relief from the courts earlier decision based on the excessive cost of complying with the neutral site provision of the *Argular* decision.

Can the Supreme Court change its mind? Yes, and it did just that in *Agostini v. Felton*. This past June, the court asserted that with appropriate safeguards, providing Title I programs on parochial school grounds was not a violation of the establishment clause. There was no evidence that public school teachers attempted to religiously indoctrinate students or that the programs promoted or enhanced religion. The court also determined the program did not excessively entangle government, or that public funds for religious schools were not auto-

matically inappropriate or invalid.

This case is significant to educational leaders for several reasons. It shows how important it is to stay up-to-date on legal matters that are dynamic and ever changing. It also shows us that the Supreme Court can change its mind. On the broader question of the separation of church and state, it would seem that the pendulum, constantly moving on such matters, is swinging toward a more flexible view concerning public funds being spent in parochial schools.

I spoke with Barry Blackwell, federal programs coordinator for the State Department of Education, concerning this case. It is Blackwell's opinion that, "The *Agostini* case will have a major impact on students in Alabama's private schools. In the past, a number of school systems provided services to private school students using mobile units. This finding will allow school systems to provide better and more Title I services at a lower cost. School systems as diverse as Mobile and Wilcox Counties are likely to take advantage of this decision."

It is my view that while Alabama has yet to take advantage of Title I funds for students in religious schools, we are likely to see a move in that direction. The Supreme Court, in this case, affirmed its trend of moving toward greater acceptance of allowing the use of public funds for students in private schools. ■

### References

- Aguilar v. Felton*, 473 U.S. 402 (1985).
- Agostini v. Felton* (In Press) (1997).
- Lemon v. Kurtzman*, 403 U.S. 602 (1971).
- Barry Blackwell, telephone interview, Oct. 31, 1997.



much effect as these more mundane predictors of school success.

The picture of Vietnamese "boat people" struggling to give their children an education and of the children scoring high on tests as a consequence is one that has been painted often in articles critical of native-born American students. Overall, though, those who have immigrated from Southeast Asia don't reach the national average on standardized tests. In fact, says Kim, "the high school dropout rates for schools with high concentrations of Southeast Asians hover around 50%." Southeast Asians also have lower expectations of what their own educational attainments will be. Some 65% of them think they'll earn at least a bachelor's degree, while for the other Asian groups the figures are in the range of 80%-95%. Fully 75% of the South Asian seniors expect to wind up with an advanced degree, 39% saying they'll get a master's degree and 37% anticipating a Ph.D. or its equivalent.

Kim observes that "the stereotype of Asian Americans is that of a highly successful minority who have made it in American society. Asian American students are portrayed as 'whiz kids,' the 'best and the brightest,' math and science majors, students who pass through our toughest universities with ease. . . . Contrary to the stereotype, there are significant differences among Asian American seniors in terms of socioeconomic characteristics, parental expectations and involvement, educational values, academic achievement, and college aspirations." (Another stereotype that Kim doesn't discuss envisions Asians living in various urban "Chinatowns" when, in fact, a majority live in the suburbs.)

If we put all of the Asian kids into one school district, we would characterize it as an affluent (median income of \$41,251 in 1990, compared to \$32,142 overall), highly educated, suburban system. No wonder they score well on tests.

Kim goes on to make a different point. Although the stereotype of Asian students is a "good" stereotype, it is still a stereotype and so prevents us from seeing the reality. Recall that Denis Doyle earned his Rotten Apple Award in the Seventh Brace Report for claiming that it was "Asian" kids who were pushing the SAT math scores up. (Kim's report can be obtained for \$9.50, prepaid, from the Policy Information Center, Mail Stop 04-R, Educational Testing Service, Rosedale Rd., Princeton, NJ 08541-0001. **■**)

## A RARE RELIGIOUS REVERSAL

BY PERRY A. ZIRKEL

**C**ONGRESS enacted Title I of the Elementary and Secondary Education Act of 1965 "to provide full educational opportunity to every child regardless of economic background." Under Title I school districts receive and spend federal funds for remedial education, guidance, and job counseling for eligible students. Eligibility is based on residence in low-income areas and failing — or being at risk of failing — the state's student performance standards.

Title I funds are not limited to eligible children in public schools; services to eligible students in private schools must be "equitable in comparison to services and other benefits for public school children." However, special restrictions do apply, such as 1) the school district must retain complete control over the funds, 2) the district must provide the services through public employees or other persons independent of the private school and any religious institution, and 3) the services must supplement, not supplant, the level of services provided by the private school and must be "secular, neutral, and nonideological."

The New York City Board of Education first applied for Title I funds in 1966 and has grappled ever since with how to provide Title I services to the private school students, especially those in parochial schools, within its jurisdiction. Its initial arrangement, which was to transport the children to public schools for after-school Title I instruction, was largely unsuccessful; attendance was poor, teachers and children were tired, and parents were concerned with

safety. The board next tried after-school instruction on the private school campuses, which also yielded mixed results. Then the board offered Title I services on private school premises during school hours. Under this arrangement, the Title I teachers, who were district employees, received a detailed set of rules spelling out the secular purpose of the program, and a board field supervisor made unannounced monthly visits to monitor compliance.

In 1978, six taxpayers from New York City filed suit in federal court, claiming that the board's third arrangement violated the establishment clause of the First Amendment. In 1985, after appeals to and beyond the Second Circuit, the Supreme Court issued a 5-4 decision in *Aguilar v. Felton* finding the board's program to be unconstitutional because of an "excessive entanglement of church and state in the administration of [Title I] benefits." On remand, the federal district court permanently enjoined the board from offering Title I instruction and counseling services provided by public school personnel "on the premises of sectarian schools."

The board then arranged for Title I services to be offered at public school sites, at leased neutral sites, in mobile units parked near sectarian schools, or by means of computer-assisted instruction (CAI) on the premises of sectarian schools. The costs of compliance were significant. Since the 1986-87 school year, the board has spent over \$100 million providing CAI, leasing sites and mobile units, and transporting students.

In October and December 1995, the board and a group of parents of eligible parochial school students filed motions in the district court seeking relief from the

PERRY A. ZIRKEL is Iacocca Professor of Education, Lehigh University, Bethlehem, Pa.

permanent injunction under *Aguilar*. The district court recognized that the plaintiffs were seeking a procedurally sound vehicle to get the issue back before the Supreme Court, and it denied the motions. On appeal, the Second Circuit affirmed.

On 23 June 1997, the Supreme Court voted 5-4 in *Agostini v. Felton* to reverse *Aguilar*.<sup>1</sup> While rejecting two of the three grounds argued by the plaintiffs — the costs of compliance and the dicta of five of the justices in favor of reconsidering or overruling *Aguilar*<sup>2</sup> — the majority decision relied on the significant change in the legal landscape represented by the Court's establishment clause decisions since *Aguilar*. More specifically, the majority concluded that more recent rulings have so undermined *Aguilar* and its companion case, *School District of Grand Rapids v. Ball*,<sup>3</sup> that they are no longer good law.

First, in *Zobrest v. Catalina Foothills School District*,<sup>4</sup> in which the Court held that providing an interpreter for a deaf student on the premises of a sectarian school did not violate the establishment clause, the Court refused to accept the assumption that the placement of public employees on parochial school grounds inevitably results in state-sponsored religious indoctrination or constitutes a symbolic union between government and religion.

Second, in *Witers v. Washington Department of Services for the Blind*,<sup>5</sup> in which the Court held that the establishment clause did not bar a state from issuing a vocational tuition grant to a blind person for religious education, the Court invalidated the assumption that any and all public aid that directly aids the educational function of religious schools impermissibly finances religious indoctrination.

Finally, *Zobrest* also undid the "excessive entanglement" argument, which was an essential assumption underlying the *Aguilar* finding. The Court's logic in *Agostini* was as follows: "Since we have abandoned the assumption that properly instructed public employees will fail to discharge their duties faithfully, we must also discard the assumption that pervasive monitoring of Title I teachers is required."

In thus overruling both *Aguilar* and *Ball* as inconsistent with "our current understanding of the Establishment Clause," the majority of the Court expressly held that "a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not [unconstitutional] . . . when such in-

struction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here."

The four dissenters took issue on both substantive and procedural grounds. Substantively, they criticized the majority for exaggerating the meaning of *Aguilar* and *Ball* while ignoring the limited scope of *Zobrest* and *Witers*, thus repudiating the long-standing principles against direct and substantial subsidization. Procedurally, they interpreted the applicable federal rules as requiring deferral of reconsidering *Aguilar* until a future case.

**T**HE FINDING in *Agostini* represents one of the Supreme Court's rare reversals.<sup>6</sup> It was all the more unusual because it happened within the confines of the same case. It reveals the importance of the membership of the Court, which reflects the interaction of individual and societal values and which is particularly crucial for church/state issues.<sup>7</sup> As illustrated by the change in votes from 5-4 against to 5-4 for, it was a close call, but the current bent on the Court is toward lowering the metaphorical wall of separation in establishment clause cases. Factual variations can be significant, however. Thus the U.S. Department of Education has already issued guidelines to spread the "safeguards" referenced in *Agostini*.<sup>8</sup> The most proximate legal issue in the schools, which concerns the provision of services to special education students in parochial schools, is now somewhat clearer; *Agostini* seems to suggest that doing so on the premises of parochial schools is constitutionally permissible. But the new amendments to the Individuals with Disabilities Education Act appear to effectively eliminate the individual statutory entitlement.<sup>9</sup>

Moreover, *Agostini* does not necessarily change the legal landscape in states, such as Washington, that have a higher church/state barrier in their state constitutions than that of the First Amendment establishment clause.<sup>10</sup>

In any event, one can safely predict more church/state litigation, with results that defy safe predictions. School officials, without the aid of state-sponsored prayers, can only continue trying to discharge their First Amendment duties "in good faith."

1. *Aguilar v. Felton*, 473 U.S. 402, 414 (1985).  
2. 117 S. Ct. 1997 (1997).

3. Although their individual expressions were merely dicta in *Board of Education of Keyes-Joel School District v. Gramer*, 512 U.S. 687 (1994), because the issue was distinctly different in that case, the same five justices — O'Connor, Kennedy, Rehnquist, Scalia, and Thomas — constituted the majority in *Agostini*.

4. 473 U.S. 373 (1985). The Court's decision in *Ball*, which similarly concerned an on-premises remedial program, rested on the second prong (primary religious effect) of the tripartite test. Both *Aguilar* and *Ball* passed the first prong (secular purpose), while *Aguilar* fell on the third prong (excessive entanglement).

5. 509 U.S. 1 (1993). See, for example, Perry A. Zirkel, "Is the 'Wall of Separation' Like the Walls of Jericho?" *Phi Delta Kappan*, September 1993, pp. 88-90.

6. 474 U.S. 481 (1986).

7. There are only two other examples in the elementary/secondary school context: *West Virginia State Board of Education v. Barnette* (1943), which reversed *Minersville School District v. Gobitis* (1940); and *Brown v. Board of Education*, 373 U.S. 483 (1954), which reversed *Gong Lum v. Rice* (1927). For a summary of these decisions, see Perry A. Zirkel, Sharon Malbone Richardson, and Steven S. Goldberg, *A Digest of Supreme Court Decisions Affecting Education*, 3rd ed. (Bloomington, Ind.: Phi Delta Kappa Educational Foundation, 1995).

8. For analyses of the Supreme Court's establishment clause jurisprudence in terms of the members of the Court, see Julie Underwood and Julie Mead, "Establishment of Religion Analysis," *Journal of Law and Education*, Winter 1996, pp. 55-82; and Perry A. Zirkel and Faith MacMurtre, "A Scalogram Analysis of Supreme Court Establishment Clause Cases in Education," *West's Education Law Reporter*, 16 October 1986, pp. 1-10.

9. Mark Walsh, "ED Gives Advice on Title I Aid to Church Schools," *Education Week*, 6 August 1997, p. 26.

10. See, for example, *Cefalu v. East Baton Rouge Sch. Dist.*, 117 F.3d 166 (5th Cir. 1997).

11. See, for example, *Witers v. Washington Dep't of Serv. for the Blind*, 771 P.2d 1119, cert. denied, 493 U.S. 850 (1989). K

#### JUST RELEASED

### Developing a Classroom Portfolio System

By Dr. William L. Beckley

Teacher-tested strategies and black line masters that will help you to put structure and meaning into your classroom portfolios. Includes peer assessment, self-assessment, parent conferencing strategies, parent reaction format, and much more.

To Order: Send \$19.95 (check or purchase order) plus \$2 s/h (Total: \$21.95) to:  
North Suburban Curriculum Seminars  
2240 Prairie Ave., Suite 1961  
Beloit, WI 53511

Ph: 708/341-9133 Fax: 815/624-8122  
Web: www.spe1.com/beckley  
E-mail: beckley@inwv.com

10% discount on orders of five books or more

**EDUCATION LAW -1997 SUPPLEMENT**

*This case pertains to Chapter 2, The Church-State Distinction.*

**AGOSTINI v. FELTON**

65 U.S.L.W. 3605 (1997).

**NATURE OF CASE:** Appeal of decision affirming the denial of a motion seeking relief from a permanent injunction (barring a school board from sending public school teachers into parochial schools to provide remedial education to disadvantaged children).

**GENERAL RULE OF LAW:** Under certain circumstances, public school teachers may provide remedial education to parochial students on parochial school grounds without violating the Establishment Clause of the First Amendment.

**PROCEDURE SUMMARY:**

**Plaintiffs:** The New York City Board of Education (headed by its Chancellor, Betty-Louise Felton), and parents (P) of disadvantaged parochial school students.

**Defendants:** Rachel Agostini (D) and five other federal taxpayers.

**U.S. District Court Decision:** Denied plaintiffs' request for relief from injunction issued in *Aguilar v. Felton*.

**Second Circuit Court of Appeals Decision:** Affirmed denial of relief.

**FACTS:** The Board of Education of the City of New York (P), a local educational agency (LEA) under Title I of the federal Elementary and Secondary Education Act of 1965 (the Act), 20 U.S.C., §§ 6301 et seq., has been required to provide "full educational opportunity" to every school-age child, regardless of his or her economic background, under the terms of the Act. Title I channeled federal funds, through the states, to LEAs, which in turn used the funds to provide remedial education, guidance, and job counseling to eligible children. The intended goal was that of assisting these children in meeting state student performance standards.

LEAs were not prohibited from providing services to children enrolled in private schools within its jurisdiction; however, the provision of services under such circumstances was subject to several restrictions. Services were required to be provided on a per-pupil, rather than schoolwide, basis. Ad-

ditionally, the services were required to be "secular, neutral and nonideological in nature," and to be provided through public employees or others who were independent of private schools/religious institutions. Finally, each LEA was required to retain complete control over funds as well as title to all educational materials.

Within the jurisdiction of the NYC Board of Education (the Board), 10% of the total number of students eligible for services under the Act went to private schools; 90% of those private schools were secular in nature. Originally, the Board arranged to bus Title I-eligible students to public schools for after-school remedial education. When that program failed for logistical reasons, the Board then moved the after-school instruction directly onto private school campuses. The remedial instructors were all public employees, as contemplated by the Act, and were specifically admonished not to introduce any religious matter into their teaching or become involved in any way with the religious activities of the private schools.

In 1978, six federal taxpayers (P) sued the Board in federal district court, asserting that the Board's Title I program violated the Establishment Clause of the First Amendment to the U.S. Constitution. They sought an injunction prohibiting the Board from pursuing its remedial education plan (placing public employees in private religious schools).

The district court permitted the parents of several Title I-eligible parochial students to join the Board as defendants in the lawsuit and thereafter denied the plaintiffs' request for an injunction. The federal Second Circuit Court of Appeals overturned the district court's decision.

The U.S. Supreme Court, in *Aguilar v. Felton*, 473 U.S. 402, 413, affirmed the federal appellate (circuit) court, holding that the Board's Title I program necessitated an "excessive entanglement of church and state in the administration of [Title I] benefits." 473 U.S., at 414. The Court then remanded the case to the district court, which promptly enjoined the Board from using public funds for any program that authorized public

## EDUCATION LAW • 1997 SUPPLEMENT

school teachers and counselors to provide services on the premises of sectarian schools.

In response to the injunction, the Board modified its program so that it could continue to serve Title I-eligible private school students. It once again provided instruction at public schools (as it had originally but unsuccessfully) as well as at leased sites and in vans it converted into classrooms in the vicinity of the sectarian schools. Computer-aided instruction was offered on private school premises since this program did not require public employees to be physically present at the sites.

Between the 1986-87 and 1993-94 school years, the Board spent approximately \$93 million complying with the Act, as modified under the injunction issued in *Aguilar v. Felton*. These funds were deducted from the entire grant of money available under Title I of the Act, before any of it was passed on to Title I-eligible students throughout the United States. The *Aguilar* costs thus reduced the amount of funds provided to all LEAs for remedial education. In plain terms, 20,000 disadvantaged children from New York City, and 183,000 such children nationwide, experienced a decline in Title I services.

In late 1995, the Board and a new group of parents of disadvantaged parochial school students (P) filed a motion in federal district court seeking relief from the Supreme Court's *Aguilar* decision, claiming that the Court's decisional law had changed to the point that what once had been determined to be illegal was now legal. Both the district court and the Second Circuit Court of Appeals, while recognizing that Establishment Clause decisional law had indeed changed over the years, nevertheless upheld the denial of the motion for relief.

**ISSUE:** Is the *Aguilar* decision, which held that permitting public school teachers to provide remedial education to disadvantaged parochial school children on the grounds of their private schools has the improper effect of advancing a religion with public funds, still valid law?

**HOLDING AND DECISION:** No. The *Aguilar* decision is no longer valid law. Permitting public school teachers to provide remedial education to disadvantaged parochial school children in the case's context is no longer seen to have the improper effect of advancing a religion.

Implicit in the decision to overturn *Aguilar* are the following points:

1. The general principles used to evaluate whether government aid violates the Establishment Clause have *not* changed since *Aguilar* was decided. The Court continues to ask whether the government acted with the purpose of advancing or inhibiting religion, just as it continues to explore whether government aid has the "effect" of advancing or inhibiting religion.

2. However, what *has* changed is the Court's understanding of the criteria used in assessing whether government aid to religion has an impermissible effect of advancing religion. Cases decided by the Court after *Aguilar* have modified its approach to assessing establishment cases in two significant respects:

a. First, the presumption (developed in *Ball* and *Meek*) that placement of public employees on parochial school grounds "inevitably results in the impermissible effect of state-sponsored indoctrination [of a religion]" is abandoned. Put another way, no longer will it be presumed that any public employee who works on the premises of a religious school inculcates religion in his or her work. Here, the Court cites the *Zobrest v. Catalina Foothills School District* case for its holding "expressly disavowing the notion that 'the Establishment Clause [laid] down [an] absolute bar to the placing of a public employee in a sectarian school.'" *Agostini*, 1997 \_\_\_ U.S. \_\_\_, 117 S.Ct. 1997, 2010 (1997), citing *Zobrest*, 509 U.S. 1, 13. In *Zobrest*, the Court refused to presume that a publicly employed interpreter for the deaf would be pressured by pervasively parochial surroundings to inculcate religion by adding to or subtracting from the lectures being translated. Instead, it decided that in the absence of evidence to the contrary, the interpreter would dutifully discharge his or her duties as a full-time public employee by accurately translating what was said.

b. Second, no longer will it be presumed (as it was in *Ball*) that all government aid that directly aids the educational function of religious schools is invalid. Specifically relying on its 1986 holding in *Witters v. Washington Dept. of Servs. for Blind*, 474 U.S. 481, in which the Establishment Clause was found not to bar a state from is-

## EDUCATION LAW -1997 SUPPLEMENT

suing a vocational tuition grant to a blind person who wished to use her grant to attend a Christian college, where the tuition grants in question were "made available generally without regard to the sectarian-nonsectarian or public-nonpublic nature of the institution benefited" (*Witters*, 474 U.S. 481, 487 (1986)), the Supreme Court reasoned that the Title I funding that "benefited" the parochial schools in *Agostini* must be viewed in the same light — i.e., that the funding was an incidental benefit to parochial schools that came about only because disadvantaged students happened to attend parochial schools within the Board's jurisdiction, just as funding indirectly benefiting the Christian college at issue in *Witters* came about merely because a recipient of the funding wished to attend that particular college. In each case, the indirect funding benefit to parochial institutions came about through the "genuinely independent" and private choices of individuals. (Remember, none of the Title I funds at issue in *Agostini* were disbursed directly to parochial schools.)

c. Aside from looking at the criteria by which an aid program identifies its beneficiaries for purposes of determining whether the state is responsible for subsidizing religion, it is also necessary to look at whether the criteria by which a program identifies its beneficiaries creates a financial incentive to undertake religious indoctrination. \_\_\_ U.S. \_\_\_, 117 S.Ct. 1997, 2014 (1997). Such an incentive cannot be present if aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to religious and secular beneficiaries on a nondiscriminatory basis. *Id.* Applying such reasoning to the NYC Board's Title I program, it is apparent that remedial services to disadvantaged students are allocated on the basis of criteria that neither favor nor disfavor religion. All children who meet the program's eligibility requirements may avail themselves of services, no matter where they go to school or what their religious beliefs may be.

3. Finally, *Aguilar's* conclusion that the NYC Title I program resulted in an excessive entanglement between church and state is no longer valid law. The *Aguilar* court had specifically noted that the NYC program (1) required pervasive monitoring by public employees to insure no governmental inculcation of religion, (2) required administrative

cooperation between the Board and parochial schools, and (3) potentially increased the risk of political divisiveness. Under the current understanding of the Establishment Clause, the last two considerations do not, by themselves, create an "excessive" entanglement anymore, given that they are present wherever Title I services may be offered, in both parochial and non-parochial school settings. The assumption underlying the first consideration has been undermined; after *Zobrest*, the Court will no longer presume that public employees will inculcate religion simply because they happen to be in a sectarian environment.

**COMMENT:** The Court summarized its majority decision with the following: "We therefore hold that a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here." \_\_\_ U.S. \_\_\_, 117 S.Ct. 1997, 2016 (1997). This decision has already been applauded by those commentators who decried the fact that the *Aguilar* injunction had essentially forced the Board to spend upwards of \$100 million to rent vans for use as classrooms — merely to avoid the appearance of public teachers setting foot in religious schools. Others who believe in the strict separation of church and state have yet to weigh in, but it is likely that a few, at least, will see this decision as eroding the principle underlying the Establishment Clause (prohibiting the government from establishing a religion) while giving only a minor nod to those favoring the Free Exercise Clause (guaranteeing the free exercise of religion to all). Query whether the two clauses are necessarily at odds with one another.

School administrators will see the decision as beneficial, but it remains to be seen — and given the somewhat confusing nature of this opinion, certainly cannot be predicted — whether this decision signals a continuing relaxation of strict Establishment Clause criteria.

The Blaine Amendment  
State Constitutional School Provision

prepared by D. Harvey McIntyre  
Archdiocese of Seattle Canon Lawyer

A movement away from sectarian schools toward the common or public elementary schools had been developing at the local and state government levels in many parts of the country since the early part of the 19th century. The original common school movement, while opposing sectarian religious instruction, openly supported teaching basic community values which were obviously Christian and implicitly Protestant. Many Roman Catholic immigrants desirous of protecting their own religious and ethnic traditions found the common schools totally unacceptable and sought a share of the public education funds to support their own schools. As a result many advocates of the common schools opposed these Catholic efforts by adopting legal and constitutional restrictions against the use of any public funds for sectarian schools and sectarian control of public schools.

The federal government joined the campaign for a free non-sectarian school system in 1875 when President Ulysses S. Grant called for a constitutional amendment requiring all states to establish such public schools. His proposal was stricter than the common school movement by prohibiting all religious instruction in such schools. Soon Republican Congressman James G. Blaine, himself a longtime advocate of extending federal Establishment restrictions to the states, introduced during the same year a constitutional amendment into the House of Representatives. However, unlike President Grant's call, the Blaine amendment, while prohibiting state support for sectarian religion, specifically protected Christian instruction: "This article shall not be construed to prohibit the reading of the Bible in any school or institution." The Blaine Amendment passed the House in 1876 by a vote of 180 to 7 and fell only two votes short of the required Senate two-thirds majority. For the next decade Blaine continued to support a constitutional amendment without success. In 1889 Senator William W. Blair introduced a similar amendment and expressed his support for a restrictive public school provision in the Enabling Act for the admission of new states. For Blair also the prohibition of sectarian instruction in public schools was conditioned by a requirement that such schools educate their students in "virtue, morality, and the principles of the Christian religion." Beginning in the previous year of 1888 the intent of the unsuccessful constitutional amendment effort had shifted to the insertion of the public school provision into Enabling Acts for the admission of new states. The bill began in the house as H.R. 8566 and was passed in the Senate as S. 185 in 1889 to enable the admission of the states of North and South Dakota, Montana and Washington.

The Washington Constitutional Convention of 1889 was composed of a comfortable majority of Republican delegates who were undoubtedly Blaine Republicans. The Republican delegates from the earlier Washington Territory to the National Republican Convention had solidly backed Blaine for President three times as did the state delegation in 1892. These delegates also supported Blaine's well-known views on religious establishment and common schools. The Constitutional Convention discussion was remarkably parallel to congressional debate on the Blaine Amendment and Blair's comments on the Enabling Act's public school provision.

It should be no surprise therefore to discover that Washington State's establishment clauses are remarkably similar to those found in the Blaine amendment.

Application of the school provision sections of our state constitution should consider the framers distinction between religion and sectarianism which mirrored the national common school movement: they saw religion as a positive moral force for society and a positive influence for students. The repeated failure of the federal constitutional amendment and the inclusion of the public school provision in only the last third of the states admitted, explains why only some states prohibit financial support for students in sectarian schools, and why federal policy requires an equitable distribution of federal funds to sectarian, and independent private as well as common school students.

Note: This summation is based on the excellent article co-authored by Robert F. Utter and Edward J. Larson in the Spring, 1988 edition of the Hastings Constitutional Law Quarterly, "Church and State on the Frontier: The History of the Establishment Clauses in the Washington State Constitution."

# STATE OF ALASKA

## DEPARTMENT OF LAW

### OFFICE OF THE ATTORNEY GENERAL

February 22, 1999

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

(FAX) 465-2539

Honorable Fred Dyson  
Co-Chair, House HESS Committee  
Alaska State Legislature  
State Capitol - Room 428  
Juneau, AK 99801-1182

ETL

Post-it® Fax Note	7671	Date	2/25	# of pages	3
To	Greg GILLES	From	LISA		
Co./Dept.	AA5B	Co.	DYSON		
Phone #	586-1083	Phone #	465-2199		
Fax #	586-2995	Fax #	465-4587		

Just came in the mail... today

Re: Constitution Issues Raised by SSHB 5

Dear Representative Dyson:

You have asked for a quick response from the Attorney General to questions raised in your Committee regarding the constitutionality of a proposed school voucher program. SSHB 5 would establish an educational voucher program which would provide a voucher equal to the cost of private school tuition to the parents of students enrolled in private schools. We agree with the conclusion of the January 22, 1999, Opinion Memorandum of Legislative Counsel Michael F. Ford, that "the proposed voucher system suffers serious constitutional problems."

The SSHB 5 proposal to provide reimbursement of private school tuition appears to clearly violate Article VII, section 1 of the Alaska Constitution, as interpreted by the Alaska Supreme Court. Art. VII, sec. 1, in pertinent part, states:

No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

In *Sheldon Jackson College v. State*,<sup>1</sup> the Alaska Supreme Court directly considered the application of Article VII, sec. 1, to a state tuition grant program which was enacted by the Alaska legislature in 1976. Under that grant program, each state resident who attended a private college within the state was eligible for a state grant in an amount equal to the difference between the tuition charged by the private school and the tuition charged by a public college in the same area. The state payment was made directly to the student, not to the college. In interpreting Article VII, sec. 1, the Alaska Supreme Court decision set out several distinct principles or factors which were

<sup>1</sup> 599 P.2d 127 (Alaska 1979).

found applicable to that tuition voucher program, and which we believe would apply directly to the proposal of SSHB 5 as well. The Court concluded:

First, the class primarily benefited by the tuition grant program consists only of private colleges and their students. Though the appellants characterize the statute as merely equalizing the positions of private and public university students, effectively the chief beneficiaries are the private colleges themselves.<sup>2</sup>

Further:

the public funds expended under AS 14.17.776 constitute nothing less than a subsidy of the education received by the student at his or her private college, and thus implicate the core concern of the direct benefit provision.<sup>3</sup>

In regard to the fact that no direct payment was made by the state to the private schools under that program, the Court held:

Finally, though the tuition grants are nominally paid from the public treasury directly to the student, the student here is merely a conduit for the transmission of state funds to private colleges. Before the state will deliver the check to the student, the latter must certify under oath and under penalty of perjury that he or she will pay it over to the college. AS 14.40.786. Simply interposing an intermediary "does not have a cleansing effect and somehow cause the funds to lose their identity as public funds. . ."<sup>4</sup>

Article VII, sec. 1, of the Alaska Constitution unquestionably applies to elementary and secondary schools as well as to colleges and universities. We believe that under the express holdings of the *Sheldon Jackson* decision, the SSHB 5 proposed private school voucher program would be held unconstitutional.

The SSHB 5 proposal for vouchers to home schooling families raises constitutional implications from the establishment clause prohibitions of the state and federal constitution,<sup>5</sup> which have been uniformly interpreted to deny expenditures of public funds for sectarian educational programs and materials. We can also foresee challenges to the home schooling vouchers under the public purpose doctrine of the Alaska Constitution<sup>6</sup> due to the extremely broad category of costs and fees which appear to be compensable by the state under that section.

---

<sup>2</sup> *Sheldon Jackson*, supra at 131.

<sup>3</sup> *Sheldon Jackson*, at 131.

<sup>4</sup> *Sheldon Jackson*, supra at 132.

<sup>5</sup> U.S. CONST. amend. I; Alaska CONST. art. I, sec. 4.

<sup>6</sup> Alaska CONST. art. IX, sec. 6.

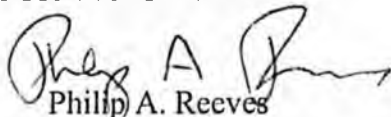
Honorable Fred Dyson  
Co-Chair, House HESS Committee

February 22, 1999  
Page 3

In summary, the private school voucher proposal of SSHB 5 appears to be fundamentally at odds with Art. VII, sec. 1 of the Alaska Constitution and we believe would be invalidated under the *Sheldon Jackson* analysis of the Alaska Supreme Court. In addition, the home schooling vouchers raise significant constitutional concerns under both the establishment clause and the public purposes clause of the Alaska Constitution.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Philip A. Reeves  
Assistant Attorney General

PAR:ebc

cc: Honorable John Coghill, Alaska State House

COMPLIMENTS OF THE  
ALASKA STATE LIBRARY

# The New Accountability

*If schools can't do a better job of educating all students,  
parents will opt out of public education altogether*

BY MARC S. TUCKER AND CHARLES S. CLARK

**W**hen school officials vow to resign or take pay cuts if students' test scores don't rise, you can be sure the age of accountability in education is here. One example of the new accountability is Swanton, Ohio, Superintendent Roger Barnes, who has promised to resign if test scores fail to improve. Another is Philadelphia Superintendent David Hornbeck, whose contract stipulates that he will receive a \$16,000 annual bonus if test scores go up but an \$8,000 pay cut if scores stay low. Similarly, Alexandria, Va., Superintendent Herbert Berg stands to receive a bonus of up to \$30,000 if enough elementary and middle school student pass the state's new Standards of Learning examination.

Why is this happening now? Is it yet another fad that will once again draw the attention of managers and policy makers away from instruction, which is what really matters? Or is it somehow at the heart of the matter?

To find the answer, educators might look at some lessons from the business world—in particular, the transformation Xerox Corp. went through in the early 1980s. At the time, Xerox was among the world's most widely admired industrial corporations. Yet just as David Kearns was becoming the new chief executive officer, he found out that Japanese competitors were learning how to design copiers and build them in a fraction of the time it took Xerox to design and build comparable machines. He also learned that these machines were of substantially higher quality than Xerox mod-

els and—worst of all—that the Japanese were able to sell them to consumers for less than it cost Xerox just to build a comparable machine. The challenge was simple, if daunting: to make enormous improvements in quality and time to market and, at the same time, to greatly reduce cost. Xerox was forced to learn to produce more (or better) for less. And it did.

That is precisely the challenge faced by American education. The economic facts of life have dramatically changed in recent decades, and the facts of American education have not kept pace. Since 1950, the proportion of American jobs available to people with limited literacy and strong backs has been steadily decreasing, and the proportion requiring high-level skills and knowledge has been swiftly rising. Nevertheless, despite a slow, steady rise in the educational achievement of our high school graduates, as evidenced by the rising numbers attending college, the National Center on Education Statistics reports that half or more of the young people who leave our high schools with or without a diploma have no more than an eighth-grade level of literacy—well below what it will take to land jobs that enable wage earners to support a family above poverty level.

The only way public schools will survive is by learning how to educate virtually all of their students to a much higher standard at a cost no greater than current costs. That's why coming up with an adequate response to this challenge is no fad. It is a matter of survival. If public school districts do not muster a credible response, then those who have political power will opt out of the public school system and take as much public money with them as they can.

## Paving the way

In the past, when educators have talked about accountability, they have asked, how can we produce public data on

---

*Marc S. Tucker (mtucker@ncee.org) is president of the National Center on Education and the Economy in Washington, D.C. Charles S. Clark (cclark@ncee.org) is the center's senior writer-editor.*

performance? But the public has been asking a different question: If students are not performing, who (among the professional educators) is responsible, and what should happen to them? The public is fed up with what it sees as excuses. It demands improved student performance at no increase in cost. Public educators do themselves no good by complaining. Whether we call it accountability to the public (as educators would have it) or better management (as business and government would have it), the challenge is to get much better results at no increase in cost.

In the business world, this process begins with top management being very clear as to the organization's goals, formulating those goals in measurable terms, communicating them clearly and forcefully to everyone in the organization, and demonstrating in every conceivable way that the goals are not mere rhetoric but real core values on which the actions of top management will be based every day.

It continues with devising accurate measures of performance against the goals and then constructing a system in which managers produce data on those measures and send that information directly to the people who need it. Top management then seeks to make sure that the people who are in direct contact with the customer and who are actually making the products are empowered to decide how the product will be made and how the service will be rendered. This entails cutting intervening layers of staff and management and giving real authority over budget, hiring, staffing, and so on to the people who previously were simply told what to do.

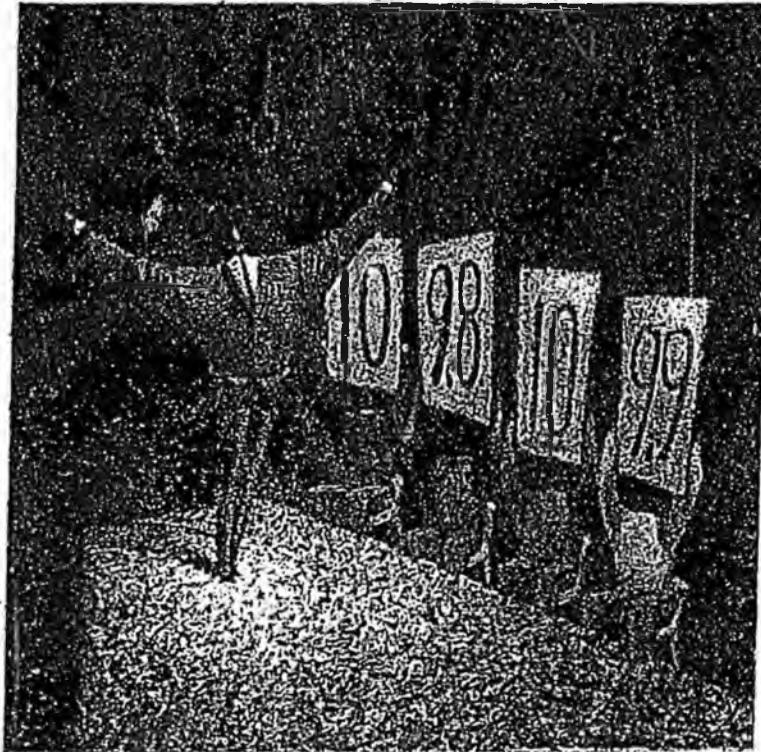
But none of this happens until the newly empowered people on the front line are given strong incentives to make every possible effort to reach the established goals. It is only by changing incentives that top management can be sure people on the front line will use their new power to benefit the organization. So systems are set up to make sure that units in the organization that make continuous improvements are rewarded and that units that do not improve face consequences.

Nowhere, we submit, are these ideas more applicable and more needed than in public education, especially since various school reform efforts over the past 20 years have helped paved the way for them.

The first such reform is site-based management, which responds to the call for pushing decisions about how to get the job done right, down to the people making the product or rendering the service. As the 1986 Carnegie report *A Nation Prepared* pointed out, the bureaucratic mode of management that dominates public education might well be replaced by something that looks more like the professional practice model that characterizes true professions such as architecture, medicine, and law. In that model, the faculty of the school would get to make the important decisions about how the needs of the students could best be met, within the

bounds determined by the standards set by the larger system. Whatever rewards came from doing a good job would be shared among the faculty, and the faculty would suffer whatever consequences came from a poor performance.

But in the real world, school boards and superintendents proved reluctant to give up power when they would still be accountable in the end. Instead, in many places, they instituted site-based councils composed typically of teachers and parents and presided over by the principal. Sadly, this conception of site-



based management produced the worst of all possible worlds. Power was not transferred from the central office to the school, because the central office did not trust the schools to do the right thing—nor did it want to give up long-held powers. Accountability, instead of being strengthened, was actually weakened. Weak principals in this system simply deferred to the site council, saying to the superintendent when something went wrong, "I knew that was the wrong way to go, but it was what the council decided to do." Strong principals spent much of their time subverting the council to get it to do what the principal thought right. The council became just another group of people who could say No but was not itself accountable.

Merit pay for teachers was the second precursor to modern accountability. Following the release of the famous federal report *A Nation at Risk* in 1983, many states decided to "get tough" on teachers and insist that their pay be related to the quality of their teaching. Tennessee took the most visible lead in this direction, but many other areas followed,

including local school districts such as the Fairfax County (Va.) Public Schools.

Teachers, however, hated this system and, in the end, successfully mobilized political power to defeat it. Many people concluded that it would never be possible to link teacher pay to student performance unless the unions were broken. That was the wrong conclusion. The reason these merit pay plans failed is that teachers perceived them as unfair. Teachers everywhere had seen principals using their power to reward those they believe to be loyal and punish those they believe to be disloyal. And the merit pay plans typically relied on principals to make the decision as to whose teaching was meritorious.

The third development that laid the groundwork for the new accountability was the move toward academic standards. From President Bush's call to governors to join him at the nation's first education summit in 1989 to President Clinton's call for "national—but not federal—standards" at the beginning of his second term, an enormous amount of work has been done by states, a consortium of states and districts, and national organizations devoted to teaching in the core disciplines.

In the eyes of many observers, however, the resulting standards vary widely in quality. Few make it clear what kind of student work will meet the standards, and few states have developed assessments that match the standards. Hence most of the standards are no more than symbolic. Teachers cannot teach to them, and few have any interest in doing so because they know their performance will be measured by the tests their districts administer—not by the standards their state has adopted.

The most important lesson from these precursors to today's accountability is how weak they are against the strength of the system they are intended to change. From one end of the nation to the other, the basic model of school system governance and organization is unvarying and deeply rooted. So was the mass production model in the business world. The only way to really change the way the organization functions is to see all these components as part of a much larger design for changing the way the system works.

### Three good starts

Though no school district we know of has succeeded in creating this larger design, we believe three contemporary models of accountability are much further along than the rest. They are the systems used in Kentucky, Chicago, and Edmonton in the province of Alberta, Canada.

The landmark Kentucky Education Reform Act of 1990 established a six-part "accountability index." Every two years, student progress has been measured by statewide test scores in reading, math, social studies, and science, as well as writing performance on open-ended test questions, a problem-solving activity, and portfolios of student work. An additional score has been factored in that measures attendance and graduation rates. Schools that outperform their improvement goals on these publicly released scores receive cash awards from the state, which the faculty may

choose to put in their own pockets in the form of salary bonuses or invest in staff development or a schoolwide improvement program. In this system, the schools have been essentially competing not against each other but against their own record, trying to do better each year than they did the preceding year. The rewards have gone not to individual teachers based on a supervisor's often biased or self-interested assessment, but on the basis of the scores that students received on an externally scored assessment.

Kentucky's statewide reform is not just a story of rewards for improved performance; it is also a story of consequences for failure. Kentucky identifies schools and districts that are not improving or are actually slipping behind and makes available highly skilled educators to serve as change agents. Kentucky schools that are unfortunate enough to earn this status usually improve quickly. But those that continue to perform poorly risk being reorganized, and their staff members risk dismissal.

If rewards are one side of the accountability coin, penalties are the flip side. In Chicago, 1995 reforms that brought schools under direct control of Democratic Mayor Richard Daley have prompted the school system's CEO to place more than 100 schools "on probation." Such schools are required to get help from one of a number of providers of outside technical assistance approved by the district central office and are assigned an "academic probation officer." This officer is empowered to recommend expedited dismissal of school staff, including the principal, and must approve of the school's program plan and budget every year before they are forwarded to the district central office. Students whose performance is exceptionally poor must attend a special summer school. Scores of principals and hundreds of teachers are at risk of being dismissed in Chicago under the provisions of this plan, and their schools reengineered or reconstituted.

The drive for accountability has not been simply a story of standards, assessments, empowerment, and rewards and consequences, however. Holding people accountable also requires being clear about who is responsible for what. That is the centerpiece of the Edmonton system, which has revolutionized relations between individual schools and the central office and attracted the attention of scholars and practitioners from three continents.

Edmonton's pioneering system streamlines the organizational hierarchy so that everyone reports to just one "boss." It then allocates district resources in dollars to the schools, each of which will be held accountable for student results on benchmarked tests, as well as the results of "customer satisfaction" surveys. The schools then acquire their own professional staff, learning materials, equipment, and supplies, from textbooks to globes to art supplies. If the schools are going to be held accountable for student results, the reasoning goes, then the schools, and not the central office, should control the mix of resources needed to produce those results.

The support functions in the central office, which account for by far the greatest fraction of central office employees,

must derive their budgets from the decisions that schools make about how to spend their money to get results for the students. And the schools can choose to spend that money outside the central office for services such as transportation or psychological counseling. This shift in budget power means that central office service staffs become accountable to the schools for their performance. Poor performance results in no dollars and therefore no employment for the central office service staff.

This system, of course, is likely to lead to many negative effects unless staff members at local schools are highly motivated to make decisions about the use of their new funds on the basis of student achievement rather than the convenience or ambitions of senior staff in the central office.

In all three cases—Kentucky, Chicago, and Edmonton—control of the program and budget of the schools moved from the central office to the school itself. And in varying degrees, control over the resources has been vested in the person or body that would get the rewards for good re-

sults—or suffer the consequences if results were poor. In all of these cases, too, many or all of the rules and regulations that had been in place to determine the inputs into the educational process were swept away. In their place was put a set of incentives related to the schools' success or failure in producing results.

### Putting the pieces together

What would an ideal relationship between the central office and individual schools look like under a first-class accountability system? In the box on this page we sketch such a relationship.

Almost every piece of this system is in place somewhere in the United States or in the world. But there is not yet any place where strong incentives for students to achieve have been combined with strong incentives for the professional staff to help students achieve. When these elements are finally combined, we will be watching for unprecedented gains in student performance. ❖

## A comprehensive accountability model

### Functions of the central office

Set the student performance standards, including and especially the requirements for a school leaving certificate set to internationally benchmarked standards for 16-year-old students. (One source is the New Standards Program of the National Center for Education and the Economy and the Learning Research and Development Center at the University of Illinois; for more, see [www.ncee.org](http://www.ncee.org) for information.)

Decide on the measures of student performance that will be used to assess progress toward the standards.

Decide on other common measures of results, including customer satisfaction surveys.

Decide on who the responsible individual or group will be at the school level, and the way in which individuals will be chosen and relieved of their positions.

Decide what results at the school level will be rewarded and to whom the rewards will go.

Define poor results at the school level and decide the consequences that will attend those results.

Decide on the formula to allocate resources to the schools.

Negotiate contracts with all other institutions.

Set standards for contracts, hire the people who make them, provide a strong orientation program for new teachers, and maintain a list of teachers and other staff available for employment at schools.

Publish a compendium of the rules and regulations by which the schools must abide.

Monitor and collate, for the schools, with the laws and regulations, including the rules of financial, personnel, and performance reporting systems.

Compile and publish data on performance of the system.

Provide information about the available arrangements for arranging a program of assistance to the weakest performing schools, at home or outside providers of education, or a route to schools.

Decide on an equitable assignment of students to schools that maximizes competition among public schools, while at the same time safeguarding the rights of privileged classes (meaning that individual schools are not limited to select their students based on race, gender, and ability).

ground, parents' income, handicap, or condition of religion).

Arrange for provision of any support services required by the schools, such as textbooks, maintenance, food services, and transportation.

### Functions of the individual schools

Decide on a leadership team for the school and develop and implement the school goals and plan.

Decide on a code of behavior to establish order and discipline.

Add their own standards and goals to those of the central office.

Decide on the measures they will use to assess progress toward those goals and the methods they will use to track progress.

Decide, on the basis of research into best practices, on curricula and instructional programs designed to get students to the target standards.

Decide on the best staffing structure to implement the instructional program.

Decide how to organize the school, how to assign students to classes, what the master schedule will be, and whether there will be after-school, Saturday, and summer school programs.

Decide on the best way to use non-personnel resources to get their students to the standards.

Decide what skills and knowledge the staff will need to execute the plan and what professional development program best provides those skills and that knowledge.

Decide how the school wants to involve parents, school service and public health agencies, local employers, and others in the life of the school and build a plan to make extra involvement successful.

Build, based on these decisions, an operational and operating budget that will make best use of the available resources.

Implement the plan and revise it, if necessary, based on analysis of the data on student performance gathered by the school and the central office.

Decide, based on the school's own goals, what kind of school should actively recruit a body of its students and parents interested in those goals and also construct a recruiting plan.

Provide all information required by the central office for monitoring and auditing functions.



# Iowa General Assembly

## 422.12 Deductions from computed tax.

There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

1. A personal exemption credit in the following amounts:

a. For an estate or trust, a single individual, or a married person filing a separate return, twenty dollars.

b. For a head of household, or a husband and wife filing a joint return, forty dollars.

c. For each dependent, an additional forty dollars. As used in this section, the term "*dependent*" has the same meaning as provided by the Internal Revenue Code.

d. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

e. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this paragraph, an individual is blind only if the individual's central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual's visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

2. A tuition credit equal to ten percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. As used in this subsection, "*textbooks*" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under this section and section 422.12B shall be deducted before the tuition credit under this subsection. The department, when conducting an audit of a taxpayer's return, shall also audit the tuition tax credit portion of the tax return.

As used in this subsection, "*tuition*" means any charges for the expenses of personnel, buildings,

equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

3. For the purpose of this section, the determination of whether an individual is married shall be made as of the close of the individual's tax year unless the individual's spouse dies during the individual's tax year, in which case the determination shall be made as of the date of the spouse's death. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered married.

#### Section History: Early form

[C35, § 6943-f12; C39, § 6943.044; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 422.12]

#### Section History: Recent form

83 Acts, ch 179, § 9, 10, 22; 84 Acts, ch 1305, § 32; 86 Acts, ch 1236, § 6, 7; 86 Acts, ch 1241, § 15; 87 Acts, ch 233, § 494; 88 Acts, ch 1028, §22, 23; 89 Acts, ch 296, §42; 90 Acts, ch 1248, § 9; 91 Acts, ch 159, §13; 95 Acts, ch 206, §2; 96 Acts, ch 1168, § 2

#### Internal References

Referred to in § 56.2, 96.3, 216B.3, 257.21, 422.5, 422.6, 422.10, 422.11A, 422.12B, 422.12C, 422.16, 422D.2, 476.6

#### Footnotes

1995 amendment to subsection 1, paragraph c, is retroactive to January 1, 1995, for tax years beginning on or after that date; 95 Acts, ch 206, §4 ~1996 amendment to subsection 2, unnumbered paragraph 1, retroactive to January 1, 1996, for tax years beginning on or after that date; 96 Acts, ch 1168, § 3



Iowa General Assembly



Search: Iowa Code 1997

© 1997 Cornell College and League of Women Voters of Iowa

Comments? [iacode@staff.legis.state.ia.us](mailto:iacode@staff.legis.state.ia.us).

*Last update: Mon Jan 27 16:05:08 CST 1997*

URL: [/IACODE/1997/422/12.html](#)

jhf

**NEW LANGUAGE APPEARS LIKE THIS**

*Stricken language appears like this*

Remaining language appears like this

---

**Reference Title: private school tuition; tax credit****AN ACT**

**AMENDING SECTION 43-1021, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 43-1087 AND 43-1088; RELATING TO INDIVIDUAL INCOME TAXATION.**

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 43-1021, Arizona Revised Statutes, is amended to read:

43-1021 . Additions to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of trust or estate income includible under section 43-1344.
2. A beneficiary's share of trust or estate deductions allowable under the internal revenue code.
3. An amount equal to the "ordinary income portion" of a lump sum distribution that was excluded from federal adjusted gross income pursuant to section 402(e) of the internal revenue code.
4. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the state of Arizona.
5. Annuity income received during the taxable year to the extent that the sum of the proceeds received from such annuity in all taxable years prior to and including the current taxable year exceeds the total consideration and premiums paid by the taxpayer. This paragraph applies only to those annuities with respect to which the first payment was received prior to December 31, 1978.
6. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.
7. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.
8. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the income tax act of 1954, as amended. This paragraph shall apply to all property

which is held for the production of income and which is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

9. The amount of depreciation or amortization of costs of any capital investment that is deducted pursuant to section 167 or 179 of the internal revenue code by a qualified defense contractor with respect to which an election is made to amortize pursuant to section 43-1024.

10. The amount of gain from the sale or other disposition of a capital investment which a qualified defense contractor has elected to amortize pursuant to section 43-1024.

11. The amount of depreciation or amortization of costs of child care facilities deducted pursuant to section 167 or 188 of the internal revenue code for which a credit is taken under section 43-1075, subsection A, paragraph 1.

12. Amounts withdrawn from the state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan or a county or city retirement plan by an employee upon termination of employment before retirement to the extent they were deducted in arriving at Arizona taxable income in any year.

13. That portion of the net operating loss included in federal adjusted gross income which has already been taken as a net operating loss for Arizona purposes.

14. Any nonitemized amount deducted pursuant to section 170 of the internal revenue code representing contributions to an educational institution which denies admission, enrollment or board and room accommodations on the basis of race, color or ethnic background except those institutions primarily established for the education of American Indians.

15. The amount of depreciation or amortization of costs of recycling equipment deducted pursuant to the internal revenue code for which an election is made pursuant to section 43-1076.

16. The amount paid as taxes on property in this state with respect to which a credit is claimed under section 43-1078.

17. Amounts withdrawn by the taxpayer during the taxable year from an individual medical savings account established in the taxpayer's name pursuant to:

(a) Section 43-1028, subsection F.

(b) Section 43-1028, subsection G and not transferred to a new trustee within sixty days after the withdrawal.

18. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

19. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1080 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

20. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

21. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1081 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

22. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1081 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1081.

23. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

24. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

**25. ANY AMOUNT DEDUCTED PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE REPRESENTING CONTRIBUTIONS TO A SCHOOL TUITION ORGANIZATION FOR WHICH A CREDIT IS CLAIMED UNDER SECTION 43-1087 OR 43-1088.**

Sec. 2. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1087, to read:

43-1087 . Credit for voluntary contributions to school tuition organization: definitions

**A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 1997, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF VOLUNTARY CASH CONTRIBUTIONS MADE BY THE TAXPAYER DURING THE TAXABLE YEAR TO A SCHOOL TUITION ORGANIZATION, BUT NOT EXCEEDING FIVE HUNDRED DOLLARS IN ANY TAXABLE YEAR. THE FIVE HUNDRED DOLLAR LIMITATION ALSO APPLIES TO TAXPAYERS WHO ELECT TO FILE A JOINT RETURN FOR THE TAXABLE YEAR. A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS FOR A TAXABLE YEAR IN WHICH THEY COULD HAVE FILED A JOINT RETURN MAY EACH CLAIM ONLY ONE-HALF OF THE TAX CREDIT THAT WOULD HAVE BEEN ALLOWED FOR A JOINT RETURN.**

**B. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.**

**C. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX PURPOSES.**

**D. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER DESIGNATES THE TAXPAYER'S DONATION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF ANY DEPENDENT OF THE TAXPAYER.**

**E. FOR PURPOSES OF THIS SECTION:**

**1. "QUALIFIED SCHOOL" MEANS A NONGOVERNMENTAL PRIMARY OR SECONDARY SCHOOL IN THIS STATE THAT DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN AND THAT SATISFIES THE REQUIREMENTS PRESCRIBED BY LAW FOR PRIVATE SCHOOLS IN THIS STATE ON JANUARY 1, 1997.**

**2. "SCHOOL TUITION ORGANIZATION" MEANS A CHARITABLE ORGANIZATION IN THIS STATE THAT IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501 (c) (3) OF THE INTERNAL REVENUE CODE AND THAT ALLOCATES AT LEAST NINETY PER CENT OF ITS ANNUAL REVENUE FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO CHILDREN TO ALLOW THEM TO ATTEND ANY QUALIFIED SCHOOL OF THEIR PARENTS' CHOICE. IN ADDITION, TO QUALIFY AS A SCHOOL TUITION ORGANIZATION THE CHARITABLE ORGANIZATION SHALL PROVIDE EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO STUDENTS WITHOUT LIMITING AVAILABILITY TO ONLY STUDENTS OF ONE SCHOOL.**

Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1088, to read:

43-1088. Tax credit; public school fees; definition

**A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 1997, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF ANY FEES PAID BY A TAXPAYER DURING THE TAXABLE YEAR TO A PUBLIC SCHOOL LOCATED IN THIS STATE FOR THE SUPPORT OF EXTRA CURRICULAR ACTIVITIES OF THE PUBLIC SCHOOL, BUT NOT EXCEEDING TWO HUNDRED DOLLARS.**

**B. THE TWO HUNDRED DOLLAR LIMITATION ALSO APPLIES TO TAXPAYERS WHO ELECT TO FILE A JOINT RETURN FOR THE TAXABLE YEAR. A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS FOR A TAXABLE YEAR IN WHICH THEY COULD HAVE FILED A JOINT RETURN MAY EACH CLAIM ONLY ONE-HALF OF THE TAX CREDIT THAT WOULD HAVE BEEN ALLOWED FOR A JOINT RETURN.**

**C. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX PURPOSES.**

**D. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.**

**E. FOR PURPOSES OF THIS SECTION, "EXTRA CURRICULAR ACTIVITIES" MEANS SCHOOL SPONSORED ACTIVITIES THAT REQUIRE ENROLLED STUDENTS TO PAY A FEE IN ORDER TO PARTICIPATE INCLUDING FEES FOR:**

**1. BAND UNIFORMS.**

**2. EQUIPMENT OR UNIFORMS FOR VARSITY ATHLETIC ACTIVITIES.**

**3. SCIENTIFIC LABORATORY MATERIALS.**

**Sec. 4. Department of revenue; report of fiscal impact**

The director of the department of revenue shall submit a report to the governor, the president of the senate and the speaker of the house of representatives regarding the fiscal impact of the tax credit provided for donations to school tuition organizations on July 1, 1999.

APPROVED BY THE GOVERNOR APRIL 7, 1997.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 1997.

---

[Bills](#) | [Members](#) | [Floor Calendars](#) | [Committee Agendas](#) | [Session Laws](#) | [Statutes](#) | [Arizona Constitution](#)

---



[Click here to return to the A.L.I.S. Home Page.](#)

**States that Allow for School Choice Options**  
 (Eric Hirsch, National Conference of State Legislatures, as of 9/98)

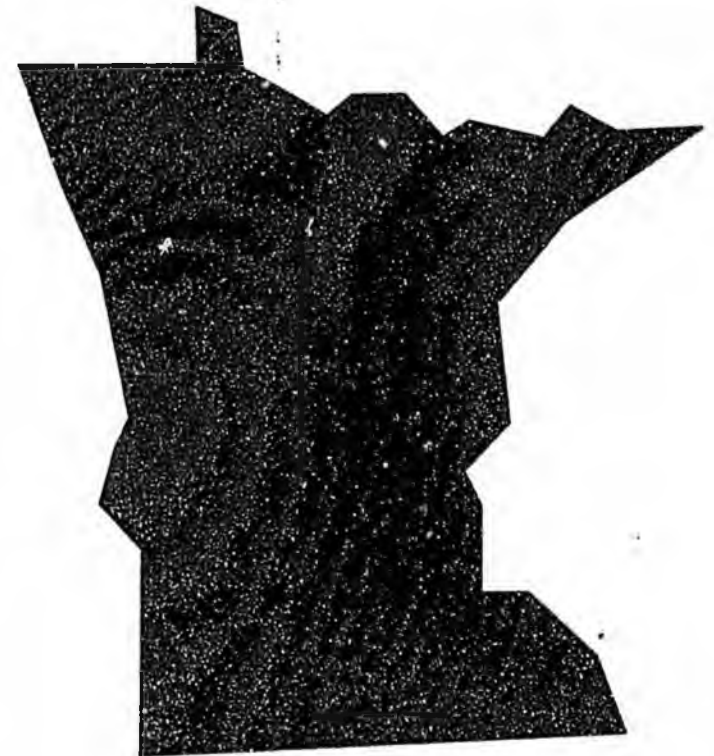
Charter Schools	Inter-District	Intra-District	Tuition Tax Credits	Vouchers
Alaska	Arizona	Alabama	Arizona	Cleveland, OH
Arizona	Arkansas	Connecticut	Iowa	Milwaukee, WI
Arkansas	California	Georgia	Minnesota	
California	Colorado	Indiana		
Colorado	Idaho	Kentucky		
Connecticut	Iowa	Maine		
Delaware	Louisiana (limited)	New York		
District of Columbia	Massachusetts	North Carolina		
Florida	Minnesota	South Carolina		
Georgia	Missouri (voluntary)	Texas		
Hawaii	Nebraska			
Idaho	New Hampshire (voluntary)			
Illinois	New Jersey (voluntary)			
Kansas	North Dakota			
Louisiana	Ohio			
Massachusetts	Oregon			
Michigan	South Dakota			
Minnesota	Tennessee			
Mississippi	Utah			
Missouri	Washington			
Nevada	Wisconsin			
New Hampshire				
New Jersey				
New Mexico				
North Carolina				
Ohio				
Pennsylvania				
Rhode Island				
South Carolina				
Texas				
Utah				
Virginia				
Wisconsin				
Wyoming				

\* Puerto Rico has both charter school and inter-district school choice options.

Sources include: Education Commission of the States; the Heritage Foundation and the National Conference of State Legislatures

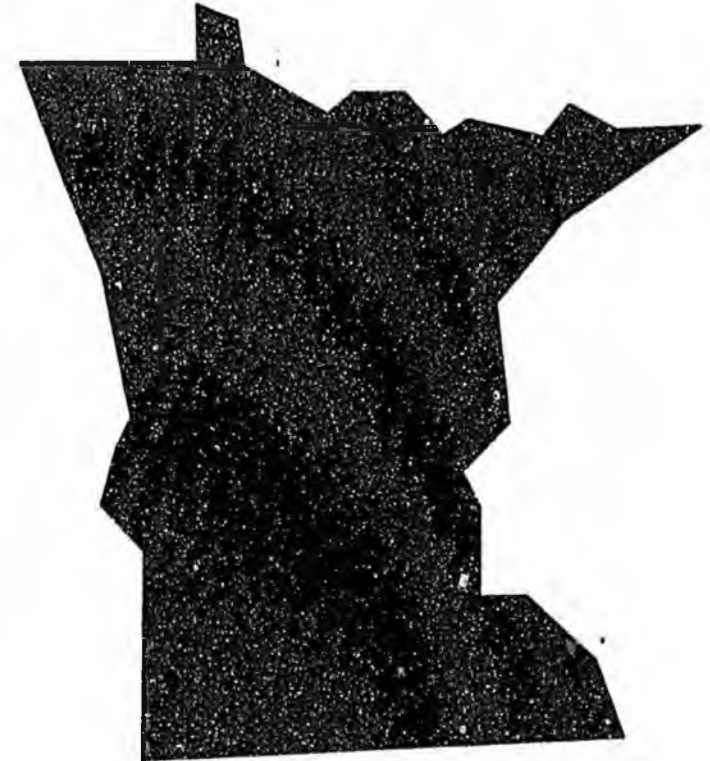
## Minnesota's Tuition Tax Deduction/Credit

- Income tax deduction since 1955. Ruled constitutional in 1983.
- Deduction for tuition, textbooks and transportation: \$1,625 for each dependent K-6 and \$2,500 grades 7-12.
- Only \$200 per year per family may be deducted for computer equipment and educational software.
- Income tax credit for families with income under \$33,500.
- Tax credit limited to \$1,000 per child and may not exceed \$2,000 per family.
- Tax credit cannot be used for tuition for regular school programs and cannot be used for the same expenses as the deduction.



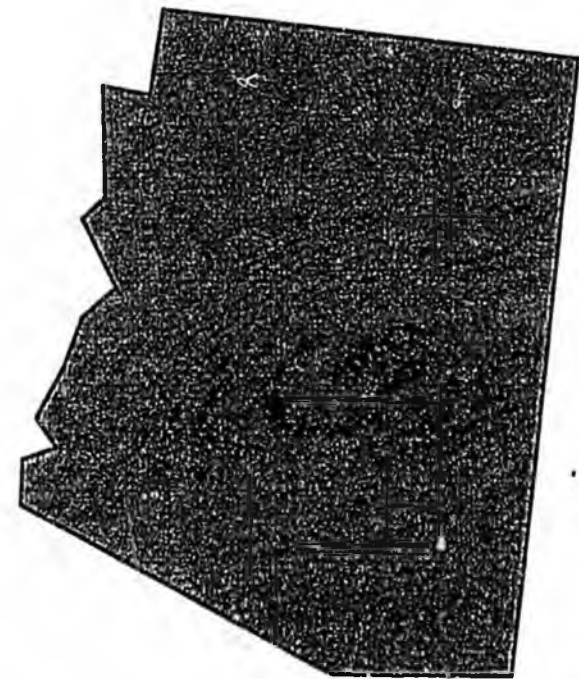
## Minnesota's Tuition Tax Deduction/Credit

- The Minnesota Department of Revenue estimates that 273,000 families will claim the deduction with the average estimated amount for each family at \$185 for parents of nonpublic school students and \$85 for parents of public school students. The estimated cost to the state in foregone revenue is \$14.5 million annually.
- The DOR estimates that 192,500 will claim the credit, with an average claim of \$200. The estimated annual cost to the state in terms of foregone revenue is \$38.5 million



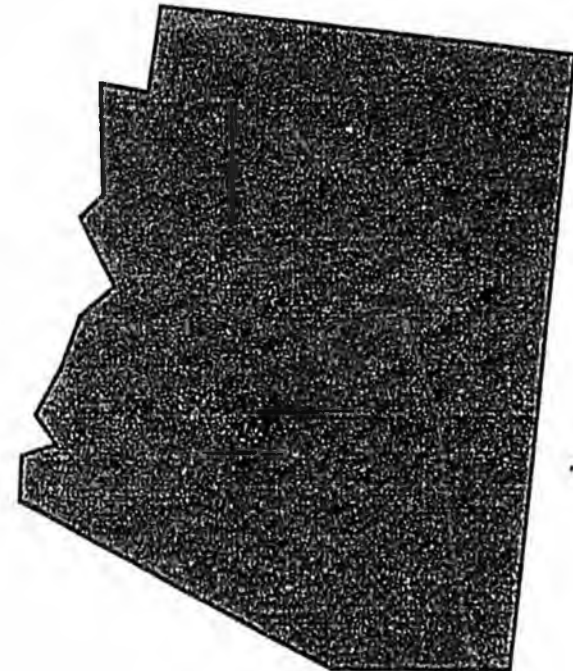
## Arizona School Tax Credits

- HB 2047 established both a private and public school tuition tax credit in 1997.
- Taxpayers can claim a tax credit for up to \$500 donated to a school tuition organization (a charitable organization that allocates at least 90% of annual revenue for educational scholarships or tuition grants to children and allow them to attend any qualified school of their parents' choice
- A \$200 credit for fees paid to a public school for the support of extra curricular activities: band uniforms, equipment or uniforms for varsity athletics and science lab materials, etc.



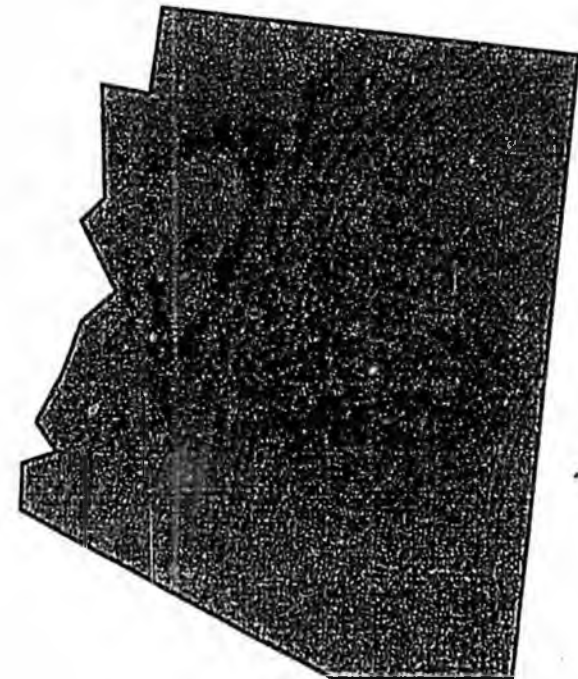
## Arizona School Tax Credits

- The Arizona JLBC estimates of the net revenue impact of the private school tuition tax credit is as follows:
- FY 1999: from a low of \$6.5 million to a high of \$20.6 million.
- FY 2000: from a low of \$9.8 million to a high of \$30.9 million.
- FY 2001: from a low of 13.1 million to a high of \$41.2 million
- Estimates vary based on assumptions of the total number households that would donate at various contribution levels.



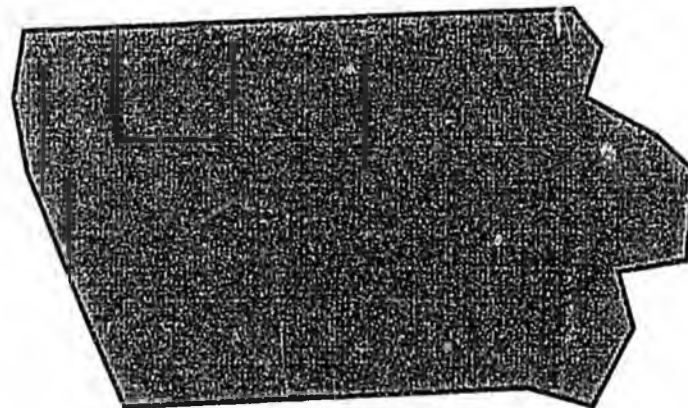
## Arizona School Tax Credits

- The Arizona JLBC estimates of the net revenue impact of the public school extracurricular tax credit as follows:
- FY 1999 - from a low of \$21.3 million to a high of \$43.6 million.
- FY 2000 - from a low of \$32.3 million to a high of \$66.1 million.
- FY 2001 - from a low of \$43.4 million to a high of \$89.0 million.
  
- Estimates are based on changing assumptions of the number of households eligible and the amount donated.



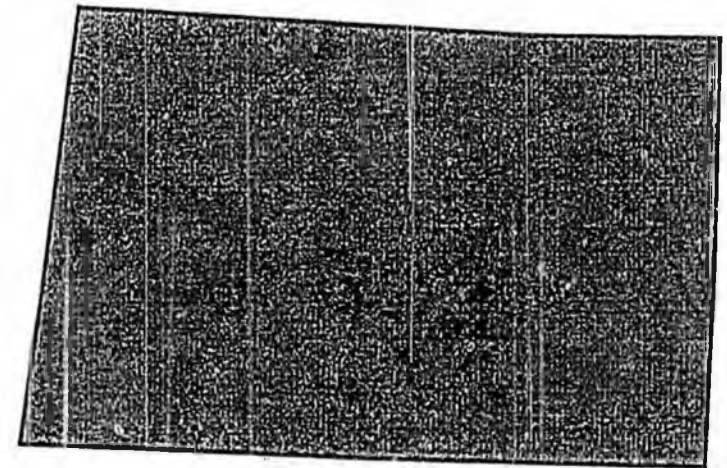
## Iowa Tax Credit

- Iowa established a tuition tax credit program in 1987.
- Ruled constitutional in 1992 based on the precedent established in Minnesota.
- Parents can claim a tax credit on 25% of the first \$1,000 spent on private school tuition and non-religious textbooks.
- The plan started at 5% and was raised from 10% to its current 25% level this year.
- Original cost estimates were between \$1.5 and \$2 million, but 1987 returns came in at about \$677,000.



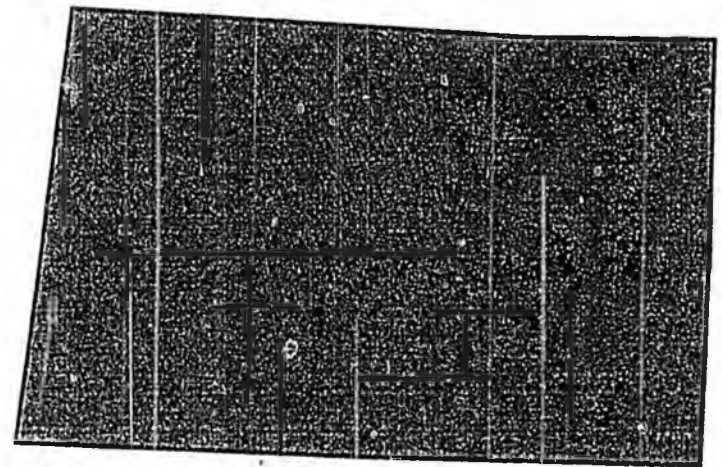
## Colorado Tax Credit Ballot Initiative

- Establishes tuition tax credits based on savings for each student that leaves the public school system (currently \$4,873).
- Priority list of parents if there is not enough money for all:
  - special needs or students transferring from a below average public school
  - parents of students who transfer from other public schools.
  - parents of low-income parents of student sin private schools.
  - all other parents with students in private school.
  - parents of home school students.



## Colorado Tax Credit Ballot Initiative

- The amount of the credit will not be less than 50% of yearly state average PPOR or 80% of the cost of the tuition paid in the applicable tax year, whichever is less (the current maximum would be \$3,600).
- Parents receive a reimbursement later. The amount of the credit will vary year to year based on student enrollment patterns.



## State Legislative Trends

- The Illinois legislature passed a tuition tax credit bill in 1997 that was vetoed by Gov. Jim Edgar. The credit, up to \$500 a year per child, was estimated to cost the state - with almost 300,000 students attending private school - at least \$100 million.
- At least 15 states considered tuition tax credit/deduction legislation in 1998, with only an increase in the existing Iowa program passing.
- Role of the federal government and the Coverdell A+ Savings Account bill.

## Legal Issues

- 1971: *Lemon v. Kurtzman*. In an 8-1 vote the court struck down laws in RI and PA that provided salary supplements for teachers in private religious schools. Established a three-part test for evaluating the constitutionality of government programs:
  - Must have a secular legislative purpose.
  - The primary effect must be one that neither advances nor inhibits religion.
  - Must not result in excessive entanglement of government in religion.
- 1973: *Committee for Public Education and Religious Liberty v. Nyquist*. The U.S. Supreme Court ruled the NY tuition reimbursement program advanced religion in a 6-3 decision.
- 1983: *Mueller v. Allen*. The court upheld Minnesota's tuition tax deduction in a 5-4 ruling, based primarily on the argument that the benefit was available to all parents.
- 1998: *Jackson v. Benson*. The Wisconsin Supreme Court upheld a 1995 state law that expanded the Milwaukee voucher program to include religious schools in a 4-2 decision.

# School Law Reporter

EDUCATION LAW ASSOCIATION  
formerly National Organization on Legal Problems of Education

September 1998

Lawrence F. Rossow, Editor  
The University of Oklahoma

Vol. 40, No.9

## TABLE OF CONTENTS

INTRODUCTION AND COMMENT .....	87
ELEMENTARY AND SECONDARY	
EDUCATION .....	89
Pupils .....	89
Constitutional Rights .....	89
Discrimination .....	90
Student with Disabilities .....	90
Teacher & Administrator Employment .....	
Dismissal, Nonrenewal, & RIF.....	91
School Boards .....	
Desegregation .....	92
Finance .....	92
Miscellaneous .....	92
TABLE OF CASES .....	92
ELECTRONIC CITES UPDATE .....	93
U.S. SUPREME COURT DOCKET .....	93

## INTRODUCTION and COMMENT\*

by Lawrence F. Rossow  
University of Oklahoma

### The Wisconsin Supreme Court Chooses "Choice": *Jackson v. Benson*

Last month, the editors faced a difficult decision as two cases of significance were handed down at the same time. The case we chose for last month's *Reporter* was *Lago Vista*. Fortunately, this month's most significant case is last month's runner up. Therefore, we bring you *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998).

On June 10, 1998, the Supreme Court of Wisconsin upheld the 1995 amendments to the 1989 Milwaukee Parental Choice Program (MPCP), originally enacted in 1989. The MPCP provides state aid to the parents of qualified students to be used for school tuition. This aid can be applied to either sectarian or nonsectarian private schools in the city of Milwaukee, thus enabling parents to actively participate in the type of education their children receive. Some view this decision as a clear violation of the Establishment Clause — the crumbling of the metaphoric wall that separates church and state. Others, however, agree with the Supreme Court of Wisconsin's reasoning that the MPCP is a prime example of religious neutrality at work.

In August 1995, the Milwaukee Teachers' Education Association (MTEA) and the National Association for the Advancement of Colored People (NAACP) filed two actions claiming that the amended MPCP violated both the United States Constitution and the Wisconsin Constitution. *Id.* at 602.

### The Original MPCP

Enacted in 1989, the MPCP provided public funds for up to 1.5 percent of Milwaukee public school students. The MPCP gave low-income students the opportunity to attend any participating private, secular school in the city, provided the student met the eligibility requirements. However, aid

\* Any opinions expressed or implied are those of the Editors and may not represent official positions of the Education Law Association.

## REGIONAL REPORTERS

Amy Abernethy .....	Northeastern/New York
Larry D. Bartlett	
University of Iowa .....	Northwestern
Gus Douvanis	
University of Georgia .....	Higher Education (State)
Irving C. Evers, Attorney at Law .....	Atlantic
Ralph Hall	
Appalachian State University .....	Southeastern
Kenneth Lane	
California State University	
at Bernadino .....	California Appellate
Timothy Letzring	
University of South Carolina .....	Higher Education (Federal)
Albert Miles	
University of Alabama .....	Southern
Louis Millhouse	
Spotsylvania County Schools.....	Northeastern/New York
Johnny R. Purvis	
University of Southern Mississippi .....	Southwestern
Jill Bush Raines	
University of Oklahoma .....	At Large
Marshall Strax	
St. Elizabeth College .....	At Large
William E. Thro, Assistant Attorney General	
Office of the Attorney General of Colorado .....	Pacific
R. Craig Wood	
University of Florida .....	Elementary & Secondary (Federal)
Michael Yates	
Missouri Southern State College .....	Federal Supplement

## EDITORIAL

Lawrence F. Rossow	
University of Oklahoma .....	Editor
Bonnie N. Hefner	
University of Oklahoma .....	Research Assistant
Laural Logan	
University of Oklahoma .....	Editorial Assistant

## EDUCATION LAW ASSOCIATION

Jeff Homer .....	President
Robert Wagner .....	Executive Director
Sheila Sandapen .....	Publications Editor
Mandy Bingaman .....	Program Coordinator
Kathleen Vacek .....	Administrative Assistant
Judy Peiman .....	Bookkeeper

*School Law Reporter*

is published monthly by

Education Law Association

300 College Park, Dayton, Ohio 45469-2280

Phone: 937-229-3589 Fax: 937-229-3845

E-mail: ela@udayton.edu Website: <http://www.educationlaw.org>

ISSN 1059-4090

did not extend to individuals who wanted to attend sectarian schools. The legislation required that the private schools participate in annual performance evaluations and all aid was given directly to the private schools. *Id.* at 608.

## The Amended MPCP

In 1995, the legislature amended MPCP to include secular schools. In addition, the amendment increased the number of eligible students from 1.5 percent to 15 percent. The amended MPCP removed the performance evaluation requirement and required that the aid be paid directly to the participating students' parents rather than the participating schools. The amended program does not limit how the private school can use the aid. In addition, the amended program now includes an "opt-out" provision. This provision exempts students from participating in any school-related religious activity, provided that the parent or guardian submits a request in writing. *Id.* at 608-09.

The state district court held that the amended MPCP violated the Wisconsin Constitution. The court of appeals affirmed. In affirming, the court of appeals stated that the amended MPCP violated the Wisconsin Constitution because the state aid benefitted schools with religious affiliations.

The Wisconsin Supreme Court faced six key issues. The first issue addressed by the court was whether or not the amended MPCP violates the Establishment Clause of the First Amendment of the United States Constitution. In answering no, the court reluctantly relied on the *Lemon* Test established in *Lemon v. Kurtzman*, 403 U.S.602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). In a footnote, the court stated the uncertainty of applying such a test, but found no alternative. *Id.* at 612 n5.

Therefore, the court asked the following three questions: (1) Does the program have a secular purpose? (2) Does the program's primary effect advance religion? and (3) Does the program excessively entangle the state and the sectarian schools?

In regards to the first issue, the court found that the primary purpose of the amended MPCP was to provide students of lower economic backgrounds with a wider range of educational opportunities. The court reasoned, "An educated populace is essential to the political and economic health of any community, and a State's citizenry is well-educated." *Jackson*, 578 N.W.2d at 612.

As for the second part of the test, the court reasoned that the legislation neither advances nor prohibits religion. *Id.* The Establishment Clause is not violated simply because state money is given to a religious institution or because a religious institution receives indirect aid from such legislation as "...there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." *Id.* at 614. The court added that "... state

programs that are wholly neutral in offering educational assistance directly to citizens in a class defined without reference to religion do not have the primary effect of advancing religion." *Id.* at 613. In their analysis of the second prong, the court refers to the "opt-out" provision. The court reasoned that because a student can be exempted from a sectarian school's religious activities, then the amended MPCP is religiously neutral.

Finally, the court held that total separation is not possible as entanglement is, to some degree, inevitable, and it "... must be 'excessive' before it runs afoul of the Establishment Clause." *Id.* at 619. The court reasoned that "[t]he program does not involve the State in any way with the schools' governance, curriculum, or day-to-day affairs." *Id.* at 620.

The second issue asked whether the amended MPCP violated the religious establishment provisions of Wisconsin Constitution. In order to answer this issue, the court looked at the Wisconsin Constitution. It provides the following:

The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries. *Id.* at 620.

The court invoked a "Child-Benefit Theory." The court reasoned that the prohibition is on direct aid to a religious institution. The MPCP only provides an indirect aid to a religious institution (potentially higher enrollments). The direct beneficiaries of the MPCP are low-income children.

In the interest of space, the next four issues will be briefly summarized. The court ruled that the amended MPCP was not a private or local bill enacted in violation of the procedural requirements mandated by the Wisconsin Constitution. Next, the MPCP does not violate the uniformity provision of the Wisconsin Constitution. Also, the MPCP does not violate the Wisconsin public purpose doctrine which generally prohibits the use of public funds for the support of religious institutions. The court reasoned that the program fulfilled a valid public purpose and contained sufficient and reasonable controls to attain its public purpose. Finally, children who were eligible for the

amended MPCP when this court's injunction was issued on August 25, 1995, and who subsequently enrolled in private schools, are eligible for the program if the injunction is lifted. It reasoned that the eligibility under the amended MPCP is determined on the date the injunction was issued. Therefore, those students would not be penalized by the injunction.

Also in this case the NAACP argued that the amended MPCP violated the Fourteenth Amendment to the U.S. Constitution. The NAACP argued that the amended MPCP, which included private schools, effectively included schools that had little or no racial minorities in attendance. Thus, public funds would be spent to support "white flight" to private schools. In rejecting this argument, the court noted that the statute was not enacted with the "purpose or intent to discriminate." *Id.* at 631. In fact, part of the amended program included an "anti-discrimination" provision.

*Jackson* was a 4-2 decision with one justice not participating. The dissent was brief. In one paragraph it addressed only the Wisconsin Constitution provision on religious establishment. Without rationale, the dissent held that the MPCP violated the Wisconsin Constitution.

This 68-page decision, while not from the United States Supreme Court, may very well wind up before our nation's highest tribunal. The *Seattle Times* called the decision "the most important ruling ever on school choice...." (William Mellor, "Was Wisconsin Supreme Court Right to Uphold School-Voucher Program?", *Seattle Times*, June 24, 1998, at B5.) The case ends, for now at the state level, after three years of challenges. Choice opponents have already announced that they will appeal to the United States Supreme Court. The Wisconsin decision does provide a model of how to deal with the Establishment Clause issue where the state perceives it to be an obstacle. The state supreme courts in Ohio, Arizona, Vermont and Maine may be considering the constitutionality of similar "voucher" programs. For Wisconsin, the expansion of the "choice" to include parochial schools will commence in September.

## ELEMENTARY and SECONDARY EDUCATION

### Pupils

#### *Constitutional Rights*

*Doe v. New Philadelphia Pub. Sch. Bd. of Educ.*, 996 F.Supp. 741 [126 Educ. L. Rep. 146] (N.D. Ohio 1998). A female middle school teacher had a sexual relationship with a fourteen year-old male student that resulted in the teacher

becoming pregnant and having an abortion. The teacher ultimately pleaded guilty to two counts of sexual battery and her employment was terminated. The minor child's mother sued the defendant school district under section 1983, Title IX, and state law. Because the plaintiffs had not shown any policy or custom which caused the student's constitutional rights to be violated, the court granted the defendants' motion for summary judgment on the section 1983 claim. Evidence existed that the principal and a school psychologist had been informed by a student that the teacher had kissed another student. They decided to deal internally with the matter, and the student was suspended for making false allegations against a teacher. The principal's antenna should have been raised when she learned that the teacher had previously been seen leaving the building with the plaintiff student without permission. These two incidents may have been negligent, but did not rise to the level of a custom within the district. However, a genuine issue of material fact as to the effectiveness of the district's response to the teacher's actions was sufficient to withstand the defendants' motion for summary judgment on the plaintiffs' hostile environment Title IX claim. The defendants were not entitled to sovereign immunity on the state law tort claim.

*Triplett v. Livingston Co. Bd. of Ed.*, 967 S.W.2d 25 [126 Educ. L. Rep. 528] (Ky. Ct. App. 1998). Parents and students who refused to take the Kentucky Instructional Results Information System (KIRIS) assessment exam brought action seeking declaratory judgment that exam and requirement to take exam violated parents' and students' constitutional rights and certain federal laws. The Court of Appeals of Kentucky held that requiring students to take the KIRIS did not violate the Hatch Amendment to the Family Educational Rights and Privacy Act. The court also stated the taking of the state exam did not violate the Establishment Clause of the Federal Constitution and its state counterpart or parents' constitutional right to direct education and upbringing of their children.

### Discrimination

*Wessmann v. Boston Sch. Comm.*, 996 F.Supp. 120 [125 Educ. L. Rep. 1214] (D.Mass 1998). The plaintiff challenged the constitutionality of the defendants' policy governing admission to Boston's three examination schools. The policy admits half of each class solely on the basis of composite score ranking. After the initial 50% cut-off at any examination school, the balance of the remaining seats at each school are awarded according to composite score rank in proportion to the racial/ethnic composition of that particular school's remaining qualified applicant pool. The composition of the second half of the class varies each year

depending upon results of the examination and the racial/ethnic makeup of the top half. The plaintiff alleged that but for the application of the policy she would have been admitted to the ninth grade at the Boston Latin School. The plaintiff, a white female, ranked 91st among the applicants to Boston Latin. If straight composite scores had been applied, students ranking between 1 and 98 would have been admitted. The application of flexible racial/ethnic guidelines resulted in the rejection of eleven white students with higher scores than black, Hispanic, and Asian students. However, all applicants were qualified, and the plaintiff's composite score was only slightly higher than the lowest admitted student. The current policy was the recommendation of a task force and replaced a 35% set-aside program for black and Hispanic students that had been held unconstitutional. In upholding the "flexible" racially and ethnically conscious admission policy, the court distinguished the case at hand from employment and university cases. The admission policy served a compelling state interest in achieving diversity within the unique context of public elementary and secondary education as well as the state's compelling interest in overcoming the vestiges of past discrimination and avoiding de facto re-segregation of the city's public schools. The policy was for a limited duration and had a built-in review provision. Therefore, it was narrowly tailored to serve these compelling state interests.

### Students with Disabilities

*Corey H. v. Board of Educ.*, 995 F.Supp. 900 [125 Educ. L. Rep. 1129] (N.D.Ill. 1998). A group of Chicago public school students and their parents brought a class action suit against the city and state boards of education alleging that the defendants systematically failed to educate children with disabilities in the least restrictive environment (LRE) as mandated by the IDEA. Following approval of a settlement agreement with the city board, the plaintiffs proceeded to trial against the state board. The court held that by inadequately monitoring the city's lack of compliance with LRE mandates and by failure to take corrective action with respect to local violations, the state defendants violated the IDEA. Placement of students in Chicago public schools based primarily on the categories or severity of their disabilities rather than by individual needs resulted in overly restrictive placements. Because state teachers were improperly trained and certified to teach by category of disability, they were unable to serve disabled children in integrated settings presumed by the LRE mandate. State funding programs created financial incentives for parents to take children with disabilities out of the public school system and place them in private, segregated schools.

The Heritage Foundation  
**Background**

No. 1188

June 2, 1998

## WHAT PEOPLE ARE SAYING ABOUT SCHOOL CHOICE

NINA H. SHOKRAI<sup>1</sup>

President Bill Clinton recently vetoed S. 1502, the D.C. Student Opportunity Scholarship Act of 1998 passed by Congress on April 30, 1998. This \$7 million plan would have offered 2,000 District of Columbia students vouchers worth up to \$3,200 to help them attend a public, private, or religious school of choice.

Critics claimed that parents in the District did not support these scholarships. For example, Senator Edward M. Kennedy (D-MA) asserted that "D.C. parents and ministers and local leaders have made it clear that they do not want vouchers."<sup>2</sup> Senator Thomas Daschle (D-SD) observed that "All parents want their children to be able to go to the best schools possible. But . . . District voters rejected vouchers by an 8-to-1 margin in 1981."<sup>3</sup> And Delegate Eleanor Holmes Norton (D-DC) stated, "I think I can say with confidence that the

people I represent would deeply resent the imposition of vouchers."<sup>4</sup>

This rhetoric, however, ignores the reality of growing bipartisan and grassroots support for vouchers. Three days after the President's veto, for example, *The Washington Post* released the results of a May 11-17, 1998, poll of District residents on this issue. Contrary to the claims of critics, the poll showed that 65 percent of African-Americans who reside in the District and have incomes under \$50,000 favor using federal dollars to send children to private or religious schools. Furthermore, 56 percent of D.C.

---

Produced by the  
Domestic Policy Studies  
Department

Published by  
The Heritage Foundation  
214 Massachusetts Ave., N.E.  
Washington, D.C.  
20002-4999  
(202) 546-4400  
<http://www.heritage.org>



- 
1. The author would like to thank Jake Phillips, a 1998 summer intern at The Heritage Foundation and senior at Duke University, for his assistance with this paper.
  2. "District of Columbia Student Opportunity Scholarship Act of 1997," *Congressional Record*, September 25, 1997, p. S9930.
  3. "District of Columbia Student Opportunity Scholarship Act of 1997," *Congressional Record*, September 30, 1997, p. S10193.
  4. "District of Columbia Student Opportunity Scholarship Act of 1997," *Congressional Record*, October 9, 1997, p. H8801.

residents overall support school choice.<sup>5</sup> Contrary to what critics have said, school choice is popular.

Congress should consider adopting choice to help District of Columbia students, whether this involves overriding the President's veto of the D.C. Student Opportunity Scholarship Act or working through some other legislative vehicle. Residents of the District, particularly low-income parents who would be eligible for such scholarships, are solidly behind vouchers, and they deserve an opportunity to send their children to schools that are most likely to help them succeed.

School choice and vouchers have attracted strong support among legislators and members of the President's own party, as well as among independent journalists, as the following quotes clearly demonstrate.

**Senator Joseph R. Biden, Jr. (D-DE):**

I have come to the belief that the constitutional issues involved [with school choice] are not as clear cut as opponents have argued. While lower courts have ruled that vouchers used in private religious schools violate the first amendment's prohibition on the establishment of religion, the Supreme Court has not yet weighed in on the question. In fact, the Supreme Court has ruled that State tuition tax credits for private religious school tuition are perfectly constitutional, and the Supreme Court has ruled that Pell grants—vouchers for college students—can be used in private religious colleges without violating the Constitution. . . . Even some liberal constitutional scholars have noted that vouchers to parents and children may be constitutional.

Even if vouchers were to take money away from the public schools—and I should

point out that not all voucher proposals do—that does not in and of itself mean that public schools will be harmed.

When you have an area of the country—and most often here we are talking about inner cities—where the public schools are abysmal or dysfunctional or not working and where most of the children have no way out, it is legitimate to ask what would happen to the public schools with increased competition from private schools and what would happen to the quality of education for the children who live there.<sup>6</sup>

**Matthew Cooper, in *Newsweek*:**

For [Senator John] Kerry [D-MA], the debate over schools has become mindless Kabuki ritual: while liberals want more money for public education and conservatives demand private-school vouchers, kids fall farther behind. . . . This spring, Kerry plans to commit the supreme Democratic heresy. He's considering, *NEWSWEEK* has learned, embracing school vouchers if conservatives do their part and back vastly increased resources for public education.<sup>7</sup>

**Former Representative Floyd Flake (D-NY):**

This is not a question for me about Democrats or Republicans. It is really a question about whether or not we are going to continue to let every child die, arguing that, if we begin to do vouchers, if we do charter schools, what we in fact are doing is taking away from the public system. We say, let them all stay there. Let them all die. It is like saying there has been a plane crash. But because we cannot save every child,

5. Sari Horwitz, "Poll Finds Backing for D.C. School Vouchers: Blacks Support Idea More Than Whites," *The Washington Post*, May 24, 1998, pp. F1, F7.
6. "District of Columbia Appropriations Act," *Congressional Record*, September 30, 1997, p. S10192.
7. Matthew Cooper, "The New Choirboys," *Newsweek*, May 4, 1998, p. 29.

we are not going to save any of our children; we let them all die.<sup>8</sup>

**Senator J. Robert Kerrey (D-NE):**

"If I were running a public school system, I'd sign a contract with the parochial schools—as Mayor Guiliani wanted to do in New York—and have them educate some of the poorest kids," [Senator Kerrey] told *New Yorker* magazine. "I don't see the First Amendment as so rigid that it prevents us from contracting with people who are getting the job done right."<sup>9</sup>

**Alveda C. King, niece of Dr. Martin Luther King and senior fellow at the Alexis de Tocqueville Institution in Washington, D.C., in *The Wall Street Journal*:**

The District of Columbia public school system allocates \$10,180 per student, the highest in the nation, according to the U.S. Department of Education. Yet, according to the Annie Casey Foundation, 80% of fourth-graders in the Washington public schools score below their grade on basic math skills. The National Assessment of Education Progress reports that 72% of Washington's fourth-graders test below "basic proficiency" . . . [an] appalling failure. . . .

Washington's families and teachers favor a right to choose the paths of education for their families. . . . The issue is not what families choose, but rather, that they be allowed and empowered to do so.

U.S. citizenship guarantees all parents an education for their children. This is a true civil right. Yet some children receive a better education than others due to their parents' abilities to pay for benefits that are

often missing in public schools. This inequity is a violation of the civil rights of the parents and children who are so afflicted by lack of income and by the mismanagement endemic to so many of the country's public school systems.<sup>10</sup>

**Senator Joseph I. Lieberman (D-CT):**

The true choice here is between preserving the status quo at all costs, which is slamming a door in the face of the parents and children who want to do better, and doing what is necessary to put those children first. In other words, asking whether the status quo of the public education orthodoxy, which is letting down so many children, is so important that we are willing to sacrifice the hopes and aspirations of thousands of children for the sake of a process, not for the sake of the children.<sup>11</sup>

**Representative James P. Moran, Jr. (D-VA):**

I am going to . . . plead with my colleagues on the Democratic side, where the opposition to the bill lies, to set aside the suspect political motivation behind [the Student Opportunity Scholarship Act] and to put aside all that kind of lofty ideological rhetoric that partisanship can inspire. . . . Because all it is is an additional \$7 million that can only go to poor families, only poor families. . . . Why should we condemn all of these children to continue to suffer such inequity because we want to uphold our lofty principles and our traditional politics? Of course we believe in public schools. But we also believe in the intrinsic worth of every one of those children born in the District of Columbia. They have the same right as everyone else has.<sup>12</sup>

8. Floyd Flake, floor speech in support of low-income scholarships and charter schools, U.S. House of Representatives, 105th Cong., October 31, 1997.
9. Matthew Robinson, "Is Left Warming to Vouchers?" *Investor's Business Daily*, March 2, 1998, p. A1.
10. Alveda C. King, "Fighting for School Choice; It's a Civil Right," *The Wall Street Journal*, September 11, 1997.
11. "District of Columbia Appropriations Act, 1998," *Congressional Record*, September 30, 1997, p. S10195.

, columnist for *The*  
st:

from the viewpoint of those who grab so avidly for the chance to shove their children into better schools: Should they be required to keep their children in dreadful schools in order to keep those schools from growing even worse? Should they be made to wait until we get around to improving all the public schools? . . . Surely voucher opponents cannot believe the logic of their counterargument: that if you can't save everybody—whether from a burning apartment house, a sinking ship or a dreadful school system—it's better not to save anybody at all.<sup>13</sup>

Jonathan Rauch, national correspondent for *The National Journal*, in *The New Republic*:

I've always found it a little odd that liberals hand the voucher idea to Republicans like [Representatives Charles H.] Taylor and [House Speaker] Newt Gingrich, rather than grabbing it for themselves. . . . For poor children, trapped in execrable schools, the case [for vouchers] is moral rather than merely educational. These kids attend schools which cannot protect their physical safety, much less teach them. To require poor people to go to dangerous, dysfunctional schools that better-off people fled years ago, and that better-off people would never tolerate for their own children—all the while intoning pieties about "saving" public education—is worse than unsound public policy. It is repugnant public policy.

Why should the poor be denied more control over their most important means

of social advancement, when soccer moms and latte-drinkers take for granted that they can buy their way out of a school (or a school district) that abuses or annoys them?

By embracing school choice—if not everywhere, then at least somewhere—liberals could at one stroke emancipate the District's schoolchildren while also emancipating liberalism from that basest sort of corruption.<sup>14</sup>

Diane Ravitch, Senior Fellow at the Brookings Institution, and William A. Galston, Professor at the University of Maryland School of Public Affairs, in *The Washington Post*:

These [school choice] efforts should be expanded into a national demonstration program involving poor children in no fewer than 10 hard-pressed urban school districts for a period of no less than five years, with carefully designed monitoring and evaluation plans. We cannot afford to write off another generation of urban schoolchildren. . . . It is time to set ideology and politics aside and put our children first.<sup>15</sup>

Brent Staples, editorial board of *The New York Times*:

Democrats who had made careers as champions of the poor opposed the [school choice] plan, arguing that a solution that did not save every child was unacceptable. The Democrats got the worst of the exchange. They seemed more interested in preserving the public school monopoly than in saving at least some children's lives [through vouchers].<sup>16</sup>

12. "District of Columbia Student Opportunity Scholarship Act of 1997," *Congressional Record*, April 30, 1998, p. H26655.

13. William Raspberry, "Not Enough Lifeboats," *The Washington Post*, March 9, 1998, p. A19.

14. Jonathan Rauch, "TRB from Washington: Choose or Lose," *The New Republic*, November 10, 1997.

15. Diane Ravitch and William Galston, "Scholarships for Inner-City School Kids," *The Washington Post*, December 17, 1996, p. A23.

Virginia Walden, D.C. parent, in *The Washington Post*:

I am a lifelong Democrat, and I am not sure when the Democrats decided that siding with the poor and the needy is no longer part of their platform. School choice empowers parents, and I don't care who is behind it, Democrats or Republicans.<sup>17</sup>

Editorial, *The Washington Post*:

A modest voucher experiment might help energize the public schools. . . . And

such a program, we believe, will not do harm to the system or by implication suggest that it is a permanent loser. . . . The point—the hope—would be that such an experiment could be one small part of the effort being undertaken with vigor and optimism by the new school team to bring the District system to a higher, more even standard of achievement, one that reflects the quality of our best schools, which are the models.<sup>18</sup>

—Nina H. Shokraii is an Education Policy Analyst at *The Heritage Foundation*.

16. Brent Staples, "Schoolyard Brawl," *The New York Times*, January 4, 1998, Section 4A, p. 35.

17. Virginia Walden, "Vouchers Deserved a Chance," *The Washington Post*, May 24, 1998, p. C8. Virginia Walden is a single mother of three children in the District of Columbia.

18. Editorial, "The Voucher Issue," *The Washington Post*, September 30, 1997, p. A20.

September 13, 1991

## NINE PHONEY ASSERTIONS ABOUT SCHOOL CHOICE: ANSWERING THE CRITICS

### INTRODUCTION

*Free market economics works well for breakfast cereals, but not for schools in a democratic society. Market-driven school choice would create an inequitable, elitist educational system.*

So said Keith Geiger, President of the National Education Association, in September 1990.<sup>1</sup>

Similar arguments that education and consumer choice, like oil and water, simply do not mix are espoused by many other critics of educational choice. These criticisms of school choice programs have grown louder and more shrill as school choice programs proliferate. To date, some eleven states have adopted some type of plan, ranging from limited choices among public schools in several states to a program including private schools in Milwaukee, Wisconsin. Ballot initiatives and legislative battles are pending in another fourteen states, and many of these proposals would give parents the option of sending their children to private schools.

1 Keith Geiger, "Choice That Works: Transforming Public Schools at the Local Level," Advertisement, *The Washington Post*, September 30, 1990.

With growing support for choice in education,<sup>2</sup> it is hardly surprising that the National Education Association and other opponents of reform step up their attacks on educational choice. The criticisms against choice constitute nine broad categories:

**ASSERTION #1**

The Undermining-America Argument: Choice will destroy the American public school tradition.

**ASSERTION #2**

The Creaming Argument: Choice will leave the poor behind in the worst schools.

**ASSERTION #3**

The Incompetent Parent Argument: Parents will not be capable of choosing the right school for their child.

**ASSERTION #4**

The Non-Academic Parental Neglect Argument: Parents will use the wrong criteria, such as sports facilities, in choosing schools for their children.

**ASSERTION #5**

The Selectivity Issue: There will be insufficient help for students with special needs.

**ASSERTION #6**

The Radical Schools Scare (or the Farrakhan-KKK Theory): Extremists, like Louis Farrakhan or the Ku Klux Klan, will form schools.

**ASSERTION #7**

The Church-State Problem: Choice is unconstitutional.

**ASSERTION #8**

The Public Accountability Argument: Private schools are not sufficiently regulated.

**ASSERTION #9**

The Choice is Expensive Argument: There are high hidden costs associated with school choice.

---

<sup>2</sup> See, for example, Jeanne Allen and Michael J. McLaughlin, "A Businessman's Guide to the Education Reform Debate," Heritage Foundation *Backgrounders* No. 801, December 21, 1990; Clint Bolick, "A Primer on Choice in Education: Part I — How Choice Works," Heritage Foundation *Backgrounders* No. 760, March 21, 1990; Clint Bolick, "Choice in Education, Part II: Legal Perils and Legal Opportunities," Heritage Foundation *Backgrounders* No. 809, February 18, 1991, p. 6.

These criticisms too often go unanswered, and thus begin to gain currency in the press and among many Americans. Even some business leaders are prone to accept arguments against consumer choice and competition in education, despite lauding it as the key to efficiency in the rest of society. Fearful of backing an issue that may be controversial, and lacking precise and accurate information about educational choice, these business executives prefer to err on the side of caution and take no position in the debate.

This reluctance is costly, however, because American business pays heavily for the failures of the school system. U.S. firms, for instance, last year paid out \$40 billion to finance remedial education for their employees. The businessmen's reluctance to back choice in the debate also is misplaced because the criticisms of educational choice either are completely spurious or no longer are valid because they have been addressed in modifications of the original choice concept.

## NINE PHONEY ASSERTIONS AGAINST SCHOOL CHOICE

**ASSERTION #1) THE UNDERMINING-AMERICA ARGUMENT:** Choice will destroy the long tradition of common schools in America by subsidizing private schools at the expense of public schools. These schools, which embody the classless and democratic principles of the United States are enshrined in the public school system.

Says Wisconsin Superintendent of Public Instruction Herbert Grover: "[T]he private school choice program is not a solution but a program that is in conflict with the intent of the common schools established for the common good of our society."

### RESPONSE:

The term "public education" was first used in 1837 by Horace Mann, then chairman of the New York State Board of Education, to describe the goal of an educated citizenry, seen in part as an effective way to knit together the millions of immigrants from many lands who were coming to America. Charles Glenn, educational expert, author, and former director of equal opportunity for the state of Massachusetts writes that, "At the heart of this vision was the idea of the common school, a school in which the children of all classes and representing all levels of society would be educated together and would thus acquire the mutual respect essential to the functioning of a democracy."<sup>4</sup> Indeed, opponents of choice often talk of the notion of the common school and frequently invoke the name of Horace Mann.

3 Herbert Grover, "The Milwaukee Choice Plan," *Wisconsin Choice News*, August 1990, p. 4

4 Charles L. Glenn, *The Myth of the Common School* (Amherst, MA.: University of Massachusetts Press, 1988).

As University of Chicago sociologist James Coleman has discovered in his research, however, public schools rarely conform to the common school tradition.<sup>5</sup> They tend, rather, to be the most exclusive and segregated schools. Ironically, private religious schools are more consistent with the common school philosophy than are public schools. Private, inner city Catholic schools in such cities as Chicago and New York bring together children of widely differing social and economic strata.

Choice, in fact, affords Americans the best chance of re-creating the common school by returning all children to a level playing field and ensuring that schools are representative of diverse communities. Parents of all colors, socio-economic levels, and classes should be able to choose among the widest range of schools possible, rather than being segregated out of a particular school because its cost may be prohibitive. Similarly, taxpayers required to subsidize their local school districts should have some say over what occurs in the schools. While choice opponents boast of "public accountability" in the schools, in reality the schools are no longer accountable for their employees, their product, or their daily operations. Choice makes schools accountable directly to consumers.

Choice would recreate Mann's notion of the common schools by restoring quality education and accountability for results. In the 19th century, the local public school epitomized the ideals, providing education which long ago ceased to respond to the needs of American children.

**ASSERTION #2)THE CREAMING ARGUMENT:** Choice will "leave behind" the poor and most difficult to educate, while good students will be "creamed" into the best schools.

Says California Superintendent of Public Instruction Bill Honig: "The voucher approach risks creating elite academies for the few and second rate schools for the many."<sup>6</sup>

**RESPONSE:**

The creaming argument supposes that poorer and less able children will tend to be left behind in the worst schools when parents have a choice of schools. Adherents of this view presume that most minority or lower-income parents do not know the difference between good and bad schools and that their children thus will end up in bad schools. Hence, the argument goes, choice plans are unfair because they separate the "haves" from the "have-nots."

---

5 James Coleman, *Public and Private Schools* (New York, New York: Basic Books, 1987).

6 Bill Honig, "School Vouchers: Dangerous Claptrap," *The New York Times*, June 29, 1990.

While the "creaming" theorists are concerned about inequality under a choice plan, they seem to ignore that today's education system is extremely unequal. The "haves" already have choice because they have the money to choose a private school for their children. The "have-nots," meanwhile, are trapped in major urban school systems in which the quality of education is appalling despite heavy spending by the school districts.

**Successful Magnet Schools.** Choice is a tool to reduce this inequality. The evidence shows that choice improves all schools, not just a few, and that poor parents are quite able to find the best schools. This is very clear in the case of magnet schools, which are specialized schools offering unique programs. They are designed to attract children of all races. They constitute a limited form of parental choice, in that parents opt to send their children there in place of the school to which they were assigned. They post significantly better results than other public schools. Large magnet school systems have been functioning for more than a decade in over 100 cities nationwide.

Adherents of the creaming argument contend that magnet schools nationwide can boast success simply because they attract smart children of smart and very involved parents.<sup>7</sup> Yet the evidence on many long-established magnet schools suggests this is not the reason. These schools credit their success to the child's excitement at being in the school and the school's ability to tailor its lessons to the needs of individual students.<sup>8</sup> Magnets do not, in fact, selectively enroll children. Indeed, since demand is high, they operate generally by lottery, to ensure that all parents have an equal opportunity at a limited number of spaces. Moreover, refuting the assertions of choice critics, parents of these children are not necessarily the most involved and better educated parents.

Evidence suggests, meanwhile, that poor and disadvantaged parents are just as capable as better-educated or higher-income parents of distinguishing between good and bad schools. The problem today is that poor parents are rarely given the opportunity to do so. When they have the opportunity and are given full information about the choices open to them, they choose well.

**Harlem Turnaround.** Consider the case of East Harlem in New York City. Children in East Harlem School District 4 in 1974 scored the lowest of any New York City school district in state assessments. Central office officials blamed their students' failure on the bad influence and lack of involvement of parents. Then a bold district administration instituted a plan that gives teachers authority to design and run their own schools and gives parents the right to choose among them. Teachers joined administrators in launching a comprehensive outreach program to inform parents about the diversity of options then available. By 1986, students from District 4 ranked sixteenth out of 32 in reading and math scores. When

---

7 Suzanne Davenport, "School Choice," *Designs for Change*, 1989.

8 U.S. Department of Education, "Choosing Better Schools: A Report on the Five Regional Meetings in Choice in Education," December 1990.

asked to choose among a variety of schools for their children, the poorest and most desolate of East Harlem parents in fact made good choices for their children, usually based on academic criteria.

The same has been true in Milwaukee. There the parental choice program gives low-income students state "scholarships" worth \$2,500 to cover tuition at the private, nonsectarian school of their choice. In its first year of operation, parents of almost 400 students exercised their choice and sent their children to institutions such as the highly respected Urban Day School, which boasts a 98 percent graduation rate. A majority of parents participating in the choice program are single parents, and many are unemployed. They are virtually identical to their public school counterparts according to most socio-economic measures.<sup>9</sup>

Proponents of the creaming view assume that there is a static pool of schools and that choice plans will allow good schools to drain away the better students; the bad schools will continue to educate the worst students and deteriorate. This criticism overlooks one of the most fundamental dynamics of choice: the ability of parents to choose schools forces existing public schools to change. Another dynamic is that good schools expand and new schools emerge. If bad schools cannot or will not improve, their students can go elsewhere. The assertions about "bad children being left behind" simply do not take into account the dynamics of a school choice plan.

**ASSERTION #3) THE INCOMPETENT PARENT ARGUMENT:** Since some parents are truly incapable of making choices, such as those who abuse drugs, some parents also are incapable of wisely exercising their choice option, thus consigning their children to sub-standard education.

Says Urban Institute scholar Isabel Sawhill: "The emphasis on choice...conflicts with the rising body of evidence that poor families are often beset with any multitude of problems, making it difficult for them to cope with the added responsibility—such as evaluating different schools or owning a home."<sup>10</sup>

#### **RESPONSE:**

The evidence actually suggests that the opportunity to make a real decision—possibly for the first time in years—can shake an individual out of a life of despair and dependency. This notion undergirds the philosophy of empowerment, and its dramatic effects can be seen in the success of tenant management of public housing and similar empowerment strategies.<sup>11</sup> According to New York University political scientist Lawrence Mead, allowing or requiring the poor to make de-

---

9 "Parents are happy with choice program," *The Milwaukee Journal*, August 12, 1990, p. 1.

10 Isabel V. Sawhill, Raymond J. Struyk, and Steven M. Sachs, "The New Paradigm: Choice and Empowerment as Social Policy Tools," *Policy Bites*, The Urban Institute, February 1991, p. 5

11 John Scanlon, "People Power in the Projects: How Tenant Management Can Save Public Housing," *Heritage Foundation Backgrounder* No. 758, March 8, 1990.

cisions renders them just as capable of good decisions or work habits as someone who is better off. Writes Mead, "The poor are as eager to work [and participate in decisions] as the better-off, but the strength of this desire appears to be unrelated to their work behavior...most clients in workfare programs actually respond positively to the experience of being required to work, not negatively as they would if they truly rejected work."<sup>12</sup>

The ability to choose leads to one of two outcomes. In very many instances, as supporters of empowerment contend, it leads to parents gaining the self confidence to exercise control over their lives. But even if this does not happen, and parents do not bother to choose a school for their children, they are still assigned a school under choice plans. The assigned school is not likely to be worse than the one now attended by the child. Indeed, it is likely to be better because of the improvements forced by increased pressure from other parents.

Deeply troubled or dysfunctional children, meanwhile, are likely to do better under a choice system because it will make available a wider range of schools, especially if private schools are included in the choice program. Explains Abigail Thernstrom, adjunct Associate Professor of Education at Boston University and author of *School Choice in Massachusetts*, "... Already many private schools meet the needs of dysfunctional children."<sup>13</sup>

To be sure, a ready availability of information is more important to poorer and less able students than to sophisticated parents. For this reason, choice plans such as those crafted by Brookings Institution senior fellow John Chubb and Stanford University professor Terry Moe would require parent information centers and parent liaisons to help parents who need assistance in making choices.<sup>14</sup> But even if such source of information were not available, the worst that could happen is that children for whom no choice is made would be assigned to a school—which is no different from what occurs today.

**ASSERTION #4) THE NON-ACADEMIC PARENTAL NEGLECT ARGUMENT:** Parents will use such criteria as a school's location or its athletic facilities, rather than the quality of the education it provides, in deciding what school their child will attend.

Asks American Federation of Teachers President Albert Shanker, "Do most [parents]—rich, poor or in the middle—really want rigorous standards for their children? And if they don't, would they choose rigorous schools?"

---

12 Lawrence Mead, "Jobs for the Welfare Poor," *Policy Review*, Winter 1988, p.65

13 Abigail Thernstrom, "Hobson's Choice," *The New Republic*, July 15, 1991, p. 13.

14 John E. Chubb and Terry M. Moe, *Politics, Markets, and America's Schools* (Washington, D.C.: The Brookings Institution, 1990), p. 221.

## RESPONSE:

Choice critics like Shanker argue that most parents would not bother to choose a school or if they did, they would do so on the basis of non-academic concerns. They point to public school choice plans in Minnesota, where only a small percentage of students actually switched schools when state-wide open enrollment was instituted last year. The most common reasons given by parents for switching schools included transportation, proximity to work and child care, and athletics.

Minnesota is not a valid example. For one thing, its choice program is limited. In most grades the choice of school is restricted entirely to the public sector. For another thing, there are few academic differences among public schools in Minnesota's mainly suburban, sprawling communities. Significant differences may emerge, of course, as schools begin to make major improvements to meet competition.

The law creating the open-enrollment plan, moreover, did not include mechanisms to make change easy in the organization of Minnesota schools. Thus superintendents function as they did before and principals and teachers have not seen their autonomy increased. As such, schools cannot respond easily to parental choices. Minnesota and other states with open-enrollment policies also have not taken sufficient steps to make information available to parents. In Iowa, for example, no money has been allotted from the annual state school budget for outreach information. The result: parents find it hard to obtain academic information on which to base decisions.

Parent frustration in Minnesota already is prompting changes in the law. The Minnesota legislature this June enacted the Charter Schools Act, making it possible for teachers to form their own school, and be free from most state oversight.<sup>15</sup>

**Gauge for Achievement.** Shanker's argument in any case unwittingly underscores the need for choice. The fact is that parents routinely are kept in the dark about how well public schools perform because hard performance information generally is unavailable. The need for such information has led an increasing number of choice advocates to support calls for state and national testing to give schools performance standards and to give parents a gauge by which to measure their children's achievement.

Once an accurate and dependable system of accountability is in place, parents will become smart consumers and can demand improvements—even if they choose not to change schools. Of course, even with clear performance testing and with precise information on which to make choices, some parents may, as Shanker fears, decide that a neighborhood school or a school with an emphasis on team sports is better for their child than one which excels in mathematics. But that

---

15 Ted Kolderic, "Minnesota's New Program of 'Charter Schools'" (Center for Policy Studies: St. Paul, MN), June, 1991.

should be their choice to make as parents. It is a choice made routinely by affluent parents. Choice plans allow poor parents the chance to make that same decision.

**ASSERTION #5) THE SELECTIVITY ARGUMENT:** Private schools in the choice plan will admit only easy-to-teach children, leaving difficult, less academically gifted children in the public schools. Such selectivity is the reason for the private schools' vaunted ability to outperform public schools.

Says Senator Edward M. Kennedy, the Massachusetts Democrat, choice has the potential to be "a death sentence for public schools struggling to serve disadvantaged students, draining all good students out of poor schools."

**RESPONSE:**

The selectivity issue argument challenges choice advocates. Few are willing to deny a private school the right to set admissions standards. But while some private schools set high admission requirements, the fact is that parochial schools—the private schools serving most children in cities with or considering choice plans—actually are less selective than public schools. Explains Reverend Vincent Breen, superintendent of education for the Roman Catholic Diocese of Brooklyn and Queens, the claim that selection is normal at Catholic schools is "a completely false statement that's repeated over and over again. Catholic schools are just as open to the needs of the urban child."

According to sociologist James Coleman, Catholic schools in particular boast success in raising the academic achievement of population groups that do poorly in public schools, including blacks, Hispanics and children from poor socio-economic backgrounds. "The proximate reason for the Catholic schools' success with less-advantaged students from deficient families appears to be the greater academic demands that Catholic schools place on these students."<sup>16</sup> Research by Brookings scholars Chubb and Moe further shows that private schools in general excel because of their organization, not because they weed out less able students through set admissions criteria. After controlling for all of the variables used to explain away the performance of private schools such as selection criteria, as well as socio-economic status, student ability, and the influence of peers, Chubb and Moe find that private schools still outperform public schools.<sup>17</sup>

To avoid the possibility of private schools rejecting students who are particularly costly to teach or accommodate, such as handicapped children or those with pronounced learning disabilities, Chubb and Moe recommend that choice plans offer more valuable scholarship certificates for such children to encourage schools to create programs suited to their needs. Many school systems in fact already contract with private centers to provide extra assistance to public school

---

16 James Coleman, *Public and Private Schools*, Basic Books, New York, 1987, p. 148

17 Chubb and Moe, *op. cit.*, p. 129.

children with special needs, indicating that private institutions by no means shun such children.

**ASSERTION #6) THE RADICAL SCHOOLS SCARE:** A choice system will lead to "fly by night" schools, which take public funds without providing adequate education. Worse still, schools espousing radical or extremist dogmas would emerge, perhaps even those run by the Ku Klux Klan or by black extremists.

According to critic Isabel Sawhill, "Diploma factories might be established in the inner cities to take advantage of the government funding, it is argued, similar to the recently exposed examples of vocational schools that exploit low income students to profit from federally sponsored student loans."<sup>18</sup> Adds California Superintendent Bill Honig, choice "opens the door to cult schools. Public schools are the major institutions transmitting our democratic values. By prohibiting common standards, [choice proponents] enshrine the rights of parents over the needs of children and society and *encourage tribalism* [emphasis added]. Should we pay for schools that teach astrology or creationism instead of science? Should we inculcate racism?"<sup>19</sup>

#### RESPONSE:

Most states have imposed minimum academic standards on private as well as public schools. Most education choice proposals, moreover, require the government to play some role in enforcing federal anti-discrimination laws and ensuring contractual obligations to students. If governments fail to do this effectively, as the federal government is accused of doing for trade schools, this is a deficiency of government, not of consumer choice. As it is, a good number of public schools today would be found delinquent in complying with a government regulation requiring good value for money.

While many for-profit trade schools abuses have been documented, the vast majority of schools of higher education currently operate in a choice system and state or federal assistance follows needier children to the school that they choose. Unlike its public education system, American higher education is considered world class.

As to the claim that bizarre or extremist schools will proliferate under a choice system, nothing prevents such schools from opening and attracting customers today in the private sector. The fact is that few exist. Fewer, if any, would be established under choice programs. One reason is that schools are banned from discrimination on the basis of race under the 14th Amendment. Another reason is that a school accepting government funds under a choice program would be sub-

---

18 Isabel V. Sawhill, Raymond J. Struyk, and Steven M. Sachs, "The New Paradigm: Choice and Empowerment as Social Policy Tools," *Policy Bites*, The Urban Institute, February, 1991, p.5

19 Honig, *op. cit.*

ject to some additional constraints. In short, Honig's vision of "cult schools" is mere fantasy.

**ASSERTION #7) THE CHURCH-STATE PROBLEM:** Choice plans that include private, religious schools are unconstitutional because they violate the First Amendment's establishment clause.

Robert L. Maddox, Executive Director of Americans United for Separation of Church and State, claims that public funds cannot be used at religious schools without "violating the constitutional separation of church and state." He adds that "A long line of Supreme Court cases has repeatedly found that the First Amendment bars the expenditure of tax money to support religion or religious schools."<sup>20</sup>

**RESPONSE:**

This claim, though widely believed, simply is wrong. As the *Congressional Quarterly* notes in an April article on school choice: "The federal government already provides Pell grants to students at private, religiously affiliated colleges, notes Michael W. McConnell a law professor at the University of Chicago. The GI bill even covers tuition at seminaries."<sup>21</sup> The journal also points out that Harvard Law School's Lawrence Tribe, one of America's most liberal constitutional scholars, says that the current Supreme Court would not find a "reasonably well-designed" choice plan a violation of church and state. He agrees there may be policy concerns about choice, but that the constitutional concerns have been addressed in a litany of cases.

The Supreme Court generally has applied three tests in "establishment clause" cases, to determine whether legislation to support private schools is constitutional. First, the program must serve a secular purpose. Second, its "primary effect" must neither advance nor inhibit religion. And third, it must not foster an "excessive entanglement" between government and religion.<sup>22</sup>

In practice, as long as a school choice program puts the decision of where the funds are spent in the hands of individual students or parents, and as long as the program does not discriminate in favor of religious schools, the program is likely to survive any constitutional challenge.

---

20 Robert L. Maddox, Letter to the Editor, *The New York Times*, May 10, 1991

21 *The Congressional Quarterly*, April 27, 1991.

22 Bolick, Part II, *op. cit.* The study provides details of key court cases on choice.

**ASSERTION #8) THE PUBLIC ACCOUNTABILITY ARGUMENT:** Private and parochial schools in a choice system would not be regulated by state and federal laws, and therefore would not be accountable to public authority.

Asks Boston University Professor of Education Abigail Thernstrom: "Would taxpayers have an adequate say in how their money is spent?" Claims a *New York Times* editorial, choice among both public and private schools would "undermine the accountability and morale of public schools."<sup>23</sup>

**RESPONSE:**

The irony of the accountability argument is that in most cities it is the public schools, not the private schools, that are not accountable to parents or even taxpayers. The private schools, by contrast, are directly accountable to their customers. The editors of *The New York Times*, for instance, need only consider the abuses of public funds in New York City schools, which their newspaper has documented, to appreciate that limiting the use of public funds to public schools is no guarantee of accountability.

Residents of Chicago also know that government control of a school does not guarantee fairness or equity. This is why in 1989 they backed a radical overhaul of the city's schools, giving control to parents to run schools. Most private institutions constantly feel forced by competitive pressure to provide a regular accounting of expenditures and receipts, and to detail the achievements of their students.

The accountability argument is also used to advance claims that private schools, left to their own devices, will discriminate. Yet all constructive choice proposals require that schools follow legal accountability requirements and federal anti-discrimination laws.

**ASSERTION #9) THE CHOICE IS EXPENSIVE ARGUMENT:** There are large hidden costs associated with school choice programs. Transportation costs, for instance, would be so prohibitive as to offset benefits.

Senator Nancy Landon Kassebaum, the Kansas Republican, fears that "transportation costs alone could grow and grow, making choice programs infeasible."

**RESPONSE:**

Choice does not imply higher costs, even higher transportation costs for large districts. "A system of educational choice need not cost more than current educational systems, and might cost less," says Brookings' John Chubb. "If the supply of schools is allowed to respond to demand, the supply is likely to expand, with relatively small numbers of large comprehensive schools being replaced by larger numbers of small, specialized schools. This expansion could easily occur without

---

23 "Skimming the Cream Off Schools," *The New York Times*, July 26, 1991.

the construction or acquisition of new facilities if several schools shared a building."<sup>24</sup>

Chubb's view is firmly grounded in experience. The choice program in East Harlem District 4 in New York City was created among 20 pre-existing school buildings. Today students can choose from 52 alternative schools, many of which share a building with other schools. Thus wider choice does not necessarily mean increased overhead on transportation costs. This schools-within-a-school concept would be very appropriate for rural areas where transportation costs could indeed mount if students needed to travel farther to their chosen school.

Choice plans actually may reduce transportation costs in many instances because demand might lead to new schools. And overhead administrative costs very likely would fall since, as Chubb explains, "There is every reason to believe that the administrative structure of a choice system would be less bureaucratized than today's public school systems, and look more like private educational systems, where competition compels decentralization and administrative savings."

## CONCLUSION

There is ample evidence that a market-driven education system would spur improvements in the way schools operate, and thus improve education for America's children. Despite this evidence, school choice has its critics. Many are motivated by the challenge to their bureaucratic power that is posed by choice. Others, though, are motivated by misunderstandings and misplaced concerns.

Some critics worry that parents cannot, or are not equipped with the necessary information to make wise choices about their children's education. This view enormously underestimates the common sense of ordinary Americans. It also conveys the startling suggestion that today's bureaucratic schools are in the best interests of students. And to the extent that information is unavailable to parents, this has been the explicit policy of public school districts determined to cover up their failure to educate and to use money well. In New York City, for example, few parents know that of the \$6,100 allocated per child, only one-third ever reaches the classroom.

Other worries stem from the belief that some schools, particularly if private schools are included in a choice program, will cream off "profitable" students or discriminate in other ways, and may shortchange students. These worries too are baseless. Not only do schools participating in choice programs abide by non-discrimination policies, but they have a history of providing a more integrated environment and a higher caliber of education than traditional government schools.

---

24 John Chubb, "Educational Choice, Answers to the Most Frequently Asked Questions About Mediocrity in American Education and What Can Be Done About It." The Yankee Institute for Public Policy Studies, July 1989, p. 22

**Refuting Arguments.** Even though the concerns may be erroneous, they are in most instances sincerely held. Yet, when presented with the facts, most Americans can see that most of the arguments raised against school choice are spurious. Without the facts, however, Americans can be taken in by arguments like NEA President Keith Geiger's dismissive "breakfast cereal" analogy. Thus if reform based on choice is to succeed, these committed to choice, including George Bush and Education Secretary Lamar Alexander, as well as business leaders and reform organizations pressing for choice at the state and local level, must step up their efforts to explain the facts about choice. While the intellectual debate on school choice is over when it unites all ideological viewpoints, its supporters must demonstrate repeatedly that choice works and is the key to restoring a world class educational system in America.

Jeanne Allen  
Manager  
Center for Educational Policy

*All Heritage Foundation papers are now available electronically to subscribers of the "NEXIS" on-line data retrieval service. The Heritage Foundation's Reports (HFRPTS) can be found in the OMNI, CURRNT, NWLTRS, and GVT group files of the NEXIS library and in the GOVT and OMNI group files of the GOVNW library.*

100 27 1998

# Privatization

# 1998

12th Annual Report on Privatization

# EDUCATION

The strength of the movement toward privatization of education is reflected not only by the size and number of contracted services and choice programs in 1997, but also by the momentum of activities being carried into 1998. Court decisions, conferences, legislation, and recognition by government officials of options in education are now at the periphery of what millions of educators, parents, and children already perceive to be viable alternatives to the current educational system.

## Contracting

The National Education Association (NEA), the largest teachers' union in the United States with 2.3 million members, adopted the following resolution at its recent annual conference:

*The National Education Association believes that the following programs and practices are detrimental to public education and must be eliminated: privatization, performance contracting, tax credits for tuition to private and parochial schools, voucher plans (or funding formulas that have the same effect as vouchers), planned program budgeting systems (PPBS), and evaluations by private, profit-making groups.*

While the NEA adopts these types of provisions and directs resources at the federal, state, and local levels to have its position implemented, school districts and institutions of higher education are turning to contracting in greater numbers, usually for noneducational services.

According to the 1997 *American School & University's* "Fifth Annual Privatization/Contract Services Survey," outsourcing is prevalent in the nation's school districts (see Table 4-3). Transportation and food service were the most likely services to be contracted out, with 40.4 percent of districts contracting out for transportation and 21.1 percent of districts contracting out for food service. According to *School Transportation News*, for the 1997-98 school year, there are 109,498 privately owned buses providing school transportation service nationwide. This makes up 31.5 percent of the combined total of district-owned and contractor-owned buses.

With tightening budgets, the increasing fiscal demands of special education and other alternative education, and growing enrollments, it is no surprise that 90 percent of school districts indicated that the primary reason to privatize services was to save money. Nearly equally important as cost savings, though, was the desire to improve operations (89 percent) (see Table 4-5).

For large, urban districts, cost savings from contracting can be especially great. A 1996 performance audit by the Ohio State Auditor suggested that the Cleveland school district should privatize its transportation system. The audit estimated that the district would save between \$9 million and \$11 million—from a \$29 million budget. Philadelphia's school district saved over \$29 million in the last two years, primarily through reducing costs in the areas of transportation, food service, and human resources through contracting and restructuring.

Looking forward, 42 percent of the school districts expected their use of contracted services to increase over the next few years. School districts that use the private sector for specialized services are finding that this option is practical and allows them to devote more time and resources to their primary responsibility of educating children.

Noneducational services are not the only services that school districts are contracting out for. Educational services continue to be an option, either in the form of specific classes or through the management of entire schools. For school districts searching for alternative ways to provide remedial education to students, particularly to those students in urban districts, contracting with education service providers is quickly becoming an accepted option, even for people traditionally opposed to these contracted arrangements.

Sylvan Learning Systems, a provider of supplemental educational services, was awarded a three-year performance-based contract to provide supplemental educational ser-

**Table 4-3: Outsourcing of Noneducational Services**

	None	1 to 4	5 or more
School districts	12.3%	82.5%	5.2%
Colleges	5.1%	59.8%	35.1%

Source: *American School & University*, "Fifth Annual Privatization/Contract Services Survey," 1997.

vices in eight public schools—seven elementary schools and one middle school—in the Compton (California) Unified School District. The district has contracted with Sylvan to provide math and reading instruction to 1,200 students in

two one-hour sessions per week, during and after regular school hours. The goal of the contract is to improve students' reading scores by a minimum of 3 points on a scale of 100. If the company fails to meet the goal, it must provide

additional services at no charge to the district. And if those additional services fail, the contract can be terminated. Said LaVonne Johnson, Compton's assistant superintendent of operations, "This is the first time [with any program] we have had guarantees, where, if it doesn't work, we don't pay."

Sylvan Learning Systems is also one of five private educational service providers designated by the Los Angeles Unified School District as options to aid the 100 lowest-performing schools in the district. The district has allotted each of these schools \$100,000 to contract with their choice of providers for additional remedial services, or to come up with its own alternative instructional plan. Within one week after the announcement of the plan, 75 of the 100 schools chose to bring in the private tutoring companies to provide after-school instruction, and more followed.

The Edison Project released its *Annual Report on School Performance* in December 1997. Edison is one of a handful of for-profit education management organizations (EMOs) contracting with school districts to provide full operation of schools. It currently manages 25 schools in eight states.

Edison's annual report looked at the academic performance of all of its schools, but particularly focused upon Dodge-Edison Elementary School in Wichita, Kansas, one of the few Edison schools with two full years of instruction completed. It reported that students at Dodge-Edison have gained more than 25 percentile points against national norms in reading and math achievement, as measured by the Metropolitan Achievement Tests (MAT-7). Fifth-grade students scor-

**Table 4-4: Percentage of School Districts Using Selected Contracted Services**

Type of service	% of districts
Transportation (busing)	40.4
Food service	21.1
Computer services	19.3
HVAC maintenance	19.3
Printing	15.8
Vending	14.0
Security	10.5
Grounds maintenance	8.8
Instructional-equipment repair	7.0
Laundry	7.0
Payroll preparation	5.3
Administrative services	3.5
Custodial services	3.5
Maintenance	1.8

Source: American School & University, "Fifth Annual Privatization/Contract Services Survey," 1997.

**Table 4-5: Top Five Reasons Why School Districts Do or Do Not Privatize Services**

Reason for privatizing	Percent
Save money	90.1
Improve operations	89.0
They could do a better job	70.3
Save management time	67.3
Provide better accountability	59.3
Reason for not privatizing	Percent
Threatens jobs of loyal employees	35.5
Too expensive	17.0
Union contracts make it too difficult	16.3
If they can make a profit, we can do it for less	13.2
Not necessary; we can do it just as well	10.4

Source: American School & University, "Fifth Annual Privatization/Contract Services Survey," 1997.

## Fast Facts

1. By fall 1997, approximately 700 charter schools were in operation in 29 states, enrolling more than 170,000 students.
2. There are 30 to 40 for-profit companies providing home-study courses.
3. An estimated 10 percent of public-school special-education dollars are contracted out to private schools and organizations; 14 percent of public-school districts contract out for special-education programs and services.
4. About 7 percent of public-school districts contract out for at-risk programs.

ing in the top quartile nationally rose from 17 to 32 percent in reading and from 15 to 47 percent in math. The percentage of students scoring in the lowest quartile fell from 49 to 8 percent in reading and from 42 to 16 percent in math.

## Charter Schools

While for-profit education management organizations continue to market themselves to traditional public schools, they have found another avenue into the education market: management of charter schools. Companies that design and manage schools are either obtaining their own charters or contracting to run schools whose charters are held by parent or community groups. The Edison Project will have 25 schools in eight states by fall 1998, and Education Alternatives Inc. is working to open up to a dozen charter schools near Phoenix over the next three years. Other companies involved in the charter-school movement include:

- Sabis Educational Systems operates a K-8 charter school in Springfield, Massachusetts, opened two schools in Chicago in fall 1997, and plans to open more in Arizona in 1998.
- Alternative Public Schools operates a charter school in Chelmsford, Massachusetts and is contracting to operate a K-8 school in Wilson, North Carolina, in 1998.
- Advantage Schools of Boston has a K-5 charter school in Jersey City, New Jersey, and opened a similar school in Phoenix this fall.
- Charter School Administrative Services operates five charter schools in Michigan.

- Excel Academies operates charter schools for at-risk students in Arizona and Michigan.

## Public Vouchers

In adopting Gov. Tommy Thompson's 1998 budget, the Wisconsin legislature agreed to an expansion of the Milwaukee Parental Choice Program. The expansion would allow as many as 15,000 low-income children in Milwaukee to attend any private school at state expense, including religiously affiliated schools. A challenge to the expansion was filed immediately and is to be heard in the Wisconsin Supreme Court in 1998. The program currently provides approximately \$4,300 per student for about 1,500 students to attend nonsectarian private schools of their choice.

All nine members of the Milwaukee Public Schools (MPS) board wrote a letter supporting the fundraising efforts of the private voucher program in Milwaukee, Partners Advancing Values in Education (PAVE). The board members, regardless of their individual views on school choice, endorsed the program because of its competitive effects on district reforms. They stated: "We believe PAVE's efforts to afford disadvantaged families their first choice for

## Corporate Classrooms

Company	# of Charters	States
EAI	12	AZ
Edison Proj.	12	CA, CO, MA, MI, MN
Education Develop. Corp.	9	MI
Sabis Educational Systems	7	AZ, DE, IL, MA
Advantage Schools	3	AZ, NJ, NC
Alternative Public Schools	2	MA, NC

quality education is a critical initiative—not only to help thousands of poor families but also to support MPS reforms.”

In a surprise move, three of these same board members signed a friend-of-the-court brief in support of the public voucher program, including religious schools. Also signing the brief were Mayor John Norquist and former MPS superintendent Howard Fuller.

Choice proponents continue to point to two research analyses that found improved performance by students attending private schools in the Milwaukee public voucher program, countering a study done by John Witte from the University of Wisconsin at Madison. The first analysis was from a group of researchers led by Paul Peterson of Harvard University, the second by Cecilia Rouse of Princeton University.

Both Rouse and Peterson's group found that in the first few years, students in the voucher program gained little in math and reading compared to the control group, but after four years in the program, voucher students gained between 6 and 10 percentile points on math tests scores.

In another program, 2,000 students participating in the Cleveland Scholarship and Tutoring Program were allowed to continue to attend the schools of their choice this school year. Schools in the Cleveland choice program, unlike the Milwaukee program, were not limited to nonsectarian schools.

After the program's first year, a preliminary analysis by Peterson's Harvard group found that two-thirds of parents were very satisfied with the academic quality of the school, compared to less than 30 percent of those who applied for a voucher but remained in public schools. In addition, voucher parents were also more than twice as likely to be happy with the school's discipline and class size.

Academic results, as measured by tests scores at the beginning of the year and the end of the year, showed that voucher students gained 15 percentile points in math and 5 percentile points in reading, relative to national norms.

**Table 4-6: At-Risk Youth in Charter Schools & Public Schools**

	Public	Hudson Charter	Federal Charter
Minorities	34.0%	49.6%	48.4%
Eligible for free/reduced lunch	36.6	40.5	33.8
LEP	6.8%	13.1%	7.0%
Special Education	10.4%	12.6%	7.4%

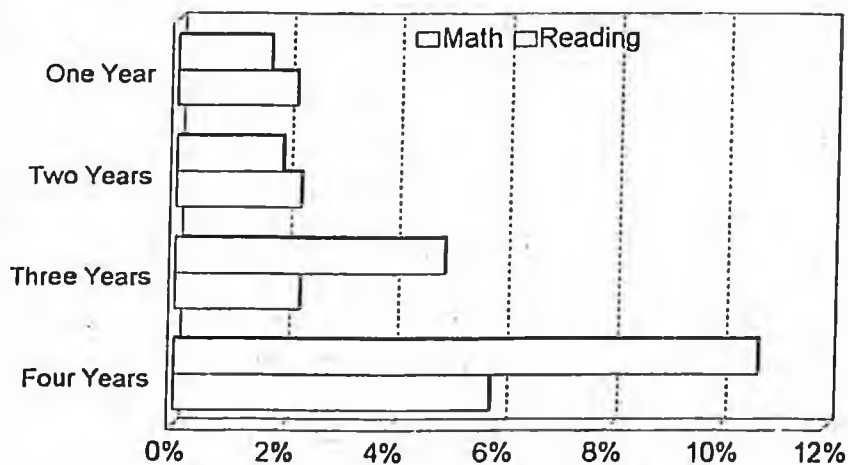
Source: Hudson Institute and U.S. Dept. of Educ.

### Private Vouchers

Since 1991, at least 32 private voucher programs have sprung up around the nation to provide private-school tuition assistance for students in elementary and secondary schools, particularly inner-city students from low-income families. Approximately 14,000 students currently receive these private vouchers that enable them to attend the schools of their choice, and more than 40,000 students are on waiting lists for these same vouchers.

A recent evaluation of the PAVE private voucher program in Milwaukee found that 75 percent of PAVE graduates in the last two years went on to college or technical school.

**Figure 4-2: Effect on Test Scores per Year of Attending Milwaukee's Choice Schools**



Source: Program on Education Policy and Governance, Fall 1997, p. 4.

Summer 1998  
 A National Coalition of Catholic Schoolparent  
 Assn. Publications  
**Educational Liberty**

"EVERY PARENT'S RIGHT TO CHOOSE PUBLIC, PRIVATE OR  
 RELIGIOUS SCHOOLS FOR THEIR CHILDREN."

## Empowering the Educational Liberty of Parents/Guardians

Good Nationwide  
 Update

"*Liberty*," as protected by the Fourteenth Amendment, includes a parent's (or guardian's) Constitutional right to direct the education of their children free from unreasonable state interference. *Educational Liberty* is every parent's freedom to choose the learning community, educational philosophy and curriculum for one's children from among qualified government-run, private, or religious schools. Across our country, various legislative measures have been enacted into standing laws which currently empower such parental choice in schooling. Outlined below is a summary of those existing public policies which today honor and affirm the educational liberty of parents.

## EDUCATIONAL INVESTMENT INCENTIVES

### Arizona

✦ Allows taxpayers two separate state income tax credits related to K-12 schools which: (1) reduce an individual's state income taxes up to \$500 for donations made to a "school tuition organization" that, in turn, provide scholarships for students to attend private and religious schools, and (2) reduce an individual's state income taxes up to \$200 for fees paid to a public school for extracurricular activities (allows taxpayers to claim the credit against fees paid for such things as band uniforms, varsity athletic equipment and uniforms, or scientific lab materials).

✦ Donations by such charitable educational organizations to qualified nonpublic schools are to be pooled together to fund scholarships for students on a first-come, first-serve basis. The tax credit may not be used by donors who designate their contributions for the direct benefit of any of their own dependents. Contributions made by independent foundations may not limit tuition grants to students attending a specified school.

**Legislative History:** 1997) Arizona Legislature enacted, and Governor Symington signed, the tax credit for voluntary contributions to school tuition organization and for public school fees. Opponents tried gathering signatures to place a referendum on the ballot repealing the tax credit. Having gathered only 10,000 of the 60,000 signatures needed to place the measure on the ballot, the unions decided to file a lawsuit against the tax credit. 1998) A previous statutory exclusion was removed from the tax credit law to allow scholarships for students attending same-gender schools.

**Legal Status:** The tax credit was challenged in September '97 as an unconstitutional use of public funds to benefit private schools. The Arizona Supreme Court heard arguments in December '97, although no ruling has been made to date. The law took effect in January '98.



# EDUCATION TAX CREDITS/DEDUCTIONS

## Iowa

- ✦ Public and nonpublic school taxpayers can receive a state tuition tax credit equal to 25 percent (\$250) of the first \$1,000 spent on allowable education expenses for each dependent in accredited and approved K-12 schools.

- ✦ Allowable education expenses consist of costs tuition charges, textbooks and other instructional materials and equipment, as well as, costs related to extracurricular activities including sporting events, musical or dramatic events, speech activities, and driver's education.

**Legislative History:** 1987) Iowa legislature enacted a combination education tax credit/deduction law up to \$1,000, 5% of which could be applied toward tuition. The law limited beneficiaries to those with incomes of \$45,000 or less. 1996) The combination arrangement was replaced by a credit for all taxpayers (the income limitation was removed), 10% of which could be applied toward tuition. 1998) Legislation increasing and extending the tax credit was drafted and signed into law by Governor Branstad.

**Legal Status:** The 1987 law was challenged in Iowa Federal District Court in 1992 and upheld as not violating the Establishment Clause of the U.S. Constitution. No legal challenges since.

## Louisiana

- ✦ Provides a tax credit of \$25 against income taxes for any and all educational expenses incurred for each dependent child in kindergarten, elementary, or secondary school.

- ✦ The educational tax credit applies to all income taxpaying parent/guardians with children in elementary and secondary schools—public or private.

**Legislative History:** 1972) Louisiana Legislature approved tuition credit on state income tax for every child in accredited private schools only. But when the U.S. Supreme Court struck down a similar plan, the credit was never implemented. 1979) Governor Edwards proposed and signed, with the legislature's approval, the current education tax credit for both public and private school children.

**Legal Status:** No legal challenges.

## Minnesota

- ✦ Provides tax deductions for tuition, textbooks, instructional materials, and transportation summer school and summer camps, tutoring, and personal computer hardware and educational software. The amount of the deduction is \$1,625 per child in grades K-6, and \$2,500 per child in grades 7-12.

- ✦ Provides refundable education tax credits of \$1,000 per child, capped at \$2,000 per family, for low-income families with annual incomes less than \$33,500. This refundable credit can be used for all items qualified under the deduction except tuition. Families who do not earn enough to owe taxes will get checks for the amount of credits they qualify for.

- ✦ Allows a working-family tax credit to provide households that have children, and earn \$29,000 a year or less, with an additional \$200 to \$350 credit which can be used for any purpose, including private school tuition.

**Legislative History:** 1955) Legislature enacted a law which allowed taxpayers to claim a \$50 deduction from gross income for certain expenses incurred in the education of their children. This law was later revised in 1976, and then again in 1978. 1982) Legislature broadened the deduction law to \$500 per child in grades K-6, and \$700 per child in grades 7-12. That deduction was later increased to \$650 per child in grades K-6, and \$1,000 per child in grades 7-12. 1997) Governor Carlson advocated and signed comprehensive education legislation which more than doubled the tax deduction and created a new refundable education tax credit for low-income families.

**Legal Status:** In 1983 the U.S. Supreme Court upheld as constitutional, the Minnesota statute, which provided an income tax deduction for tuition, textbooks, and transportation that benefited parents of children attending public, private, and religious schools (*Mueller v. Allen*). A legal challenge for the tax credit portion of the new law is anticipated.

# OPPORTUNITY SCHOLARSHIPS/GRANTS

## Ohio

✦ Ohio's *Cleveland Scholarship and Tutoring Program* provides reimbursement for tuition to parents/guardians who send their children to the public, private, or religious school of their choice. The program also financially helps Cleveland public school parents/guardians purchase before and after school tutoring services for their children.

✦ State awarded scholarships are limited to up to 4,000 students residing in the Cleveland City district who are enrolled in kindergarten through 4th grade. Beneficiaries are selected by lottery, with a preference for low-income children. Scholarships are worth 90% of tuition (up to \$2,500) at participating private or religious schools. No more than 50% of the children may have attended private or religious schools previously.

✦ As enacted, the *Cleveland Scholarship and Tutoring Program* provides that each year one grade level will

be added to the eligibility rolls, up to and including 8th grade. For the first two years, the scholarship program allows Cleveland's public schools to keep 55% of state aid per pupil (approx. \$5,600) even if the student attends a private or religious school.

**Legislative History:** 1995) Governor Voinovich signed a two-year budget package that created the scholarship program for 2,000 K-3 students for the 1996-1997 school year. 1997) The legislature voted to expand the program through the Governor's biannual budget, to 3,000 students and to include 4th grade in its second year, and to 4,000 students and to include 5th grade in its third year.

**Legal Status:** July '96, Franklin County Common Pleas ruled that the legislatively approved Cleveland plan violates neither Ohio's Constitution nor the U.S. Constitution. In May '97, Ohio's Court of Appeals overturned the lower court's decision. In July '97 under appeal to Ohio's Supreme Court, the expanded Cleveland Scholarship Program was allowed to continue in operation while the appeals process proceeds.

## Wisconsin

✦ Wisconsin's *Milwaukee Parental Choice Program* allows eligible students enrolled in the Milwaukee Public Schools (MPS)—and students attending private schools in grades K-3—to receive an equitable share of public funds to pay for the cost of education in participating elementary and secondary schools in Milwaukee including religious schools.

✦ Eligibility is limited to Milwaukee families with incomes at or below 175% of the federal poverty level. Participation is limited to 15% of enrollment in the MPS, or about 15,700 students. Students are selected by the participating schools through a lottery, except that preference may be given to siblings.

✦ The state pays the lesser of either the MPS per-student aid (roughly \$4,400) or the private/religious school's operating and debt-service cost per pupil that is related to educational programming. As payment, the state issues a check, made directly payable to the parent or guardian of a participating student, and mails it to the private/religious school to be endorsed by the parent and used by the school for expenses for that student.

The program does not restrict the uses to which private religious schools can put the state aid.

✦ MPS, through a variety of programs, gives eligible parents the choice of sending their children to a neighborhood public school, a different public school outside the district, a specialized public school, a private school, or a religious school. Under an opt-out provision, if requested by parents, students cannot be required to participate in religious activity.

**Legislative History:** 1989) *Milwaukee Parental Choice Program* was created for nonsectarian schools. 1995) The legislature expanded the program to include religious schools.

**Legal Status:** Court injunctions in 1995 prevented eligible Milwaukee students from using scholarships to enroll in religious schools. Two years later a state appeals court ruled 2-1 that the inclusion of religious schools in the scholarship program violated the Wisconsin Constitution. The appeals court upheld a ruling made earlier by a state trial court judge. On appeal, the Wisconsin Supreme Court on June 10, '98 upheld the state law allowing taxpayer funds to be used for religious school tuition. Overturning lower court decisions, the state high court said expansion of Milwaukee's program to include religious schools violates neither the U.S. nor the Wisconsin Constitution.

# Educational Liberty

## TUITIONING

### Maine

- + State aid is provided for children to attend non-religious private schools if the district in which they reside does not have a public school.
- + "Tuitioning towns" reimburse families for their children's tuition expenses in rural school districts that do not have their own public high schools.
- + Students receive tuition—up to the average amount of public per-pupil funding—to attend public high schools in adjacent school districts or private schools.

**Legislative History:** (1903-1983) Parents were permitted to choose a religious school for their children. (1983) Maine state law specifically prohibited towns from paying tuition to any school that is "sectarian."

**Legal Status:** In July '97 four families sued alleging that Maine's law, prohibiting parents from selecting a religious school for their children, violates the U.S. Constitution's guarantee of free exercise of religion and equal protection of the laws. The State Supreme Court heard oral argument on April 10, 1998, and is expected to deliver its decision later this year.



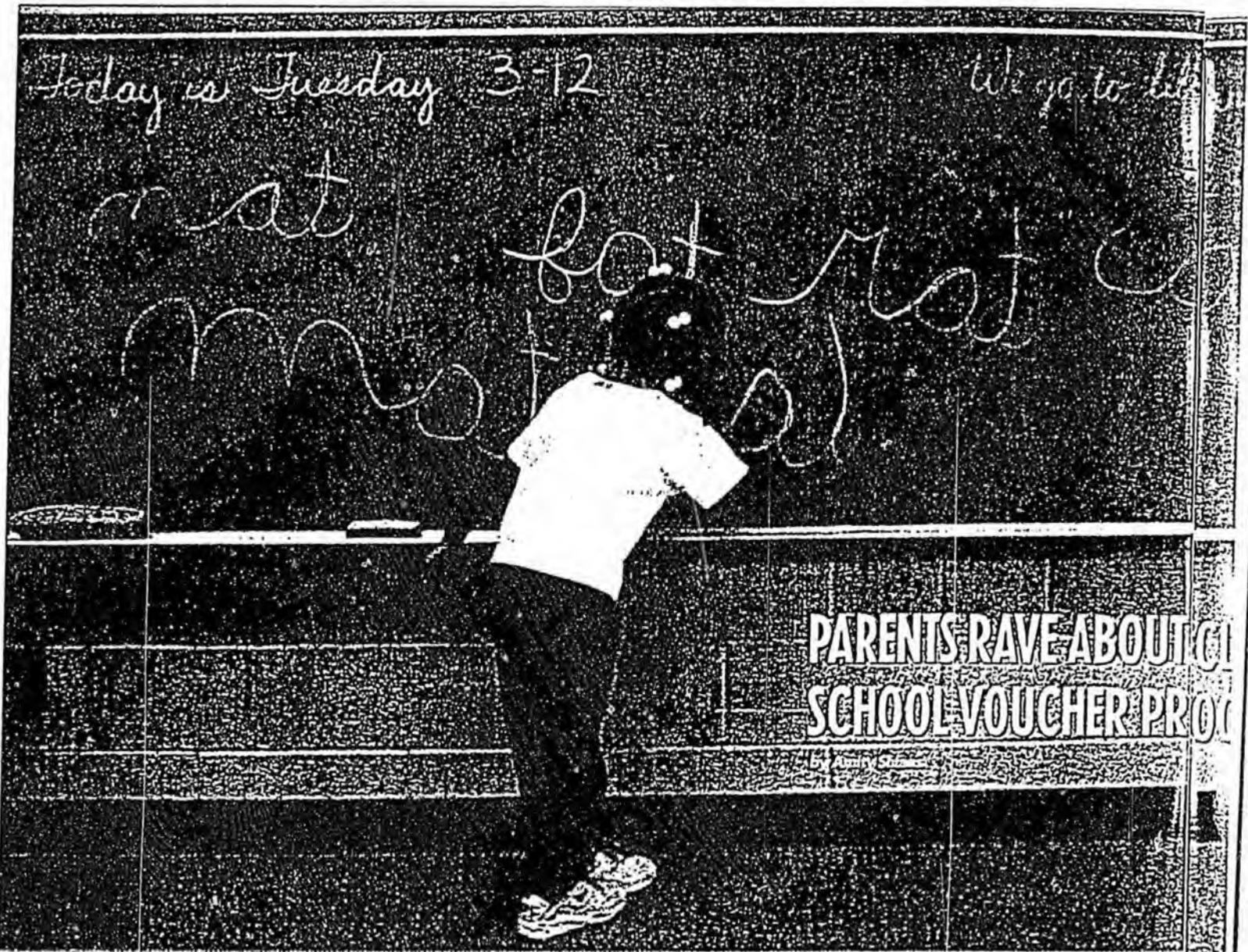
### Vermont

- + Vermont, like Maine, practices "tuitioning." In order to meet the demand of families who live in towns too small to support a local public high school, the state pays the tuition expenses for children to attend any public or approved nonsectarian private school.
- + Students in these towns may attend public or approved nonsectarian secondary schools selected by their parents and located either within or outside of Vermont. Their hometown school boards pay their tuition expenses.
- + The school board of a "tuition town" must pay the full tuition charged by a public school, but private schools receive only an amount equal to the average tuition charged by the state's high school districts. If a selected private school charges more than this amount for tuition, the school district may pay the greater amount, but it is not required to do so. Parents must cover the difference, if the full tuition is not paid by the school district.

**Legislative History:** (1869) Vermont's tuition statute was adopted to ensure that both urban and rural school children could receive a quality secondary education and did not distinguish between religious and secular schools. (1990) The state legislature permitted school boards in small towns that do not have schools for first through sixth grades to "tuition" pupils to nonresidential, independent private schools.

**Legal Status:** Religious high schools were included in Vermont's tuitioning program until 1961, when the state supreme court ruled that religious schools were ineligible, under the federal Constitution. In 1994 that court unanimously reversed itself allowing a student to attend an out-of-state school. In May '96, the school board in the 200-student Chittenden school district voted to pay tuition for 15 children to attend Mount St. Joseph Catholic High School. In June '97 a superior court judge ruled that it was unconstitutional. Chittenden school board voted in July '97 to appeal the case to the Vermont Supreme Court. A decision is expected before the end of '98.

# 'A CHANCE TO EG



## PARENTS RAVE ABOUT SCHOOL VOUCHER PROGRAM

**E**very morning Delvond Shakespeare buckles his two sons into the back seat of his gray Ford Taurus and drives them to a Cleveland elementary school called Our Lady of Peace.

Shakespeare loves the school. It has taught 8-year-old Landel the computer keyboard, and it is teaching 5-year-old Isaiah to read. After he drops them off, he pulls his car up beside the school so he can see his two sons joining the lines for their classes.

"That," he says, "gives me the best feeling."

Sometime in the coming weeks—

maybe by the time you read this—Ohio's state Supreme Court will decide whether it can stand to see its citizens this happy. Shakespeare's sons are among 2,962 Cleveland kids attending 56 private schools under a state voucher program that offers low-earning families up to \$2,500 a child for tuition.

America is hungry for school reform, and there are other voucher and scholarship programs operating across the country. But the two-year-old Ohio Scholarship and Tutoring Program does something daring: It allows parents to use their government vouchers at parochial schools. And two-thirds of Cleveland

voucher families, like the Shakespeares, choose to do so.

### ABSOLUTELY BERSERK

One way to tell that this is a great idea is that it is driving teachers unions absolutely berserk.

They know that parochial schools have the power to lure away public schools' most precious political asset—pupils. The Ohio Education Association, the National Education Association and the American Federation of Teachers, along with the American Civil Liberties Union, are all busy clamoring at the Ohio courts' doors, huffing about church-state

# EQUIP MY CHILD'

"First thing we saw were the drug dealers. The next corner was the winos. The third corner was shooting dice. And the fourth corner, there were the young ladies"—prostitutes.

Inside the school, the children were bouncing around. The teachers paid no attention. And then there were the books.

"Hardly books at all," says Shakespeare's wife, Charlynn, recalling battered, coverless texts and photocopies. When Shakespeare went into the boys' bathroom, he met a man who tried to sell him marijuana. He remembers imagining what first grade would be like for Landel:

"He had to walk through this war zone, and once we get in the school grounds he is still in a war zone, and once inside the school he is still in a war zone. No way I was going to send him to that school."

For a year, the Shakespeares lived in an attic so they could afford to send Landel to Our Lady of Peace.

## AN ANSWER TO PRAYER

The Shakespeares are fervent Baptists, and the announcement of the voucher program's first lottery came to them like the answer to a prayer. Landel got a voucher, and when Isaiah reached kindergarten, he got one too. The vouchers spared the family several thousand dollars in costs, which they saved to buy a ranch-style house with white siding—their first home.

Seated in the rec room of that home, the couple count on their fingers what the school gives their children: civility, phonics and that thing most desired by modern parents—computers. Now, says Shakespeare: "I have a chance to equip my child."

Other families recently came together to testify of their excitement at Hope Central Academy, one of two pilot nonsectarian schools created by Akron philanthropist David Brennan to give parents a place to spend their vouchers if they didn't want to use a parochial school.

"It's about time," says Christine Suma, a mother of 12. Her oldest children attend all kinds of colleges—religious, public, private—on various grants and subsidies. "So," she asks, "why can my college kids get aid and not my little kindergartner?"

The numbers bear out the parents'

enthusiasm. A study by Paul Peterson of Harvard University found that 63 percent of voucher parents were "very satisfied" with the academic quality of their schools, compared with less than 30 percent of public-school parents. Although they were often poor scorers in public school, most of the voucher children now perform at grade level or above. Next year the program is expanding to 4,000 students to meet fresh demand.

## A BUREAUCRATIC MONSTER

What makes vouchers so hot here is that Cleveland schools are so rotten. The courts, the state government and even the federal government have spent four decades and many billions trying to rescue the city's schools by taking them over, rearranging them, reforming them and otherwise intervening.

Yet the work has yielded little but a swelling bureaucratic monster: Today a full 51 percent of the \$5 billion budget of Ohio schools is spent outside the classroom. Cleveland schools spend a generous \$7,000 a child, nearly double the state average, and more than twice what schools like the Hope Academies spend per child. Yet half its high schoolers drop out. Those who do graduate read, write and compute well below grade level.

Nonetheless, local voucher opponents recently circulated anti-voucher material under the ominous headline: "How a Pilot Private School Voucher Project Will Eventually Destroy Urban Education."

Voucher parents are particularly furious about the union charge that vouchers will "cream off" middle-class kids from the public school system.

"There's nobody left to cream off," snorts Fannie Lewis, a city councilwoman who marched on the state capitol to push for more school choice. Nearly every family that could leave the system did so long ago. And the voucher families are hardly prosperous—their average household income is under \$12,000.

Bert Holt, the state education official who directs the voucher program, sees vouchers as a continuation of blacks' struggle for civil rights. Years ago, she worked for the city desegregating schools. Now, for the same reasons, she works on vouchers.

Without vouchers, Holt says, Cleveland children are "locked out" of



CLEVELAND'S  
PROGRAM

separation and labeling the program "unconstitutional and unfair."

To listen to the Shakespeares describe their desperate circumstances before the new program is to feel such objections melt into irrelevance. A few years ago, when Landel turned 5, Shakespeare did what many American parents with children that age do. He took a walk down to his local school, a public elementary school, to see what he was getting for his tax money.

To this day, Shakespeare gets vehement when he recalls that moment. All four corners at the intersection outside the school were occupied.

opportunity. "They suffer a terrible disenfranchisement."

Across the nation, many pastors and parishioners in black churches are beginning to agree. A recent visitors' day at Hope Central, one of the two new academies, attracted ministers and other church people from as far away as Texas and the District of Columbia. They, like many voucher parents, feel that restoring religion to schools will help many minority kids.

Listening as the pastors lovingly consider the details of their dream schools, one can't help feeling that education reform in this country has come full circle. Like Cleveland, most of the country has been busy centralizing education for 40 years. Now, many Americans are realizing they long for the days when the school mistress was hired and paid by four farmers meeting on the village green.

The nation learned a bitter lesson in the past 25 years, says Caroline Floyby, a Harvard economist who studies school finance: "If you sacrifice local control in the name of equality, you're also sacrificing quality."

### PRECIOUS LOCAL CONTROL

The path by which the Cleveland program restores that precious local control is circuitous and artificial, a far cry from the simple and understandable relationship between villagers and their schoolmarm.

Voucher families like the Shakespeares pay local taxes to a public school system that their children do not use. Lawmakers in Columbus pour money into Cleveland's public schools—none of which benefits the voucher families. But Columbus also funnels an extra, special stream of money to voucher parents.



It is a Jarvik heart of school finance, but one quite precious to families like the Shakespeares. In 1996, Shakespeare met with voucher opponents.

"When I went to see them," he says, "I wanted to know why they were so against inner-city kids getting a good education." ■

*This article first appeared in the Feb. 23, 1998, edition of The Wall Street Journal and is reprinted with permission. Amity Shlaes is a member of the Journal's editorial board.*



## A PRIVATE RESCUE MISSION

*Wealthy businessmen are helping poor children out of failing public schools and into private education.*

*by Judith Havemann*

When 12-year-old Franciscue Blassingame completed sixth grade last year, waiting for him was a middle school in Washington, D.C., where nearly half the students lack fundamental reading skills and almost none can do basic math.

His grandmother was desperate for an alternative and eventually found one: Thanks to the largess of a Wall Street tycoon, she received \$1,200 to remove Franciscue from the public schools entirely. He's now happily enrolled at St. Thomas More Catholic School near her home.

Franciscue is one of 14,000 needy children across the country whose educations are being at least partly financed at any private school their parents choose.

Paying their way are wealthy individuals who have lost patience with the nation's public schools and given up on long-term incentives like offering college scholarships to those who finish high school. These philanthropists are reaching down into the nation's elementary schools and offering low-income children the opportunity to escape the public sys-

tem in the same manner that many more affluent families already do.

While Cleveland and Milwaukee are experimenting with taxpayer-financed private school vouchers and Congress is embroiled in an ongoing debate over whether to expand the idea across the country, philanthropists are moving swiftly on their own. Already, their efforts have produced private-voucher programs in 32 cities, up from just a single program at the beginning of the decade. That growth has propelled private school vouchers into a field of its own and one that has attracted \$45 million in charitable donations.

In the process, these programs have become a new lightning rod for criticism from educators and from teacher unions like the National Education Association. Such concerns, however, are not dampening the pace of growth.

### SHAKING UP THE SYSTEM

In Washington, D.C., Wall Street multimillionaire Theodore J. Forstmann and John Walton, an heir to the Wal-Mart fortune, have contributed \$6 million for



1,000 scholarships for low-income children. So far, 7,573 children, or about 10 percent of students enrolled in D.C. public schools, have applied.

In Albany, N.Y., philanthropist Virginia Gilder offered a \$2,000 scholarship to every child in the city's lowest-performing school. More than 100 children, one-sixth of the student body, left.

Gilder, who over the years has used her millions to promote conservative causes, wanted to do more than simply offer a scholarship. She wanted to shake up the system so that public school educators would be forced to take notice. It worked: The school board ousted the principal, brought in nine new teachers, added two assistant principals and invested in books, equipment and teacher training after years of neglect.

In Milwaukee, a private foundation raised \$1.8 million for scholarships in the week after the courts there blocked a public voucher system from including religious schools three years ago. This year, the organization gave out 4,300 scholarships, the largest number in the country, to help get low-income children into 110 Catholic and other private schools.

Although the private vouchers are financed entirely with charitable donations, the chief complaint of those who have criticized the effort is that the donations represent a dangerous force that could hurt public schools by taking away the best students, the most motivated

parents. Some opponents also believe that private vouchers represent a thinly veiled attempt to further discredit public schools and open the door to a giveaway of taxpayer funds to parochial education.

"If these scholarships cream off the kids with the most motivated parents, how does that help education?" asked Deanna Duby, director of education policy for the People for the American Way Foundation.

Forstmann responds that his aim is to help children get a good education.

"These kids are sentenced to die," he said, "and this is only a bit of an overstatement, because without education there is no hope for them."

Forstmann argues that public schools are graduating only a small fraction of their students when a Catholic school across the street, spending only half as much money per pupil, sends 80 percent of its graduates to college. "What is going on here?" he thunders.

### THE MISSING LINK

Forstmann's effort is being described within Washington, D.C., as the critical missing link for the poor.

"We need to be helping not only the children in 12th grade who have made it, but the kids in second grade who are not learning to read and will never be candidates for college," said Douglas D. Dewey, who oversees the local effort.

Called the Washington Scholarship Fund, Forstmann's project has touched a nerve ever since its details became public through a \$100,000 advertising campaign last fall. Within three months, it had attracted thousands of applicants—although not all are actually eligible because many hopeful candidates are not poor at all, and others don't realize that

they will have to pay a share of the tuition out of their own pockets.

District resident Bernice Gates said she called the Washington Scholarship fund every day for almost three years trying to get a scholarship for her 11-year-old son to go to Calvary Christian Academy in Northeast D.C.

"My 9-year-old son who was going to Calvary was so much more advanced than his older brother" in public school, she said.

Gates, herself a student at the University of the District of Columbia, said the public schools did not push her son to learn.

"If he turned his papers in, did his homework, the other kids made fun of him, ridiculed him, let him know it wasn't cool," she said.

Phyllis Hickey is another applicant. Her two children already attend St. Michael's Catholic School in Silver Spring, but at considerable personal sacrifice for the single mother with a secretary's income.

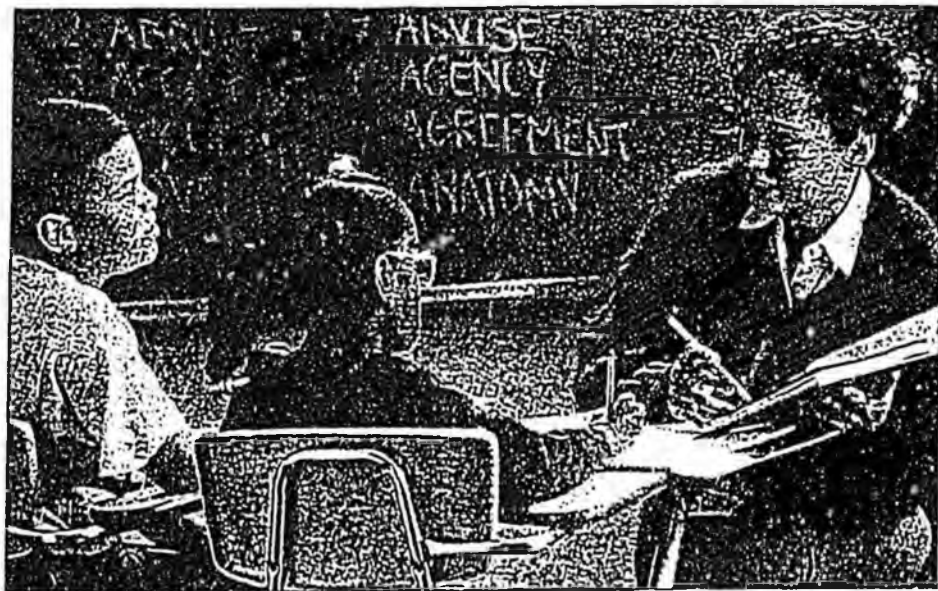
"Discipline-wise, I prefer private school," Hickey said. Her daughter had "three or four" different teachers in first grade before she removed her from the District public school system, she said.

"I am from Jamaica, and I am not used to public school," she said. "I don't like the noise, kids running up and down the hall."

Right now, Hickey is struggling to pay the tuition herself.

"If we don't win the scholarship, I will make the sacrifice, but it would help." ■

*This article first appeared in the Feb. 21, 1998, edition of The Washington Post and is reprinted with permission. Judith Havemann is a Post staff writer.*



*A reprint from*

THE JOURNAL OF AMERICAN CITIZENSHIP  
**POLICY**  
**REVIEW**

---

**Free at Last**  
Black America  
Signs up for  
School Choice

*By Nina Shokrati*

November/December 1996

Editorial Office:  
*Policy Review*  
The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
202-546-4400; Fax: (202) 608-6136  
e-mail: [polrev@heritage.org](mailto:polrev@heritage.org)  
internet: <http://www.heritage.org>

To subscribe:  
Subscriptions Department  
*Policy Review*  
P.O. Box 638  
Mt. Morris, IL 61054-8207  
1-800-304-0056

---

  
The Heritage Foundation

## Features

---

- 20 Free at Last**  
Black Americans sign up  
for school choice  
BY NINA SHOKRAH
- 28 An Echo, Not a Choice**  
Vouchers repeat the error  
of public education  
BY DOUGLAS D. DEWEY  
A chance to pursue my dreams  
BY CYNTHIA INDA
- 34 Three Cheers for  
Three Strikes**  
California enjoys a record  
drop in crime  
BY DAN LUNGREN
- 40 Redd Scare**  
A drill sergeant's brilliant assault  
on juvenile crime  
BY JOE LOCONTE
- 44 Welfare Reform: Can the  
States Fly Solo?**  
Four welfare directors  
explain how their states  
will fight poverty  
BY ELOISE ANDERSON,  
VANCE MCMAHAN,  
DON TAYLOR &  
JASON TURNER

- 50 Absence of Judgment**  
What social workers really think  
about the poor  
BY JAMES L. PAYNE
- 55 The Freshmen's  
First Principles**  
House Republicans learn some  
lessons from the 104th Congress  
BY REP. GEORGE RADANOVICH



Sergeant Redd's tough-love  
remedy for youth crime.

40

## Departments

---

- 3 Correspondence**
- 5 Editorial**  
*Adam Meyerson on the cultural  
contradictions of Clintonism*
- 7 Lessons from Abroad**  
*Shalom for at-risk youth*
- 8 Blessings of Liberty**  
*John Hood on the market's  
medical miracles*
- 10 Abuses and Usurpations**  
*Jessica Gavora: EPA greenmails  
the states*
- 12 One Nation Under God**  
*Indianapolis's attack  
on teen pregnancy*
- 14 Laboratories of Democracy**  
*Bellwethers of realignment:  
Bernadette Malone on key races  
in state legislatures*
- 17 Home Front**  
*Charmaine Crouse Yoest on  
state family policy groups*
- 59 Town Square**  
*News from the  
Citizenship Movement*
- 64 Profiles in Citizenship**  
*Julius Rosenswald: An educator  
in the Jim Crow South*

# Free at Last

## Black America Signs up for School Choice

**A** powerful grass-roots movement is slowly gathering force that may transform the politics of American education. Its human face is not white but black; its resources few but its determination strong. And its goal is freedom. Although most black political leaders still actively oppose vouchers and charter schools, their constituents are growing increasingly angry at the public schools' disastrous record of teaching black children. As a result, black parents, pastors, local officials, and civil-rights leaders are beginning to embrace school vouchers, charter schools, and other reforms that offer alternatives to dismal public schools.

These African Americans believe that academic achievement is the key to their economic independence. They want schools that involve them in their children's education while imposing high standards and strict discipline, and they reject the notion that poverty somehow renders parents less interested in their children's academic well-being. As their numbers swell, teachers unions will find it increasingly difficult to hold back reforms that offer black children a better chance.

This new movement is already spreading throughout the country. In Cleveland, African Americans like councilwoman Fannie Lewis, school principals Lydia Harris and Sister Hasina Renee, and school-board member Genevieve

*By Nina Shokraii*

Mitchell led the fight for a new state law that provides vouchers this fall for 2,000 low-income children. Lewis, Harris, Renee, and Mitchell vigorously supported Republican governor George Voinovich as he moved his voucher proposal through the state legislature. Lewis recruited 300 citizens in her neighborhood of Hough, the site of race riots in 1968, to travel to Columbus to lobby for the scholarship program. Last fall, when the governor's staff organized a press conference to announce the signing of the bill, jubilant black students and their parents packed the hallways and aisles.

In fact, support for vouchers in Cleveland was so strong that nearly 6,300 students, almost all of them black, applied for only 2,000 slots, which were filled by lottery. By mid-September of this year, 1,410 of the students had enrolled in a religious school. Councilwoman Lewis, a mother and 46-year Cleveland resident, attributes this flight to public schools' dismal educational record and indifference to parents. "The quality of public schools in Hough is poor," she says. "The roofs leak and the schools sometimes lack books, chairs, and other materials. Of the more than \$7,000 spent on each child in the Cleveland public schools, only a fraction goes to classroom education." Thanks to vouchers, this fall Lewis was



able to open her own community school, the Hough-Brooks Academy for Higher Learning—a nonsectarian school run by a community board with a curriculum emphasizing the arts and cultural awareness. Lewis hopes this will “force school officials to pay more attention to parents’ concerns and to provide safer and better schools.”

In Milwaukee, as Dan McGroarty has shown in his new book, *Break These Chains*, blacks have been the principal supporters of two Wisconsin voucher programs. “The battle for Parental Choice,” McGroarty writes, “began in the church basements and meeting halls of Milwaukee’s Near North Side,” a poor neighborhood where only 48 percent of adults hold a job. “From the start, the Milwaukee proponents’ language was appropriated from the civil-rights movement. Their rhetoric was more redolent of Martin Luther King Jr. than the free-market pronouncements favored by conservative voucher proponents.”

The engineer of Milwaukee’s first voucher plan, which was limited to nonsectarian schools, was Annette “Polly” Williams, a black Democratic state representative from the Near North Side. Having fought the school system a dozen years earlier for busing her daughter to a bad public school, Williams was familiar with the Milwaukee education establishment’s indifference to the needs of low-income black families. “The system is the system. It doesn’t care. It doesn’t feel,” Williams told McGroarty. “The way I saw it, [it] is

preparing our children for slavery. Look at the situation: Drop out by 10th grade, get into the street life. When you should be walking across the stage getting a diploma, you’re standing in front of a judge wearing chains.”

Committed to breaking up the system for the sake of the young black children in her community, Williams gradually mobilized her army of mothers and grandmothers, most of whom were on welfare, and all of whom were determined to “do right by their children.” Aware of her army’s powerful impact on lawmakers, she convinced the chairman of the state assembly’s urban-education committee to hold a public hearing on her school-choice plan on the morning of February 23, 1990. The three-hour-long hearing, which attracted 200 low-income minority parents and children, prompted the committee to approve her proposal. Soon thereafter, it passed the assembly and the senate and was signed into law by Republican governor Tommy Thompson.

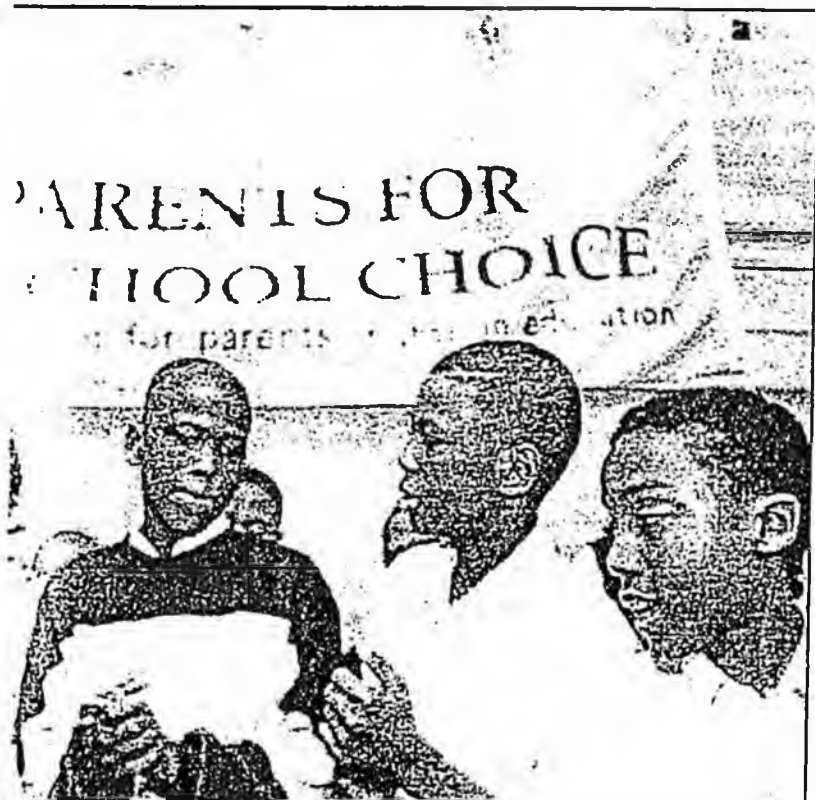
Throughout the endeavor, only one local newspaper captured Williams’s crusade in a concise and accurate way: *Community Journal*, whose editor, Mikel Holt, is yet another fan of school choice. As for Milwaukee’s mainstream dailies, McGroarty notes, “they attacked Williams repeatedly. One went as far as portraying her in a cartoon as a stick-up artist pointing a pistol at a public-school teacher.”

Having survived a grueling round of constitutional scrutiny, the program generated so much support that in September 1994, 750 mostly low-income blacks rallied for its expansion. This time, a new generation of African-American educators joined Williams in the battle. They included Zakiya Courtney, then principal of the Urban Day School and now the director of a grass-roots group called Parents for School Choice; Brother Bob Smith, the principal of the outstanding inner-city school Messmer High; and Howard Fuller, then superintendent of Milwaukee public schools. Last year, the school board and the teachers unions mailed 3,000 videotapes attacking Fuller’s stance on choice, calling it an attempt to scale back or completely cut educational programs. The unions succeeded in establishing an anti-reform majority on the board of education, which prompted Fuller’s resignation.

But according to a February 1995 report by the Wisconsin Policy Research Institute, 95 percent of African Americans polled in Milwaukee support school choice, and 70 percent believe that students in private and religious schools get a better education than students in the Milwaukee public schools. Finally ceding to their constituents’ demands, the Wisconsin legislature last year expanded the program to include religious schools, increased the number of vouchers

Photo by Andy Merris

They have a dream: Milwaukee children and parents rally for school choice while the Wisconsin Supreme Court hears a challenge to vouchers.



from 1,500 to 15,000, and eliminated restrictions on the number of choice students in participating schools. In response, voucher opponents immediately and successfully sought an injunction from the courts and have, so far, blocked the plan's implementation.

The parents, however, are equally determined. In February 1996, for instance, Courtney filled nine buses with 500 mostly black parents and children to attend a rally at the capitol, in Madison. There they voiced their enthusiasm for the newly enacted plan, which was being challenged in the Wisconsin Supreme Court. After a tie vote, the court sent the case back to trial court, where Dane County Circuit Judge Paul Higginbotham refused to lift the injunction blocking religious schools' participation in the program. "The state cannot do indirectly what it can't do directly," he said.

Higginbotham did allow the state to issue up to 15,000 vouchers for private nonreligious schools. But Courtney and Milwaukee's parents eagerly await the day the court will grant them complete authority over the upbringing of their children—including the freedom to send them to a religious school. Meanwhile, 4,500 low-income Milwaukee students are going to religious schools this year with privately financed vouchers—thanks to the generosity of the Bradley Foundation and 1,040 private donors who gave more than \$4 million to help the students hurt by Higginbotham's decision.

In Florida, T. Willard Fair, the president and chief executive officer of the liberal Urban League of Miami, and the Reverend R.B. Holmes, a black Baptist pastor from Tallahassee, are the principal supporters of a new charter school law enacted in April. The Florida plan allows any creative educator to open a school, free of the red tape that binds most public schools (such as teacher certification and state-imposed standards). Fair formed a partnership with Jeb Bush, the conservative Republican candidate for governor in 1994, to advance the legislation. Fair described public schools as "too regulated, entrenched in bureaucracy, with overcrowded classrooms, out-of-control children, and teachers who are not held accountable due to too much union interference." And so he created Florida's first charter school, whose student body is almost entirely low-income and African-American.

Similarly, Holmes opened the C.K. Steele-Leroy Collins charter middle school, with a student body that is 75 percent black. His school is modeled after a Christian academy he created five years ago, which he describes as a school that "all people, [whether] black, white, rich, or poor want to send their kids to." To Holmes, charter schools mean "freedom to teach reading, writing, arith-

metic, respect, responsibility, and entrepreneurship all in one—without the bureaucratic strings attached." A 1995 survey by the Foundation for Florida's Future found that Florida's black citizens supported school choice and charter schools by 68 percent and 63 percent, respectively.

In California, voucher supporters include Anyam Palmer, the principal of the Afrocentric Marcus Garvey School in South Central Los Angeles, who views "the present school system [as] the vehicle that puts us on welfare, in prison, and leaves us illiterate. . . . School choice is the only way out of this vicious cycle." "Public education is not working for most minority citizens in the inner city," says Bishop George D. McKinney Jr. of San Diego, who has set up a school at St. Stephen's Church of God in Christ. Testifying for vouchers last year before the House Subcommittee on Early Childhood, Youth, and Families, McKinney faulted public schools for "low expectations . . . of minority students" and "the systematic tracking of minority students toward nonacademic programs." A recent survey of South Central's residents by the Center for the Study of Popular Culture found that 77 percent of minorities supported vouchers.

Californians may not win the right to vouchers in the near future, but an innovative charter-school law, passed in 1992, offers blacks a close alternative. According to the Hudson Institute, the California plan gives "charter petitioners the right to seek significant autonomy from local board control [and provides] a blanket waiver from most state laws and regulations." Jonathan Williams, the black principal of the Accelerated School, in South Central Los Angeles, says that a charter-school system offers "more freedom, choice, and responsibility." Accelerated's student body comprises 50 percent blacks and 50 percent Hispanics; a majority of students belong to low or low-moderate income groups.

Williams believes charter schools are the solution to the educational crisis. "With charters you can keep the system public and free, while instilling stronger accountability," he contends. Without union pressure and

## School Choice Leaders

Class of 1996



State Legislator  
Polly Williams

handouts, "I feel like a professional instead of a wage earner." Williams's school sits in a gang-infested neighborhood. "It is not unusual for us to hear gun fights, and notice the residues of drug abuse around the school grounds," he says. But with a low student-to-teacher ratio, lots of parental involvement, and zero tolerance toward violence and drugs, Williams avoids the problems that incapacitate many public schools every year.

In Michigan, the TEACH Michigan Education Fund reports that black educators have launched one out of every three Michigan charter schools. According to Bryan Taylor, the fund's executive director, "5,000 applicants applied for 330 spots when the first charter school came to Detroit; African-American educators led most of them." In Michigan, where charter schools are called "public-school academies," the law allows any individual or group to develop a charter and to seek sponsorship from a variety of entities such as the board of a state public university. The program's key supporters include black leaders like the Reverend Ned Adams Jr., an official of the Council of Baptist Pastors, which assists member churches in Detroit interested in starting charter schools; and Larry Patrick, the former president of the Detroit Board of Education and an avid advocate "for parents having as many choices as possible for the education of their children."

Another black charter-school fan is Freya Rivers. The frustrated former Lansing public-school teacher now serves as district superintendent, full-time language-arts teacher, and part-time janitor and nurse. Her school, the Sanfoka Shule charter school in Lansing, targets at-risk elementary school students. In an article for the *Wall Street Journal* earlier this year, she wrote, "I have two students who were [in special education in traditional Lansing public schools]. They couldn't even write their names or recognize any words...."

I use the same methods to teach them that I use with the other students. Now both of them are writing sentences." In fact, 85 percent of the first- and second-graders Sanfoka received from Lansing public schools were illiterate; now all are able to read.

In Texas, ardent African-American voucher promoters include Democratic state representative Glenn Lewis, the former general counsel for the Tarrant County chapter of the National Association for the Advancement of Colored People (NAACP), and his liberal legislative colleague Ron Wilson. Fueled by support from a growing number of black churches, including the Reverend Raymond Bryant's Union Center African Methodist Episcopal Church, in Conroe, the leaders foresee a strong chance to enact school choice in their state next year. A 1995 Texas Poll showed black support for vouchers at 59 percent, and a growing number of church groups, ministers, and community groups also believe vouchers are the next step. Says Michael Williams, a black conservative and former assistant education secretary in the Bush administration, "The [African-American] community looks to choice as the vehicle to reclaim control over the learning of the next generation of African-American scholars and leaders." Allan Parker, the president of the Texas Justice Foundation, whose group has convened a citizens' task force to investigate why Texas minority students fare worse than whites on the state's achievement tests, works closely with these leaders in promoting school choice.

All of these low-income parents and community leaders seek the same opportunities for their children that middle- and upper-income black parents enjoy. "I don't think African-American parents are any different than other parents," says Michigan's Larry Patrick. "All they want is quality education for their children. Wealthy parents, like the president, can make this choice; poor ones cannot. . . . Most African-American leaders [seem to] practice choice in their own lives and support [it] on a personal level." Denis Doyle, a senior fellow with The Heritage Foundation, notes that black teachers are twice as likely as other black parents to send their children to a private school, and 30 percent of Congressional Black Caucus members with children send their children to private schools. Meanwhile, only 4 percent of blacks possess the means to exercise this option.

Perhaps this is why a poll by the left-leaning Joint Center for Political and Economic Studies in April 1996 reveals that African Americans favor school choice more strongly than the general population. Support registers highest among women (51 percent), parents (61 per-



School Principal  
Brother Bob Smith



Community Activist  
Zakiya Courtney



City Councilwoman  
Fannie Lewis



At Milwaukee's Holy Redeemer Academy, low-income black parents and community leaders seek the same opportunities that middle- and upper-income black parents enjoy.

cent), and younger African Americans (64 percent among 18- to 25-year-olds, 61 percent among 26- to 35-year-olds). These numbers are particularly telling when you consider that only 18 percent of blacks support the devolving of power from the federal government to the state and local levels. Says Brian Jones, the president of the Center for New Black Leadership, they reflect "a stalwart trend towards reclaiming the power of parents."

With respect to charter schools, the Hudson Institute's Educational Excellence Network recently reported similar positive conclusions. The report finds a high level of satisfaction with charter schools among most students, and cites the schools' clear academic expectations, safety, individualized instruction, committed teachers, and familial atmosphere. Hudson found that 63 percent of the students attending charter schools nationwide belong to a racial minority—including 19 percent who are African-American—and that 55 percent are poor.

What drives African Americans toward choice and charter schools? Standards, discipline, and parental involvement are the three core reasons.

Joyce Watkins, a resident of Chicago's West Side and a mother of seven, wants higher academic standards and eagerly hopes her city will adopt some form of school choice soon. "Where I'm from," she says, "public education offers leftovers. It means getting lost in the cracks." What frustrates Watkins the most is public-school teachers' lack of interest in her children's academic achievement. "They come home without homework sometimes," she laments. "The quality of education is really low. . . . I often wonder if teachers and school counselors even know my

children's names, since they are too busy disciplining unruly students." Watkins would prefer sending her children to Providence St. Mel, a Catholic school in her neighborhood, even though she belongs to a different Christian denomination. "If they gave us more choices, more kids would go to school, stay in school, and graduate to college. . . . You would also see the crime rate go down because the kids would be in class, not on the streets. . . . That's where the opportunity lies."

Gloria Grayson, a mother in Milwaukee whose two daughters now attend a private school, abhors the absence of strict disciplinary guidelines in public schools. "They were not learning. Classes were large and pupil-to-teacher ratios were high," she says. "The children were afraid and could not concentrate because they had to deal with their undisciplined peers rather than listen and learn in class. Teachers were not able or did not try to maintain adequate control over their classes. As a result, classes progressed slowly. Teachers and administrators had nothing but excuses for the poor education my children were receiving. The . . . schools are filled with drugs and violence. They graduate drug dealers. At best, children leave those schools not with a diploma, but with battle scars."

Grayson and Watkins join other parents and educators in blaming the education system's lack of interest in their concerns. After all, as Cleveland councilwoman Fannie Lewis notes, "parents have little influence over education policy. The school board often will go into executive session to shut out community attendance at its meetings." Texas legislator Glenn Lewis, whose constituents show their anger by picketing out-

Photo by Mark Hoffman

side school-board meetings, concurs. He considers choice a means to provide parents with more leverage over the school boards and "an opportunity to improve public schools . . . because so long as they are guaranteed our parents' dollars, they have no incentives to listen." According to a poll by the Center for Education Reform, 61 percent of blacks say "the quality of their public school could be improved a great deal," compared with 44 percent of the general population.

To find those key ingredients of a good education, black parents often gravitate towards religious education. As Fannie Lewis observes, "in most instances [the parents'] decisions have nothing to do with religion. They want their children in a safe environment with strong disciplinary standards where they can get a good education." Sectarian schools constitute 85 percent of all private schools; of that share, more than half are Catholic. Others include religious schools run by Baptists, Lutherans, Seventh-Day Adventists, and Muslims. These schools, especially in urban areas, enroll growing numbers of ethnic minority students, according to the National Catholic Educational Association (NCEA). NCEA also reports that in the last 20 years, the minority percentages have more than doubled in all Catholic schools, from 10.8 percent in 1970-71 to 23.5 percent in 1992-93.

Bob Smith, the veteran superintendent of Milwaukee's Messmer High School, a Catholic school, attests to these facts. "Catholic schools have been known for high-quality education since the black migration from the South. For many years, next to public schools, they were the only safe haven for blacks in the segregation era." He proudly cites the St. Benedict the Moor School, known today as the Urban Day School, as an example. The black all-male boarding school boasts a number of high-profile alumni, including Dizzy Gillespie, the jazz musician; Harold Washington, the first black mayor of Chicago; and Redd Foxx, the comedian and television star. Catholic schools are popular with parents, Smith says, because they are "safe havens against drugs, violence, and uncaring teachers."

A forthcoming study in the *Journal of Labor Economics* supports the believers in religious schooling by revealing that those most likely to benefit from a Catholic-school education are minorities, many of whom are not Catholic, who attend big-city schools. The paper's author, University of Chicago economist Derek Neal, observes that "in the urban minority sample, Catholic schooling dramatically increases the probability of high school graduation . . . [and increases] college graduation rates." According to Neal, that translates into future wage gains. Among the study's sample of urban blacks and

Hispanics, the probability of graduating from high school rises from 62 percent to at least 88 percent when the public-school students are placed in a Catholic secondary school. "For urban whites," he continues, "the effects are . . . always smaller in magnitude. In fact, [their] estimated wage gain from Catholic schooling is not statistically different." Neal concludes that "urban minority students benefit most from access to Catholic schools because their local public-school alternatives are poor."

Perhaps this explains why New York City mayor Rudolph Giuliani recently urged educators to use the city's Catholic schools as a "guide" to reforms. He noted in a *Wall Street Journal* article in 1995 that the city's Catholic and public schools enroll about the same proportion of students with multiple risk factors, but that Catholic schools have a dropout rate of 0.1 percent, compared with 18 percent in the public schools. Giuliani also observed that, despite popular belief, Catholic schools have expulsion rates of only 2 percent. The mayor has recently proposed a measure allowing students performing in the bottom 5 percent to attend religious schools.

Furthermore, a recent report by Jay Greene of the University of Houston and Paul Peterson of Harvard's John F. Kennedy School of Government fortifies the supporters of choice. This study demonstrates, for the first time, that students participating in the Milwaukee choice experiment, 70 percent of whom are African American, made major academic improvements compared with a control group in public schools. In fact, after three years, the gap be-



**tstandards, discipline, and parental involvement are pulling black parents toward school choice.**

tween the test scores of whites and minorities narrowed by 33 to 50 percent.

Despite the growing black support for vouchers, the civil-rights establishment and most black leaders in Congress and state legislatures remain steadfastly opposed. Their explanations range from fears of losing their best students to private schools (so-called creaming) and segregation to concerns that private schools will soak up public funds. Jessica Butler, a spokesperson for the Greater Harrisburg branch of the NAACP, exclaims "tuition vouchers are just the latest scheme for abandoning our public schools." Michael Myers, the president and executive director of the New York Civil Rights Coalition, says, "School choice is a gimmick. There is no such

thing as school choice for children who don't have a choice," since private schools get to select the types of students they like.

Militant opposition to choice may also stem from the influence of large, monied teachers unions, which see any choice outside the public schools as a threat to their monopoly. Teachers unions adamantly opposed a small school-choice plan tagged to Congress's District of Columbia appropriations bill last fall. After it passed overwhelmingly in the House of Representatives, the plan died in the Senate, despite the support of local leaders like Franklin Smith, the city's schools superintendent, and Mayor Marion Barry. Throughout the proceedings, District of Columbia delegate Eleanor Holmes Norton and the Congressional Black Caucus sided with the unions and refused to endorse school choice for the city's neediest children. Explaining her reasons for opposing the modest school choice proposal, Norton told the *Washington Post* on November 3, 1995, "It's not about money; it's about the strong feeling in the District that District schools are where most of the children are going to be, so we need to spend money fixing up our schools."

"School choice creams the public schools of their best students, and robs them of their much needed funds for educating the needy kids left behind," explains Daniel E. Katz, legal counsel for the Washington office of the American Civil Liberties Union (ACLU). "Choice also raises the specter of segregation." But as Cleveland's Lydia Harris, principal of one of the nation's best private schools, can attest, this description is inaccurate. In a recent article in *World* magazine, she writes, "There's no cream on my crop until we put it there. It's a myth that we take discipline problems and throw them out of school. It's the other way around. I get the kids the public schools can't handle." And she does all this at a per-pupil cost one-seventh that of Cleveland public schools.

"Choice is just a subterfuge for segregation, like it was in the South," says Felmers Chaney, the head of the Milwaukee NAACP, which joined the lawsuit against the initial Milwaukee school-choice plan as lead plaintiff. "Taken as a whole, expanded [school choice] will deny African Americans equal educational opportunity," asserted Chaney in a recent brief against the expanded Milwaukee school-choice plan. To many of its black critics, the NAACP seems more concerned with integration than with quality education for black children. Even so, opponents of vouchers need only examine the work of the late James Coleman, of the University of Chicago, which shows not only that poor black youngsters fare better in religious schools than

in public schools, but also that a child is more likely to attend school with a child of another race in the private sector than in the public sector. As for the Milwaukee plan, the NAACP ought to take a look at the high level of integration in Milwaukee private schools in comparison to its public schools.

Some critics argue that the education establishment opposes school choice for a very basic reason: self-preservation. "Perhaps one of the strongest reasons why the civil-rights establishment opposes choice is economic," says Brian Jones. "They strongly feel that competition and privatization will leave them out in the cold." Public schools employ a large portion of the African-American professional community; some of them may view school choice and charter schools as programs designed to rob them of tenured jobs. To convince public-school employees that market forces will provide jobs for the best teachers and administrators from these public schools is next to impossible. Of course, as

### **S**chool choice and charter schools are becoming the civil-rights movement of the 1990s.

Milwaukee's Zakiya Courtney points, the number of kids in the school system won't shrink. "This won't impact the teachers," she says. "It will only affect the pencil pushers."

Will saving jobs justify depriving innocent children of a quality education? To answer this question, these leaders ought to talk to students and their parents, visit the neighborhood private schools these children could go to, and perform a cost-benefit analysis of the savings associated with sending children to these schools. "Once you do this, you can't help but become a believer in school choice," says Messmer's Smith.

School choice is the civil-rights movement of the 1990s. Says Milwaukee's Polly Williams, "I am one of those people who is supposed to be very stupid because I am black, I live in the inner city, I am poor, and I raised my children in a single parent home. Well, those are lies. The only thing different about us is that we have been deprived of resources and access. When you empower parents like me, there is a major difference. We become responsible for our own lives. . . . We want to be empowered, and that is what the choice program has done."

---

*Nina Shokrati is the director of outreach programs at the Institute for Justice, a nonprofit, nonpartisan public-interest law firm in Washington, D.C.*

# POLICY REVIEW

THE JOURNAL OF AMERICAN CITIZENSHIP

Published by  
The Heritage  
Foundation

Nov. • Dec. 1996

Three Cheers  
for  
Three Strikes  
by Dan Lungren



**Free at  
Last**  
Black America  
Signs up for  
School Choice

## AFDC, R.I.P.

How Four States Will Fight Poverty

## Tear 'em Down, Build 'em Up

A Drill Sergeant's Brilliant Assault on Teen Crime

## The Cultural Contradictions of Clintonism

Adam Meyerson

## What GOP Freshmen Have Learned

Rep. George Radanovich



0733676523

*Wall St Journal* **Choice Goes Mainstream**

9/29/98  
PAZZ

The effort to bring choice to American education hit a milestone yesterday. A group of 35 business and political leaders announced in Washington a plan to distribute \$172 million in scholarships to enable more than 35,000 children to attend schools of their choice. Rather than merely wait for public schools to improve, these civic leaders have decided the time has come to shake up the education system by encouraging competitive forces.

The Children's Scholarship Fund (reachable at 800-805-KIDS) is the brainchild of Ted Forstmann, the chairman of Gulfstream Aerospace, and John Walton, a director of Wal-Mart Stores. Three months ago, the two men committed \$100 million to set up scholarship programs in 38 cities. Since then, they have raised an additional \$72 million from like-minded reformers. They have also recruited a stellar and diverse Board of Directors.

It includes civil-rights leaders such as Martin Luther King III and the Rev. Floyd Flake. Former Democratic Cabinet officials Henry Cisneros and Joe Califano have signed on, as has Miami Heat coach Pat Riley and Roger Staubach. It also has Democratic Senators Daniel Patrick Moynihan, John Breaux and former Senator Sam Nunn. Business leaders such as Dick DeVos of Amway, James Kimsley of America Online, Peter Lynch of Fidelity, Julian Robertson and Stedman Graham are on board. The board also includes such universally respected figures as Barbara Bush and Colin Powell.

Mr. Forstmann says this breadth of support demonstrates "the agreement many people have that we need equal opportunity and a competitive envi-

ronment in education." The need for competition was brought home to him during his involvement with the Big Brother program. He found that while only 30% of students in public schools went to college, more than 90% of those from parochial schools did. Nor were the two groups of students radically different. Nearly nine out of 10 New York City parochial school students were minorities and more than 60% came from single-parent households.

Mr. Forstmann believes public education can be strengthened in much the same way that competition has improved consumer products. He notes that any system that can enforce a 90% market share has overly monopolistic characteristics. "We have thousands of bureaucrats worrying about the harm private monopolies do," he says. "But how many people worry about the harmful effects that a public school monopoly can have?"

The answer could be found in last week's record attendance at the annual Washington meeting of CEO America, the umbrella group that sponsors scholarship programs supported by private donations in more than 40 cities. Organizers clearly feel that the political zeitgeist has shifted toward choice, a move symbolized by the fact that a National Education Association vice president monitored the conference.

Only a few years ago, school choice was considered a radical concept embraced by politicians at their peril. That's changing, but it's a sign of the times that a group of mostly private citizens such as Mr. Forstmann and Mr. Walton have assembled are so far ahead of the curve than either the politicians or the education establishment.

## STRONG SUPPORT FOR SCHOOL CHOICE

A telephone survey commissioned by the Center for Education Reform asked: "How much in favor are you of allowing poor parents to be given the tax dollars allotted for their child's education and permitting them to use those dollars in the form of a scholarship to attend a private, public or parochial school of their choosing?"

	All	Black	White	Other	Dem.	Rep.	Ind.	No children	Children in school	Children not in school
Strongly or somewhat in favor	73%	90%	71%	78%	77%	67%	77%	68%	84%	82%
Somewhat or strongly against	23%	7%	26%	14%	21%	28%	21%	28%	14%	16%

Source: Center for Education Reform/International Communications Research

The Washington Times

# New poll finds public support for education vouchers for poor

By Carol Innerst  
THE WASHINGTON TIMES

A new national poll conducted for the Center for Education Reform finds strong public support for tax-funded vouchers to allow the poor to send their children to the private, public or parochial school of their choice.

The results, released yesterday, "are dramatic and challenge recent surveys which have purported to show public opposition to reform," said CER President Jeanne Allen. "The questions were clear and unambiguous. No negative buzzwords, no skewed phrasing, no leading inferences, just straight-up questions that brought straight-up answers."

Among the most notable findings of the Survey of Americans' Attitudes Toward Education and School Reform:

- Seventy percent of the public supports policies to help children in failing schools attend a public, private or parochial school of their parents' choosing.

- Seventy percent of the public supports giving poor parents tax dollars to send their children to a private, public or parochial school.

The CER telephone survey of 1,017 individuals, conducted by International Communications Research of Media, Pa., confirms data released earlier this year by the Public Agenda Foundation.

The findings challenge the results of recent National Education Association and Phi Delta Kappa-Gallup polls that showed a majority of the public still opposes government-funded vouchers for private schools.

Parents with children in public schools split evenly, 49 percent to 49 percent, on the government-funded voucher question in the PDK-Gallup poll.

On the CER poll, 82 percent of parents with school-age children favor vouchers funded by the government. The CER poll did not ask whether the children were in public or private schools.

Support for government-funded vouchers was strongest among

blacks (90 percent), Democrats and Independents (77 percent each) and parents with children not in school (84 percent).

The NEA and Phi Delta Kappa-Gallup polls also showed support for a federal role in education.

Other poll highlights:

- Sixty-one percent of respondents favor creating charter schools. Charter schools are public schools started by teachers, parents or community groups. They are freed from some governmental regulations other than those affecting health, safety and discrimination.

- Forty-eight percent perceive teachers unions to be supportive of educational excellence and 35 percent see them as an obstacle to reform.

- Ninety-three percent say the quality of their public school could be "a great deal" or "somewhat" improved.

- Sixty-one percent believe that teachers should be judged and compensated on student performance.

## *Choice Is a Panacea*

*John E. Chubb and Terry M. Moe*

---

---

**F**or America's public schools, the last decade has been the worst of times and the best of times. Never before have the public schools been subjected to such savage criticism for failing to meet the nation's educational needs — yet never before have governments been so aggressively dedicated to studying the schools' problems and finding the resources for solving them.

The signs of poor performance were there for all to see during the 1970s. Test scores headed downward year after year. Large numbers of teenagers continued to drop out of school. Drugs and violence poisoned the learning environment. In math and science, two areas crucial to the nation's success in the world economy, American students fell far behind their counterparts in virtually every other industrialized country. Something was clearly wrong.

During the 1980s a growing sense of crisis fueled a powerful movement for educational change, and the nation's political institutions responded with aggressive reforms. State after state increased spending on schools, imposed tougher requirements, introduced more rigorous testing, and strengthened teacher certification and training. And, as the decade came to an end, creative experiments of various forms — from school-based management to magnet schools — were being launched around the nation.

---

*John E. Chubb, a senior fellow in the Brookings Governmental Studies program, and Terry M. Moe, professor of political science at Stanford University and a former Brookings senior fellow, are the authors of *Politics, Markets, and America's Schools*, an analysis of 500 public and private high schools based on information gathered from more than 20,000 students, teachers, and principals, the most comprehensive data set on high schools ever assembled. This article is excerpted from the conclusion to that book.*

We think these reforms are destined to fail. They simply do not get to the root of the problem. The fundamental causes of poor academic performance are not to be found in the schools, but rather in the institutions by which the schools have traditionally been governed. Reformers fail by automatically relying on these institutions to solve the problem — when the institutions are the problem.

The key to better schools, therefore, is institutional reform. What we propose is a new system of public education that eliminates most political and bureaucratic control over the schools and relies instead on indirect control through markets and parental choice. These new institutions naturally function to promote and nurture the kinds of effective schools that reformers have wanted all along.

### *Schools and Institutions*

Three basic questions lie at the heart of our analysis. What is the relationship between school organization and student achievement? What are the conditions that promote or inhibit desirable forms of organization? And how are these conditions affected by their institutional settings?

Our perspective on school organization and student achievement is in agreement with the most basic claims and findings of the "effective schools" literature, which served as the analytical base of the education reform movement throughout the 1980s. We believe, as most others do, that how much students learn is not determined simply by their aptitude or family background — although, as we show, these are certainly influential — but also by how effectively schools are organized. By our estimates, the typical high school student tends to learn considerably more, comparable to at least an extra year's worth of study, when he or she attends a high school that is effectively organized rather than one that is not.

Generally speaking, effective schools — be they public or private — have the kinds of organizational characteristics that the mainstream literature would lead one to expect: strong leadership, clear and ambitious goals, strong academic programs, teacher professionalism, shared influence, and staff harmony, among other things. These are best understood as integral parts of a coherent syndrome of organization. When this syndrome is viewed as a functioning whole, moreover, it seems to capture the essential features of what people normally mean by a team — principals and teachers working together, cooperatively and informally, in pursuit of a common mission.

How do these kinds of schools develop and take root? Here again, our own perspective dovetails with a central theme of educational analysis and criticism: the dysfunctions of bureaucracy, the value of autonomy, and the inherent tension between the two in American public education. Bureaucracy vitiates the most basic requirements of effective organization. It imposes goals, structures, and requirements that tell principals and teachers what to do and how to do it — denying them not only the discretion they need to exercise their expertise and professional judgment but also the flexibility they need to develop and operate as teams. The key to effective education rests with unleashing the productive potential already present in

the schools and their personnel. It rests with granting them the autonomy to do what they do best. As our study of American high schools documents, the freer schools are from external control the more likely they are to have effective organizations.

Only at this late stage of the game do we begin to part company with the mainstream. While most observers can agree that the public schools have become too bureaucratic and would benefit from substantial grants of autonomy, it is also the standard view that this transformation can be achieved within the prevailing framework of democratic control. The implicit assumption is that, although political institutions have acted in the past to bureaucratize, they can now be counted upon to reverse course,

grant the schools autonomy, and support and nurture this new population of autonomous schools. Such an assumption, however, is not based on a systematic understanding of how these institutions operate and what their consequences are for schools.

### *Political Institutions*

Democratic governance of the schools is built around the imposition of higher-order values through public authority. As long as that authority exists and is available for use, public officials will come under intense pressure from social groups of all political stripes to use it. And when they do use it, they cannot blithely assume that their favored policies will be faithfully implemented by the heterogeneous population of principals and teachers below — whose own values and professional views may be quite different from those being imposed. Public officials have little choice but to rely on formal rules and regulations that tell these people what to do and hold them accountable for doing it.



*The key to better schools, therefore, is institutional reform.*

These pressures for bureaucracy are so substantial in themselves that real school autonomy has little chance to take root throughout the system. But they are not the only pressures for bureaucracy. They are compounded by the political uncertainty inherent in all democratic politics: those who exercise public authority know that other actors with different interests may gain authority in the future and subvert the policies they worked so hard to put in place. This knowledge gives them additional incentive to embed their policies in protective bureaucratic arrangements — arrangements that reduce the discretion of schools and formally insulate them from the dangers of politics.

These pressures, arising from the basic properties of democratic control, are compounded yet again by another special feature of the public sector. Its institutions provide a regulated, politically sensitive setting conducive to the power of unions, and unions protect the interests of their members through formal constraints on the governance and operation of schools — constraints that strike directly at the schools' capacity to build well-functioning teams based on informal cooperation.

The major participants in democratic governance — including the unions — complain that the schools are too bureaucratic. And they mean what they say. But they are the ones who bureaucratized the schools in the past, and they will continue to do so, even as they tout the great advantages of autonomy and professionalism. The incentives to bureaucratize the schools are built into the system.

### *Market Institutions*

This kind of behavior is not something that Americans simply have to accept, like death and taxes. People who make decisions about education would behave differently if their institutions were different. The most relevant and telling comparison is to markets, since it is through democratic control and markets that American society makes most of its choices on matters of public importance, including education. Public schools are subject to direct control through politics. But not all schools are controlled in this way. Private schools — representing about a fourth of all schools — are subject to indirect control through markets.

What difference does it make? Our analysis suggests that the difference is considerable and that it arises from the most fundamental properties that distinguish the two systems. A market system is not

built to enable the imposition of higher-order values on the school, nor is it driven by a democratic struggle to exercise public authority. Instead, the authority to make educational choices is radically decentralized to those most immediately involved. Schools compete for the support of parents and students, and parents and students are free to choose among schools. The system is built on decentralization, competition, and choice.

Although schools operating under a market system are free to organize any way they want, bureaucratization tends to be an unattractive way to go. Part of the reason is that virtually everything about good education — from the knowledge and talents necessary to produce it, to what it looks like when it is produced — defies formal measurement through the standardized categories of bureaucracy.

The more basic point, however, is that bureaucratic control and its clumsy efforts to measure the unmeasurable are simply unnecessary for schools whose primary concern is to please their clients. To do this, they need to perform as effectively as possible, which leads them, given the bottom-heavy technology of education, to favor decentralized forms of organization that take full advantage of strong leadership, teacher professionalism, discretionary judgment, informal cooperation, and teams. They also need to ensure that they provide the kinds of services parents and students want and that they have the capacity to cater and adjust to their clients' specialized needs

and interests, which this same syndrome of effective organization allows them to do exceedingly well.

Schools that operate in an environment of competition and choice thus have strong incentives to move toward the kinds of "effective-school" organizations that academics and reformers would like to impose on the public schools. Of course, not all schools in the market will respond equally well to these incentives. But those that falter will find it more difficult to attract support, and they will tend to be weeded out in favor of schools that are better organized. This process of natural selection complements the incentives of the marketplace in propelling and supporting a population of autonomous, effectively organized schools.

### *Institutional Consequences*

No institutional system can be expected to work perfectly under real-world conditions. Just as democratic institutions cannot offer perfect representation or per-

*What we propose  
is a new system of  
public education  
that relies on  
indirect control of  
the schools through  
markets and  
parental choice.*

fect implementation of public policy, so markets cannot offer perfect competition or perfect choice. But these imperfections, which are invariably the favorite targets of each system's critics, tend to divert attention from what is most crucial to an understanding of schools: as institutional systems, democratic control and market control are strikingly different in their fundamental properties. As a result, each system structures individual and social choices about education very differently, and each has very different consequences for the organization and performance of schools. Each system puts its own indelible stamp on the schools that emerge and operate within it.

What the analysis in our book suggests, in the most practical terms, is that American society offers two basic paths to the emergence of effective schools. The first is through markets, which scarcely operate in the public sector, but which act on private schools to discourage bureaucracy and promote desirable forms of organization through the natural dynamics of competition and choice.

The second path is through "special circumstances," — homogeneous environments free of problems — which, in minimizing the three types of political pressures just discussed, prompt democratic governing institutions to impose less bureaucracy than they otherwise would. Private schools therefore tend to be effectively organized because of the way their system naturally works. When public schools happen to be effectively organized, it is in spite of their system — they are the lucky ones with peculiarly nice environments.

As we show in our book, the power of these institutional forces is graphically reflected in our sample of American high schools. Having cast our net widely to allow for a full range of noninstitutional factors that might reasonably be suspected of influencing school autonomy, we found that virtually all of them fall by the wayside. The extent to which a school is granted the autonomy it needs to develop a more effective organization is overwhelmingly determined by its sectoral location and the niceness of its institutional environment.

Viewed as a whole, then, our effort to take institutions into account builds systematically on mainstream ideas and findings but, in the end, puts a very different slant on things. We agree that effective organization is a major determinant of student achievement. We also agree that schools perform better the more autonomous they are and the less encumbered they are by bureaucracy. But we do not agree that this

knowledge about the proximate causes of effective performance can be used to engineer better schools through democratic control. Reformers are right about where they want to go, but their institutions cannot get them there.

The way to get schools with effective organizations is not to insist that democratic institutions should do what they are incapable of doing. Nor is it to assume that the better public schools, the lucky ones with nice environments, can serve as organizational models for the rest. Their luck is not transferable. The way to get effective schools is to recognize that the problem of ineffective performance is really a deep-seated institutional problem that arises from the most fundamental properties of democratic control.

The most sensible approach to genuine education reform is therefore to move toward a true institutional solution — a different set of institutional arrangements that actively promotes and nurtures the kinds of schools people want. The market alternative then becomes particularly attractive, for it provides a setting in which these organizations take root and flourish. That is where "choice" comes in.

### *Educational Choice*

It is fashionable these days to say that choice is "not a panacea." Taken literally, that is obviously true. There are no panaceas in social policy. But the message this aphorism really means to get across is that choice is

just one of many reforms with something to contribute. School-based management is another. So are teacher empowerment and professionalism, better training programs, stricter accountability, and bigger budgets. These and other types of reforms all bolster school effectiveness in their own distinctive ways — so the reasoning goes — and the best, most aggressive, most comprehensive approach to transforming the public school system is therefore one that wisely combines them into a multifaceted reformist package.

Without being too literal about it, we think reformers would do well to entertain the notion that choice is a panacea. Of all the sundry education reforms that attract attention, only choice has the capacity to address the basic institutional problem plaguing America's schools. The other reforms are all system-preserving. The schools remain subordinates in the structure of public authority — and they remain bureaucratic.

In principle, choice offers a clear, sharp break from

*Of all the reforms  
that attract  
attention, only  
choice can  
address the basic  
institutional  
problem plaguing  
America's schools.*

the institutional past. In practice, however, it has been forced into the same mold with all the other reforms. It has been embraced half-heartedly and in bits and pieces — for example, through magnet schools and limited open enrollment plans. It has served as a means of granting parents and students a few additional options or of giving schools modest incentives to compete. These are popular moves that can be accomplished without changing the existing system in any fundamental way. But by treating choice like other system-preserving reforms that presumably make democratic control work better, reformers completely miss what choice is all about.

Choice is not like the other reforms and should not be combined with them. Choice is a self-contained reform with its own rationale and justification. It has the capacity *all by itself* to bring about the kind of transformation that reformers have been seeking to engineer for years in myriad other ways. Indeed, if choice is to work to greatest advantage, it must be adopted *without* these other reforms, since they are predicated on democratic control and are implemented by bureaucratic means. The whole point of a thoroughgoing system of choice is to free the schools from these disabling constraints by sweeping away the old institutions and replacing them with new ones. Taken seriously, choice is not a system-preserving reform. It is a revolutionary reform that introduces a new system of public education.

### *A Proposal for Real Reform*

The following outline describes a choice system that we think is equipped to do the job. Offering our own proposal allows us to illustrate in some detail what a full-blown choice system might look like, as well as to note some of the policy decisions that must be made in building one. More important, it allows us to suggest what our institutional theory of schools actually entails for educational reform.

Our guiding principle in the design of a choice system is this: public authority must be put to use in creating a system that is almost entirely beyond the reach of public authority. Because states have primary responsibility for American public education, we think the best way to achieve significant, enduring reform is for states to take the initiative in withdrawing authority from existing institutions and vesting it directly in the schools, parents, and students. This restructuring cannot be construed as an exercise in delegation. As long as authority remains "available" at higher levels

within state government, it will eventually be used to control the schools. As far as possible, all higher-level authority must be eliminated.

What we propose, more specifically, is that state leaders create a new system of public education with the following properties.

### *The Supply of Schools*

The state will be responsible for setting criteria that define what constitutes a "public school" under the new system. These criteria should be minimal, roughly corresponding to the criteria many states now use in accrediting private schools — graduation requirements, health and safety requirements, and teacher certification requirements. Any educational group or organization that applies to the state and meets these minimal criteria must then be chartered as a public school and granted the right to accept students and receive public money.

Existing private schools will be among those eligible to participate. Their participation should be encouraged, because they constitute a supply of already effective schools. Our own preference would be to include religious schools too, as long as their sectarian functions can be kept clearly separate from their educational functions. Private schools that do participate will thereby become public schools, as such schools are defined under the new choice system.

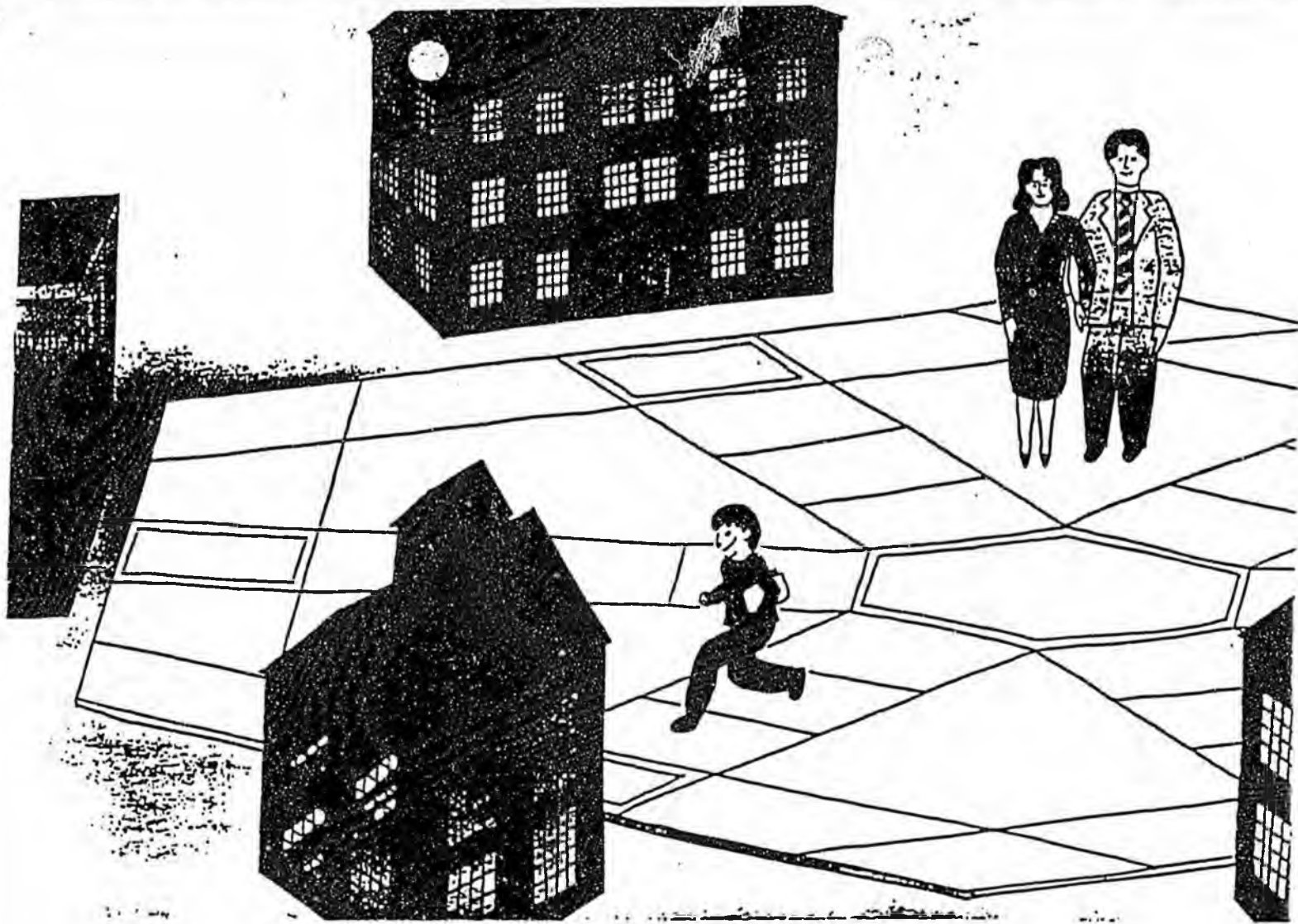
School districts can continue running their present schools, assuming those schools meet state criteria. But districts will have authority over only their own schools and not over any of the others that may be chartered by the state.

### *Funding*

The state will set up a Choice Office in each district, which, among other things, will maintain a record of all school-age children and the level of funding — the "scholarship" amounts — associated with each child. This office will directly compensate schools based on the specific children they enroll. Public money will flow from funding sources (federal, state, and district governments) to the Choice Office and then to schools. At no point will it go to parents or students.

The state must pay to support its own Choice Office in each district. Districts may retain as much of their current governing apparatus as they wish — superintendents, school boards, central offices, and all their

*Choice,  
unlike the other  
education  
reforms, is  
self-contained,  
with its own  
rationale and  
justification.*



staff. But they have to pay for them entirely out of the revenue they derive from the scholarships of those children who voluntarily choose to attend district-run schools. Aside from the governance of these schools, which no one need attend, districts will be little more than taxing jurisdictions that allow citizens to make a collective determination about how large their children's scholarships will be.

As it does now, the state will have the right to specify how much, or by what formula, each district must contribute for each child. Our preference is for an equalization approach that requires wealthier districts to contribute more per child than poor districts do and that guarantees an adequate financial foundation to students in all districts. The state's contribution can then be calibrated to bring total spending per child up to whatever dollar amount seems desirable; under an equalization scheme, that would mean a larger state contribution in poor districts than in wealthy ones.

While parents and students should be given as much flexibility as possible, we think it is unwise to allow them to supplement their scholarship amounts with personal funds. Such "add-ons" threaten to pro-

duce too many disparities and inequalities within the public system, and many citizens would regard them as unfair and burdensome.

Complete equalization, on the other hand, strikes us as too stifling and restrictive. A reasonable trade-off is to allow collective add-ons, much as the current system does. The citizens of each district can be given the freedom to decide whether they want to spend more per child than the state requires them to spend. They can then determine how important education is to them and how much they are willing to tax themselves for it. As a result, children from different districts may have different-sized scholarships.

Scholarships may also vary within any given district, and we strongly think that they should. Some students have very special educational needs — arising from economic deprivation, physical handicaps, language difficulties, emotional problems, and other disadvantages — that can be met effectively only through costly specialized programs. State and federal programs already appropriate public money to address these problems. Our suggestion is that these funds should take the form of add-ons to student scholarships. At-risk students would then be empow-

ered with bigger scholarships than the others, making them attractive clients to all schools — and stimulating the emergence of new specialty schools.

### *Choice Among Schools*

Each student will be free to attend any public school in the state, regardless of district, with the student's scholarship — consisting of federal, state, and local contributions — flowing to the school of choice. In practice most students will probably choose schools in reasonable proximity to their homes. But districts will have no claim on their own residents.

To the extent that tax revenues allow, every effort will be made to provide transportation for students who need it. This provision is important to help open up as many alternatives as possible to all students, especially the poor and those in rural areas.

To assist parents and students in choosing among schools, the state will provide a Parent Information Center within its local Choice Office. This center will collect comprehensive information on each school in the district, and its parent liaisons will meet personally with parents in helping them judge which schools best meet their children's needs. The emphasis here will be on personal contact and involvement. Parents will be required to visit the center at least once, and encouraged to do so often. Meetings will be arranged at all schools so that parents can see firsthand what their choices are.

The Parent Information Center will handle the applications process in a simple fashion. Once parents and students decide which schools they prefer, they will fill out applications to each, with parent liaisons available to give advice and assistance and to fill out the applications themselves (if necessary). All applications will be submitted to the Center, which in turn will send them out to the schools.

Schools will make their own admissions decisions, subject only to nondiscrimination requirements. This step is absolutely crucial. Schools must be able to define their own missions and build their own programs in their own ways, and they cannot do that if their student population is thrust on them by outsiders.

Schools must be free to admit as many or as few students as they want, based on whatever criteria they think relevant — intelligence, interest, motivation, special needs — and they must be free to exercise their

own, informal judgments about individual applicants.

Schools will set their own "tuitions." They may choose to do so explicitly, say, by publicly announcing the minimum scholarship they are willing to accept. They may also do it implicitly by allowing anyone to apply for admission and simply making selection knowing in advance what each applicant's scholarship amount is. In either case, schools are free to admit students with different-sized scholarships, and they are free to keep the entire scholarship that accompanies each student they have admitted. This gives all schools incentives to attract students with special needs, since these children will have the largest scholarships. It also gives schools incentives

to attract students from districts with high base-level scholarships. But no school need restrict itself to students with special needs, nor to students from a single district.

The application process must take place within a framework that guarantees each student a school, as well as a fair shot at getting into the school he or she most wants. This framework, however, should impose only the most minimal restrictions on the schools.

We suggest something like the following. The Parent Information Center will be responsible for seeing that parents and students are informed that they have visited the schools that interest them, and that all applications are submitted by a given date. Schools will then be required to make their admissions decisions within a set time, and students who

are accepted into more than one school will be required to select one as their final choice. Students who are not accepted anywhere, as well as schools that have yet to attract as many students as they want, will participate in a second round of applications, which will work the same way.

After this second round, some students may remain without schools. At this point, parent liaisons will take informal action to try to match up these students with appropriate schools. If any students still remain unsigned, a special safety-net procedure — a lottery, for example — will be invoked to ensure that each is assigned to a specific school.

As long as they are not "arbitrary and capricious" schools must also be free to expel students or deny them readmission when, based on their own experience and standards, they believe the situation warrants it. This authority is essential if schools are to define and control their own organizations, and to give students a strong incentive to live up to their side of the educational "contract."

*Each student  
must be  
guaranteed a  
school, as well as  
a fair shot at  
getting into the  
school he or she  
most wants.*

## *Governance and Organization*

Each school must be granted sole authority to determine its own governing structure. A school may be run entirely by teachers or even a union. It may vest all power in a principal. It may be built around committees that guarantee representation to the principal, teachers, parents, students, and members of the community. Or it may do something completely different.

The state must refrain from imposing any structures or requirements that specify how authority is to be exercised within individual schools. This includes the district-run schools: the state must not impose any governing apparatus on them either. These schools, however, are subordinate units within district government — they are already embedded in a larger organization — and it is the district authorities, not the schools, that have the legal right to determine how they will be governed

More generally, the state will do nothing to tell the schools how they must be internally organized to do their work. The state will not set requirements for career ladders, advisory committees, textbook selection, in-service training, preparation time, homework, or anything else. Each school will be organized and operated as it sees fit.

Statewide tenure laws will be eliminated, allowing each school to decide for itself whether or not to adopt a tenure policy and what the specifics of that policy will be. This change is essential if schools are to have the flexibility they need to build well-functioning teams. Some schools may not offer tenure at all, relying on pay and working conditions to attract the kinds of teachers they want, while others may offer tenure as a supplementary means of compensating and retaining their best teachers.

Teachers, meantime, may demand tenure in their negotiations (individual or collective) with schools. And, as in private colleges and universities, the best teachers are well positioned to get it, since their services will be valued by any number of other schools. School districts may continue to offer districtwide tenure, along with transfer rights, seniority preference, and whatever other personnel policies they have offered in the past. But these policies apply only to district-run schools and the teachers who work in them.

Teachers will continue to have a right to join unions and engage in collective bargaining, but the legally prescribed bargaining unit will be the individual

school or, as in the case of the district government, the larger organization that runs the school. If teachers in a given school want to join a union or, having done so, want to exact financial or structural concessions, that is up to them. But they cannot commit teachers in other schools, unless they are in other district-run schools, to the same things, and they must suffer the consequences if their victories put them at a competitive disadvantage in supplying quality education.

The state will continue to certify teachers, but requirements will be minimal, corresponding to those that many states have historically applied to private schools. In our view, individuals should be certified to teach if they have a bachelor's degree and if their personal history reveals no obvious problems. Whether they are truly good teachers will be determined in practice, as schools decide whom to hire, observe their own teachers in action over an extended period of time, and make decisions regarding merit, promotion, and dismissal.

The schools may, as a matter of strategy, choose to pay attention to certain formal indicators of past or future performance, among them: a master's degree, completion of a voluntary teacher certification program at an education school, or voluntary certification by a national board. Some schools may choose to require one or more of these, or perhaps to reward them in various ways. But that is up to the schools, which will be able to look anywhere for good

teachers in a now much larger and more dynamic market.

The state will hold the schools accountable for meeting certain procedural requirements. It will ensure that schools continue to meet the criteria set out in their charters, that they adhere to nondiscrimination laws in admissions and other matters, and that they collect and make available to the public, through the Parent Information Center, information on their mission, their staff and course offerings, standardized test scores (which we would make optional), parent and student satisfaction, staff opinions, and anything else that would promote informed choice among parents and students.

The state will not hold the schools accountable for student achievement or other dimensions that call for assessments of the quality of school performance. When it comes to performance, schools will be held accountable from below, by parents and students who directly experience their services and are free to choose. The state will play a crucial supporting role

*The state must refrain from imposing any structures or rules that specify how authority is to be exercised within individual schools.*

here in monitoring the full and honest disclosure of information by the schools — but it will be only a supporting role.

### *Choice as a Public System*

This proposal calls for fundamental changes in the structure of American public education. Stereotypes aside, however, these changes have nothing to do with “privatizing” the nation’s schools. The choice system we outline would be a truly public system — and a democratic one.

We are proposing that the state put its democratic authority to use in creating a new institutional framework. The design and legitimation of this framework would be a democratic act of the most basic sort. It would be a social decision, made through the usual processes of democratic governance, by which the people and their representatives specify the structure of a new system of public education.

This framework, as we set it out, is quite flexible and admits of substantial variation on important issues, all of them matters of public policy to be decided by representative government. Public officials and their constituents would be free to take their own approaches to taxation, equalization, treatment of religious schools, additional funding for disadvantaged students, parent add-ons, and other controversial issues of public concern, thus designing choice systems to reflect the unique conditions, preferences, and political forces of their own states.

Once this structural framework is democratically determined, moreover, governments would continue to play important roles within it. State officials and agencies would remain pivotal to the success of public education and to its ongoing operation. They would provide funding, approve applications for new schools, orchestrate and oversee the choice process, elicit full information about schools, provide transportation to students, monitor schools for adherence to the law, and (if they want) design and administer tests of student performance. School districts, meantime, would continue as local taxing jurisdictions, and they would have the option of continuing to operate their own system of schools.

The crucial difference is that direct democratic control of the schools — the very *capacity* for control, not simply its exercise — would essentially be eliminated. Most of those who previously held authority over the schools would have their authority permanently with-

drawn, and that authority would be vested in schools, parents, and students. Schools would be legally autonomous: free to govern themselves as they wish, to specify their own goals and programs and methods, to design their own organizations, select their own student bodies, and make their own personnel decisions. Parents and students would be legally empowered to choose among alternative schools, aided by institutions designed to promote active involvement, well-informed decisions, and fair treatment.

### *Democracy and Educational Progress*

We do not expect everyone to accept the argument we have made here. In fact, we expect most of those who speak with authority on educational matters — school leaders and academics within the educational community, to reject it. But we will regard our effort a success if it directs attention to the issues of democratic control and provokes serious debate about their consequences for the nation’s public schools. Whether or not our own conclusions are right, the fact is that these issues are truly basic to an understanding of public schools, and they have so far played no part in the national debate. If educational reform is to have a chance at all of succeeding, that is to change.

In the meantime, we can only believe that the current “revolution” in public education will prove a disappointment. It might have succeeded

had it actually been a revolution, but it was not a revolution. It was never intended to be, despite the lofty rhetoric. The 1980s reform movement never seriously thought about the old institutions and certainly never considered them part of the problem. They were, as they have always been, part of the solution — and, for that matter, part of the definition of what democracy and public education are all about.

This identification has never been valid. Nothing about the concept of democracy requires that schools be subject to direct control by school boards, superintendents, central offices, departments of education, or other arms of government. Nor does anything in the concept of public education require that schools be governed in this way. There are many paths to democracy and public education. The path America has been trodding for the past half-century is exacting a heavy price — one the nation and its children can ill afford to bear, and need not. It is time, we think, to get to the root of the problem. □

*When it comes to performance, schools will be held accountable from below, by parents and students who are free to choose.*

# THE YEAR IN REVIEW 1998

PUTTING CHILDREN FIRST



Children's Educational Opportunity Foundation



PUTTING CHILDREN FIRST  
Bentonville, Arkansas

## THE YEAR IN REVIEW

December 1998

Dear Friends and Supporters of CEO AMERICA:

This past year has been an exciting time for the school choice movement and CEO America. I want to briefly report on some of the areas in which we are involved and give you an update, as well as my views on a number of subjects. Once you read the information I've enclosed for you, I am confident that you will agree that we are breaking new ground in effectively communicating the benefits of school choice beyond the media and public policy community to low-income parents themselves.

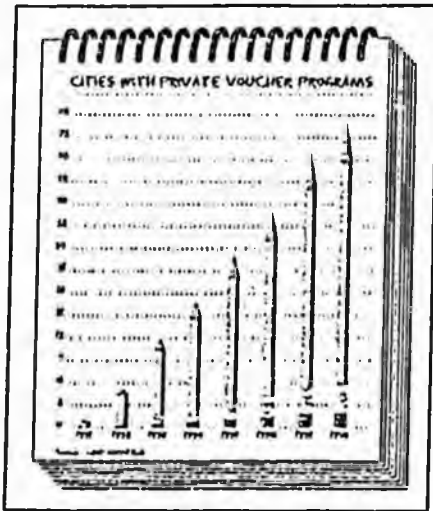
As you know, CEO AMERICA was founded in 1992 and is a 501(c)(3) nonprofit foundation dedicated to helping every child in America gain access to a quality education through parental choice programs. In order to provide immediate relief from poorly-performing, unsafe schools, the Foundation was originally established to support and develop privately-funded voucher programs. Today, with more than 40 affiliates across the country, CEO AMERICA faces a new challenge - how to increase public support for taxpayer-funded school vouchers. For this reason, we have refined our mission to focus primarily on educating and mobilizing the parents of voucher students, waiting list applicants, and families in low-income neighborhoods while, at the same time, continuing to help start more private programs.



Even though public support for school vouchers is strong and growing, especially in the inner-cities among young black and Hispanic parents, the school choice movement still faces considerable obstacles in the well-organized and heavily-funded teachers' unions. It's going to take the concentrated moral force of thousands of parents who want a better life for their children to counter the opponents of publicly funded school choice on the legislative front. Until we launched our Campaign to Educate America this year, however, there was no way to reach these concerned citizens.

### Priming the Pump: How Privately-Funded Vouchers Stimulate the Grassroots

Drawing on my experience from Wal-Mart Stores in the early 1980's, I refer to our expanded mission as "retail school choice". The role of the privately funded program has proven to be a valuable tool in demonstrating that, when given the opportunity, parents, especially those of color and low income, want to have a choice. However, it has only touched the surface in giving a few parents this choice. For this reason, we will continue our work in encouraging the privately-funded voucher movement and were successful in reaching our goal this year of adding at least ten new privately-funded voucher programs, bringing to 41 the total number of programs currently operating around the country.



In June 1998, the privately funded voucher movement received a tremendous boost when John Walton and Ted Forstmann announced the creation of the Children's Scholarship Fund (CSF). Together, they committed \$100 million in challenge grants for voucher programs, which would be matched by local partner cities around the country. This came at a good time when CEO AMERICA's matching grant program was coming to an end, completing the fulfillment of the Walton Family Foundation's \$2 million gift in 1994.

By September, the Children's Scholarship Fund announced their partner cities at a news conference in Washington, DC. To date, partnerships have been established in nearly 40 cities with a total of approximately \$70 million pledged that would be matched by the Walton/Fortsmann funds. Of the 40 partnership programs, 25 were

existing CEO affiliate programs. Another six were CEO initiated by groups who were considering starting programs. These partnerships would not have been possible without a strategic alliance of Children's Scholarship Fund with CEO AMERICA.

In the coming years, we will continue to work closely together to exchange information and pool resources so that we can effectively use the private vouchers to stimulate competition in education and the taxpayer-funded school choice movement. Our greatest asset in these private voucher programs will be those who sign up for the lottery but don't receive a voucher. They are the ones we must reach and involve in the

legislative and grassroots processes, thereby winning their loyalty as committed customers. They are the ones who believe we have the product they want and, in effect, have "set their foot in our door to shop".



## Horizon Project

Inspired by the bold example of Virginia Gilder, the New York philanthropist who offered to pay the private school tuition of every student in one of the worst performing schools in Albany, New York, we initiated what is perhaps our most exciting project this year. We committed up to \$50 million, over ten years to the Horizon Project, to give every single low-income child in an entire school district access to any religious, secular, private, or public school in the San Antonio area. We chose the largely Hispanic Edgewood District in San Antonio, where 94 percent of the 14,000 students from low-income families are eligible for vouchers.

With our ten-year commitment to Edgewood students, we will be able to test the effects of school choice in the market place. We want to know whether private schools will expand and new private schools emerge once vouchers are offered on a sustained basis. We're also interested in seeing how the public schools will respond to competition and whether population patterns will

**HORIZON**  
SCHOLARSHIP PROGRAM

change. Already, 2,000 applications have been received (1,500 of them from the public schools) and nearly 1,000 have been approved as eligible. A total of 722 students have actually enrolled in private schools, including two new schools that were created as a result of the project.

Some interesting things are beginning to occur. First, we learned that over 100 of the students applying for Horizon vouchers had been attending public schools outside the Edgewood District. In other words, these students actually lived in the Edgewood District, but were giving false addresses outside the district in order to attend a different public school. We are calling this practice "black market choice"!!! Also, a new apartment complex in the district is now advertising our program as an incentive for residents to sign their lease and move into the district! Should vouchers make the Edgewood district more attractive to live in, urban renewal will be an additional benefit of school choice.

Just several weeks ago, the Edgewood Independent School



*The Horizon Project is the most ambitious, most focused school choice program in the nation with an entire school district targeted numbering over 14,000 students.*

District officials announced that \$120,000 was being committed to hire an independent consultant to come in and take a look at ways to cut costs! Since the district loses around \$5,000 for every lost student, they have also lifted their attendance zone ban. Now, students from other school districts can cross district lines and attend Edgewood. In other words, public school choice has come to San Antonio as a direct result of our efforts!

Many more positive things are happening with this exciting new project. An independent parents' group is being organized to lobby for publicly funded school choice. And, as the Texas Legislature gears up for a school choice voucher battle, the program will be in the spotlight, not just in Texas, but also nationally. It has already attracted significant media attention, including major write-ups in most of the national print media, as well as television programs like CNN and the Lehrer News Hour.

## Building from the Grassroots Up: Campaign to Educate America

Our Campaign to Educate America will provide an answer to the thousands of parents whose children are wait-listed for private voucher programs. It will direct them to our grassroots networks, which will then organize them as a powerful voice in the school choice debate.

Through our matching grant program, we were able to partner with two existing grassroots parents' organizations and create four from scratch - places where we see some form of school choice legislation likely to pass in the next three years. These organizations are now responsible for recruiting and organizing grassroots activists from every social sector - from parents, religious, business and civic leaders to members of the news media, and policy makers. But even after the legislative battle is won, these parents' organizations will be critical in sustaining an effective public school choice system.



In addition to providing financial support to these parent organizations, CEO AMERICA has been an invaluable advisory and technical resource. We have helped to identify key leadership and staff; designed media, marketing and communications campaigns; conducted research using surveys and focus groups, and developed fundraising plans. As we expand our grassroots network, our institutional knowledge and experience will allow us to replicate successful models in other cities and states.

### **Children First Magazine**

Another exciting new project this year has been our magazine, *Children First*. Launching a national magazine has been a learning process for us, and the project has evolved quite a bit since we first expanded our mission to include grassroots and educational activities. Originally it had been our intent to primarily target policy makers, businessmen, legislators, and members of the news media with our success stories. But after conducting extensive focus group research in August, it became clear to us that the positive message and engaging format of *Children First* would best serve to motivate an altogether overlooked audience - low-income parents themselves.

This new publication is designed to tell the stories of families and children whose lives have been positively changed by school choice and then to market those stories primarily to other parents. In other words, win more parents over as customers of school choice and create the demand for reform. The Fall 1998 issue of *Children First* featured a story on the first privately-funded school choice program in the country, the Educational CHOICE Charitable Trust of Indianapolis, Indiana, started by insurance magnate, J. Patrick Rooney of Golden Rule Insurance. Already we are being inundated by an overwhelmingly positive response. In fact, the Chicago Tribune has expressed an interest in writing an article on the kids and program featured.



### **Conferences & Events: Building a Bridge between Leaders & Grassroots**



Building upon our hard work in the field and our strong ties to the public policy and business communities, CEO AMERICA hosted three very important events this past year which played a significant role in bringing together the players in the school choice movement and drew national media and Congressional attention to their great accomplishments.

The first event was our Fourth Annual Founders Meeting, held in New York City in April. This was our most successful and best attended meeting since our first meeting in Orlando in 1994. We highlighted five privately funded programs in New York, leadership awards were presented to Peter Flanigan, New York City Mayor Rudy Guiliani, Wall Street Journal Editorial Writer John Fund, New York native and Minnesota Governor Arne Carlson, former Congressman and Reverend Floyd Flake, and private-voucher funders Dick Gilder, Virginia Gilder, Bruce Kovner, and Roger Hertog.



The second event was the Washington, D.C. Golfing for Kids Charity Golf Tournament held in Bethesda, Maryland, at the PGA Avenel Golf Course in May. Fifteen members of Congress participated in the event including Senators Dan Coats and Don Nickles, as well as Congressman Bill Archer.

Our third event was held in September at the Willard Hotel in Washington, D.C. The National School Choice Conference, co-hosted by the National Center for Policy Analysis, was designed to bring together leading school choice proponents and to honor Members of Congress with "Excellence in Leadership Awards" for outstanding leadership in pushing federal school choice legislation. Among those in attendance were former Education Secretary William Bennett; syndicated columnist Mona Charen; former Attorney General Ed Meese; and Arizona Superintendent of Education, Lisa Keegan.

Members of Congress who received awards included Senators Coverdell, Coats, Lieberman, Torricelli, and Congressmen Arney, Gingrich, Archer, Watts, Talent, and former Congressman Floyd Flake.

## CONCLUSION

This year has been a good one for CEO AMERICA and the school choice movement, but it has also been a great one for the children of America and their parents. When the Supreme Court recently let stand Wisconsin's lower court ruling, it opened the floodgates for taxpayer-funded school vouchers. This judicial support, combined with the boost of the \$50 million Horizon program and the Children's Scholarship Fund's extraordinary commitment of \$100 million in challenge grants for voucher programs will create an incredible demand for hundreds of thousands of parents who want a better education for their children.

By expanding our Campaign to Educate America Program, CEO AMERICA will provide the mechanism to educate and organize these parents to propel the school choice movement to the next level. We realize that our plans are ambitious, but we strongly believe that, if we are given adequate resources early in this program, then we can make a real impact in the school choice movement. In the last few months, we have worked hard to test market our product and refine our national strategy and, based on our preliminary findings, we know we are headed in the right direction.

Although we are still a long way from achieving our aspirations where every child in America has the best schooling options available, we are making progress and I am convinced we will eventually prevail. In the meantime, we will remain vigilant, as vigilance is the eternal price of freedom.

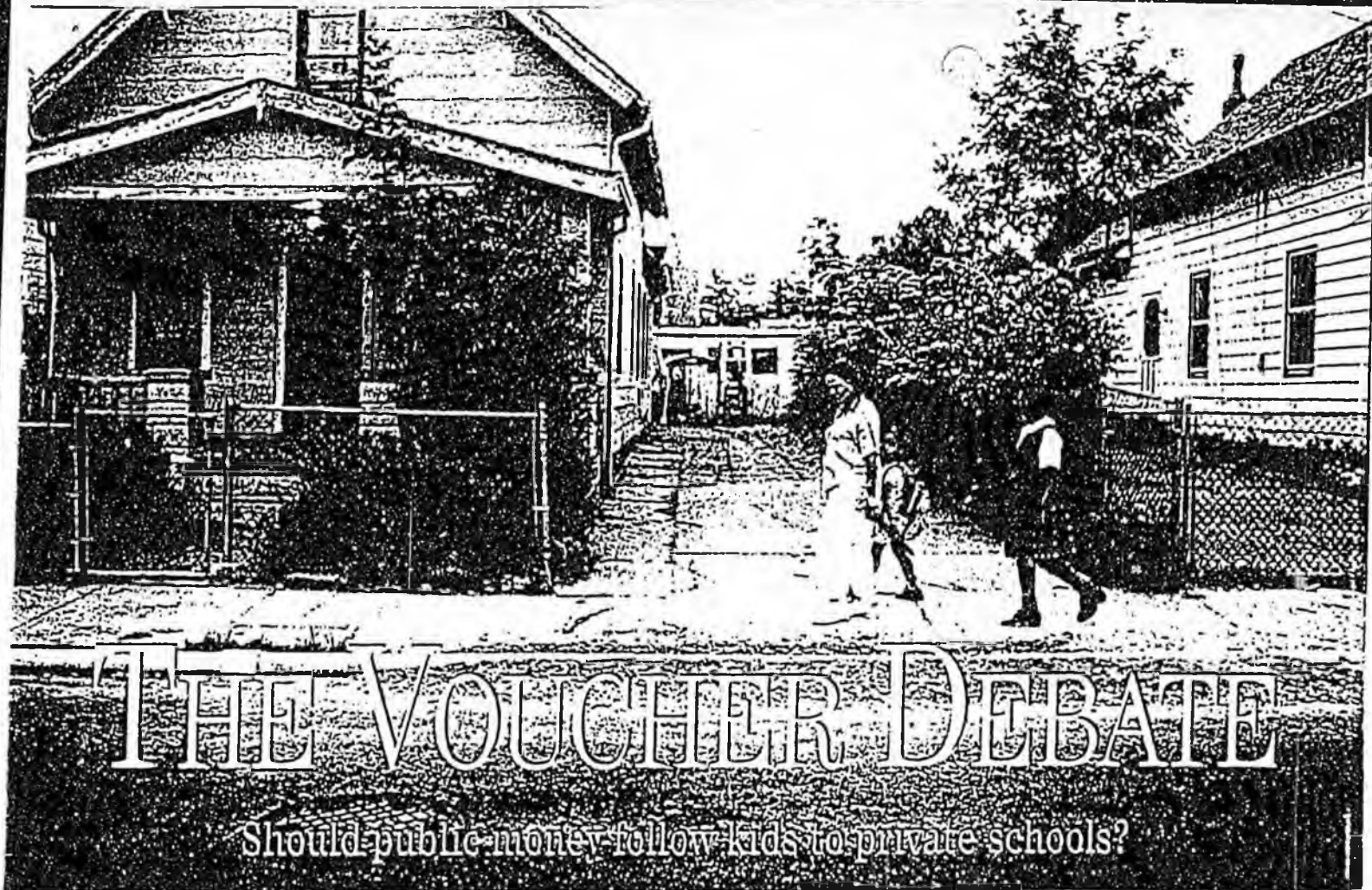
Thank you for your support, friendship, and involvement. God bless you.

Sincerely,

Fritz S. Steiger  
President



901 McClain Road, Suite 802 • P.O. Box 330 • Bentonville, AR 72712  
Phone: (501) 273-6957 • Fax: (501) 273-9362  
E-mail: ceoamerica@ceoamerica.org • Website: www.ceoamerica.org



By Judith Brody Saks

**I**n November, Donald Boggs, president of the Organization of School Administrators and Supervisors for the Detroit Public Schools, went to examine Milwaukee's school voucher program, one of only two voucher programs in the country. The trip, organized by Teach Michigan, a nonprofit organization that supports vouchers and school choice, and sponsored by the Detroit Chamber of Commerce Foundation, was intended to help a delegation of business and community leaders get the facts about vouchers in a no-pressure, non-proselytizing way.

Boggs says he spent a few hours at the Bruce Guadalupe Community School, a private school in the voucher program. What he saw was certainly appealing: a new building, children who seemed "amiable, happy, and well supervised," all-day kindergartens for 4 and 5-year-olds, and relatively small classes, staffed by aides and parent volunteers as well as teachers, for students in grades 1-8. He acknowledges, though, that he spent most of his time observing the physical plant and decorum rather than extensively examining the Milwaukee program's controversial data on academic achievement (see sidebar on page 26).

Boggs did not become a convert to vouchers. "Nothing we saw there changed my mind," he says. Like other

voucher opponents, he remains convinced that vouchers are a "cheap way out" for those unwilling to foot the bill to give the nation's big-city schools the drastic overhaul most of them desperately need. He argues that vouchers will, in reality, create a two-tier system for students, leaving the public schools to educate the students no private schools will want to—or will have to—accept.

The Detroit delegation was seeking an objective view of the voucher issue, but objectivity is hard to come by. Passions run high on both sides, despite the fact that there is little evidence about vouchers' success—or lack of success—on which to base an opinion. Speculation and conjecture, combined with ideological fervor and rhetoric, have characterized much of the debate. And an array of special-interest groups, including teachers unions and civil liberties groups on one side and conservative Christian groups and many Republican lawmakers on the other, have dominated the discussion.

#### A policy debate

The debate shows no sign of subsiding even though the American public has soundly rejected vouchers whenever the issue is put to a statewide vote. Most recently, voters in Washington state defeated a voucher initiative by a 2-1 margin; that vote followed earlier voucher defeats in Oregon, Colorado, and California. The most recent Gallup Poll indicates that, by a 61-36 margin, Americans still oppose the

Photographs by Al Fuchs

*Judith Brody Saks is a freelance writer in Rockville, Md., who writes frequently on education.*

Patricia Williams walked her daughter, sixth-grader Latricia and kindergartner Angela, to St. Francis Catholic School in September. The family has taken advantage of the city's new voucher program, which pays for a limited number of students to attend private and parochial schools.

idea of allowing parents to use public money to send children to private schools.

A key public policy issue is at stake: Who will have the right to spend the huge sums of money involved—those who provide public education, or the students who “consume” it? Arnold Fege, director of government relations for the National PTA, which “unequivocally opposes” spending public monies for private and religious schools, puts the issue this way: “We are in a battle for public resources, with \$386 billion a year at stake. The real fight is over how many of those dollars the private sector will get.”

Given the critical nature of the issue, educators across the country are looking with intense interest at both the Milwaukee plan, which began in 1990, and at a newer voucher program in Cleveland, which last fall became the first U.S. school district to allow poor students in grades K-3 to attend religious and secular private schools with public money.

The Cleveland program is currently awaiting action from the Ohio Court of Appeals after a trial judge ruled that the pilot program, funded with \$5.2 million in state money, did not violate constitutional prohibitions against government support of religious institutions. Supporters of the Milwaukee Parental Choice plan, as that city's voucher program is called, were handed a legal setback in January when a Wisconsin circuit court judge ruled that an expanded version of the plan—which would include religious schools and substantially increase the number of students eligible to participate—violated the state constitution. Voucher advocates are appealing the decision, which came as no surprise. So important are both the Milwaukee and Cleveland cases, in fact, that both sides say they are prepared to take them to the U.S. Supreme Court if necessary.

If these voucher programs survive the constitutional challenges they now face, they will surely set a precedent that may ultimately transform—and, some say, irrevocably harm—America's venerable public school system. Calling this political crisis “different” from other previous assaults on public education, Bella Rosenberg, assistant to Albert Shanker, president of the American Federation of Teachers, says, “There has never before been a time when the continued existence of public education has been in question.”

In a voucher plan, public tax money goes directly to parents to pay tuition at the school they want their child to attend. Some proposed systems would allow parents to use vouchers at schools within their own districts; others would be statewide in scope. Some proposals would limit vouchers to public schools; others would allow parents to use vouchers for any secular or religious private school. Some proposals call for income limits to determine eligibility; others would make vouchers universally available.

The Cleveland and Milwaukee programs, designed to help a small number of poor students escape troubled urban schools, use income limits to determine who may qualify. That fact alone makes the debate more complex, since many people who support the desire of poor, minority

families to improve their children's lives are not sure which side of the issue to embrace. But many observers say that these small, means-tested programs are not aimed primarily at helping the poor but at opening the door to a universal voucher system for every child in America. With a universal system, they predict, affluent students already in pricey, secular, private schools will be subsidized, and religious schools will flourish—all with public funds.

### The roots of choice

The battle, many observers agree, is politically, rather than educationally, driven. Its roots go back as early as 1955, when free-market economist Milton Friedman argued that competition could improve public schools. The issue got a political boost in the 1980s, when the Reagan administration promoted the voucher concept in the form of tuition tax credits. In 1990, *Politics, Markets and America's Schools*, a now famous book on school choice by Terry Moe and John Chubb, gave the movement a philosophical push. A series of recent events have ratcheted up the debate. The implementation of the Cleveland plan, controversy over the proposed inclusion of religious schools in the Milwaukee plan, last year's failed attempt by Congress to mandate a voucher plan for the embattled District of Columbia public schools, and Republican presidential nominee Bob Dole's call for federally funded vouchers all helped fan the flames.

More important, voucher proponents have been able to reframe the debate in a new and compelling way. When the same basic issue was called tuition tax credits or “parochial aid,” it made little political headway. But with its new name—parental choice—and its embrace of low-income, minority students, it has received considerably more attention in the press and in state legislatures. “The fight was no longer about tax dollars going to religion, but rather about whether one was for or against ‘parents’ and for or against ‘freedom of choice.’ The repackaging and new spin of this old idea was brilliant politics which totally reshuffled the political deck,” comments Mordecai Lee, executive director of the Milwaukee Jewish Council for Community Relations, in the Summer 1996 issue of *Rethinking Schools*. Lee was vice chair of the Wisconsin Coalition for Public Education, a coalition of 26 civic, religious, and educational groups that tried, unsuccessfully, to stop the state legislation from expanding the Milwaukee program to include religious schools.

Perhaps more than any other factor, though, a tremendous despair with the state of many inner-city school systems and the slow pace of reform has propelled the voucher debate forward. In Washington, D.C., for example, a federally appointed financial control board fired the superintendent and transferred the powers of an elected school board to an appointed board of trustees and a chief executive officer. The control board said the school system was in such crisis that nothing short of a radical overhaul would work.

“There is a tremendous dissatisfaction with public education. This [voucher] issue wouldn't be getting anywhere if this weren't the case,” asserts Rosenberg, whose union, the AFT, while being “deeply and unabashedly committed to the role of public education in a democracy,” has been a critic of public schools and is lobbying hard for higher standards and more discipline. Surveys show the overwhelming majority of people deeply support the *idea* of public education, she says, but the reality is that “people are deeply



Students gather at the door of Cleveland's St. Francis Catholic School, which is part of that city's voucher program.

frustrated, angry at school boards and politicians, and they are right—they have every right to be."

Voucher proponents accuse teachers, administrators, school board members, and others in the education establishment of protecting the system and the status quo at the expense of the individual child. "Through its bitter opposi-

tion to viable structural reforms within public education, it [the public education lobby] has actually encouraged support for private school vouchers," charges Diane Ravitch, a senior research scholar at New York University, in the January/February 1996 issue of the *New Democrat*. "If the defenders of the present system stand firm against structural change, they will succeed mainly in convincing disgruntled parents that the only way out is through private school vouchers."

### Who supports vouchers?

Voucher supporters include a wide range of people who are linked together not so much by ideology as by a confluence of interests, notes Peter Cookson, director of outreach and innovation at Columbia University's Teachers College. Libertarians, who believe the public school "monopoly" robs people of freedom of choice, often supply the philosophy and provide the arguments, although they do not have much political clout, says Cookson. These libertarian ideas have coalesced and come together with those of free-market theorists and entrepreneurs,

## TWO VIEWS OF VOUCHERS' EFFECTIVENESS

**D**o voucher programs work? Researchers looking at the six-year-old Milwaukee Parental Choice Program have drawn contradictory conclusions about the key issue of academic achievement.

A study released last summer by Jay Greene of the University of Houston's Center for Public Policy and Paul E. Peterson of Harvard University's Program in Education Policy and Governance contradicts five years' worth of evaluations by John Witte and his colleagues at the Department of Political Science of the University of Wisconsin-Madison. Witte's group, which evaluated the program for the first five years after it started in 1990, called the academic results "mixed," noting that changes in achievement scores varied considerably during that time. Witte found no differences in achievement between voucher students and comparable public school students in any year of the program.

Greene and Peterson, however, found that the reading scores of voucher students in their third and fourth years were, on average, from 3 to 5 percentile points higher than those of students who applied to the program but who were not selected and stayed in public school; math scores, on average, were 5 and 12 percentile points higher for the third and fourth years, respectively.

The validity of both studies has come under attack. Voucher opponents have used Witte's work as proof that vouchers do not work; proponents seized upon Greene's

and Peterson's work to show that they do. Exchanging salvos in the media, Peterson and Greene called Witte's studies "so methodologically flawed as to be worthless." In response, Witte called the Peterson study a "confusing, tortured effort to try to find any evidence that students enrolled in private schools under the choice program do better than any students in the Milwaukee Public Schools."

The different research designs of the two studies make it hard to take their real measure. Witte compared data for students in all 12 of the private schools in the program with scores from Milwaukee public school students as a whole and from the district's low-income students. Peterson and his colleagues compared the choice students with students who had applied to the voucher program but were not admitted, a design they said allowed them to compare two randomly selected groups of students. Witte looked at changes in test scores from year to year; Peterson examined only three of the participating private schools and measured the cumulative effect of the choice program on test scores for each child for the entire time the child was in the program.

Voucher opponents and proponents alike have voiced their opinions on the virtues of the two studies. The American Federation of Teachers, for example, weighed in with a critical analysis of the Greene-Peterson study. Citing "serious methodological flaws," the AFT paper noted that the student selection process was not random, as Peterson

whose mantra is, "The market is a better provider of schools than the government is." This loose coalition of voucher advocates also includes many conservative and mainstream Republican governors, members of Congress, and state legislators, supported by some urban Democratic mayors and city council members. Republican governors head Wisconsin and Ohio, the two states with voucher plans.

Evangelical Christians also play a major role in the debate. Increasingly, conservative Christians, even though they appeared to exert less clout in the November elections than expected, have the money and political power to turn their "family values" agenda into concrete action. Conservative Christian schools, which represent by far the fastest growing segment of nonpublic schools, would have much to gain from a widespread voucher system. Brian Lopina, director of government affairs for the Christian Coalition, says the 1.7-million member organization mounted an active lobbying campaign on behalf of all the priorities—including vouchers—outlined in its "Contract with the American Family." He says the coalition spent \$5 million in the first half of 1996 for lobbying Congress alone. "Our top priorities are the items in the contract; those will be continuing issues before the next Congress," he says.

Catholics, hurt by a system that has refused to give public aid to religious schools, also have a great deal to gain from a voucher system. Catholic school enrollments are climbing again after nearly 30 years of decline, and their emphasis on values, discipline, and a core curriculum make

Catholic schools an attractive alternative for many inner-city parents. Parochial schools already have about 12 percent non-Catholic enrollment, chiefly in urban areas; in the Cleveland plan, 32 of the 51 participating schools are Catholic. Although most voucher plans would not cover tuition for many expensive, secular private schools, they would cover the average Catholic school tuition of \$2,300. Tuition is kept relatively low not only because church subsidies and fund-raising activities underwrite a substantial portion of the costs, but also because Catholic students in many states receive transportation and other services at public expense. Lower teacher salaries (about 60 to 75 percent of average public school salaries) help reduce costs, as does the lack of a bureaucratic superstructure.

Leonard DeFiore, president of the National Catholic Educational Association in Washington, D.C., says his organization supports vouchers that would allow all parents to choose a school, but that, as a first step, means-tested plans are an excellent place to start. "Almost no one defends urban public education as being adequate," he says. "Where choice is missing and vitally needed is for those in inner-city schools which are underperforming."

The voucher issue also has won growing support among some low-income minority parents. A study by the Joint Center for Political and Economic Studies, a Washington, D.C.-based think tank that specializes in research on African Americans, found that 61 percent of African Americans favored vouchers. The center also found that only 5.7 percent of African Americans rated their local public

claimed, because the private schools in the program retained the right to choose students. Moreover, the AFT charged, the two groups of students were not similar, "especially on parent education level, one of the most significant out-of-school influences on achievement research has ever found." Once the mother's education is taken into account, the AFT said, the so-called private school advantage disappears.

Not surprisingly, an analysis by Dorothy Hanks of the Heritage Foundation, a conservative think tank in Washington, D.C., came to a different conclusion. "Contrary to the claims of the education establishment, choice does not leave children of poor families in failing schools," she wrote. "Rather, it is their ticket out. Schools of choice have proven their ability—and their desire—to improve the academic outcomes of poor children."

Many observers agree, however, that both studies were affected by the program's high attrition rate; an average of 30 percent drop out each year, leaving a small data pool from which to measure results. Because of the small sample, particularly by the third and fourth years, many observers were disturbed by the Greene-Peterson claim that "if similar success could be achieved for all minority students nationwide, it could close the gap separating white and minority test scores by somewhere between one-third and more than one-half."

Even if the Peterson study were correct, Witte says, bas-

ing such claims on such modest evidence is "bizarre, unless one is committed to an ideological position." Charging that the Greene-Peterson study was totally politically driven, he says choice advocates are looking for any evidence they can find to support their court case, which "could be the biggest church/state case of the century. The stakes are very high."

Witte's annual evaluations review more than educational achievement, however. They also look at parental satisfaction with the voucher program, and, by that measure, the program fares well. Overall, he concludes that the majority of students and parents who participated in the program were better off despite the fact that achievement, as measured by standardized tests, was no different than the achievement of students in the Milwaukee Public Schools (MPS).

Witte also notes that the current program does not harm the city's existing education system. "The students in the choice program were not the best or even the average students from the Milwaukee system," he says. "Thus both in terms of size and the potential for 'creaming' (i.e., skimming off the best students) this program as currently configured poses little threat to the MPS system." He adds, however, that because voucher parents were more educated and more involved in their children's previous public schools than are the average MPS parents, their loss could be construed as "potentially detrimental."—J.B.S.

schools as "excellent," compared with 19.9 percent of the general population.

### Who opposes vouchers?

Doing battle against vouchers are the country's two teachers unions, the AFT and the National Education Association. The two unions are politically and financially powerful but often are viewed as special-interest groups that want to defend their turf. Indeed, some observers believe voucher proposals are intended, in part, to break the power of the unions, and, since those unions give the Democratic party significant financial support, ultimately to break the power of the Democrats as well. The National Association for the Advancement of Colored People, civil liberties groups such as the American Civil Liberties Union and People for the American Way, many mainstream religious organizations, and education associations such as the National PTA and national and state associations of school board members and school administrators also oppose vouchers. Vouchers, they say, would undermine the time-honored tradition of the American common school, a tradition that creates a strong citizenry that can work together and get along with one another.

"Isn't there something fundamentally unique and beneficial to the tradition of public education that transcends debate—so it's not just a consumer-driven debate, but involves the larger public interest?" asks Michael Resnik, senior associate executive director of the National School Boards Association in Alexandria, Va. "We are a nation with a common culture. If vouchers become universal and niche schools arise, we can end up balkanizing the country."

AFT President Albert Shanker agrees. In an Oct. 27, 1996, *New York Times Magazine* article, he is quoted as saying: With a voucher system, "you'll end up with kids of different religions, nationalities, and languages going off to different schools to maintain their separateness, and I think we'd have a terrible social price to pay for it. You'll end up with creationist schools, Louis Farrakhan schools."

Proponents, on the other hand, advance the "free choice" argument—the right of the individual child to have the education his family chooses. Denying free choice to all is an injustice, says Patrick Reilly, executive director of Citizens for Educational Freedom, founded in 1959 as the first organization to focus on school choice; it exists solely to lobby for vouchers and tax credits. "The current system in which the government collects taxes for education but uses those tax dollars only at government schools is an injustice to parents who wish to send their children to non-government schools," he says. "The system as a whole is a purely socialistic system in which the government refuses to acknowledge that private schools are a valid option."

Opponents respond that a widespread voucher system would drain funds from the public schools, to the detriment of the children already there. Taxpayers' money would shift from public schools, open to all students, to schools that can exclude students based on ability to pay, academic achievement, or behavior; these schools are not accountable to the community as a whole or to any public authority. Further, voucher programs have the potential to skim off the best students and most committed parents, and to increase segregation by race and class. Public school would become "educational ghettos" for students with severe physical, academic, and emotional problems, opponents argue. Because those

students are expensive to educate, private schools would not want to, and don't have to, accept them.

Voucher proponents argue, on the other hand, that the nation already has a two-tier school system—the floundering big-city schools and those in the rest of the country. Vouchers would especially benefit low-income families who, for the first time, would have opportunities to improve their lives by becoming consumers of education services—opportunities more affluent people have had for generations. Proponents say poor children in inner-city schools cannot wait for each new promise or each new initiative to work while the school roof is almost literally falling down around them.

"We're opting for systemic change, yet people in the meantime are suffering, systems are failing," says Tim Sullivan, spokesman for the Center for Education Reform, a Washington, D.C. advocacy organization which, he says, is not crusading for a national voucher system but is on a crusade to assist reform efforts. "Parents are desperate. All they want is the chance to put the child in a place where the child might get a better education and feel more safe and more secure."

That certainly seems to be the case in the financially and academically troubled Cleveland schools, where parents in much higher numbers than expected opted for the voucher program. Originally, 6,200 applied (although only 2,684 had their income and residency requirements verified), says Bert L. Holt, director of the Cleveland Scholarship and Tutoring Program, which is run by the state education department. The program accepted, by lottery, 1,801 children; about 25 percent were already in private school.

In applying for the program, parents told Holt they wanted their children to have something they believed they couldn't find in the Cleveland Public Schools—an education that was "highly structured, safe, and had high expectations and standards of behavior and performance," she says.

While Holt believes it's "absolutely imperative" that urban schools throughout America be improved, she also sees this voucher program as important in serving a population that needs immediate help. "I really do take offense that, when it comes to poor people making a little bit of movement, the program is politicized and questioned and out-and-out sabotaged," she says.

Proponents argue that an unrestricted voucher system, one that truly allows for freedom of choice, would serve as a catalyst for improving public education. They see vouchers as a wake-up call for public schools, particularly in the inner cities. "Assuming that government schools are willing to make changes to compete, there is no reason why public schools wouldn't exist. A large number of Americans would still find the common school model appealing," says Reilly.

Even Terry Peterson, senior adviser and counselor to the U.S. Secretary of Education, who calls "vouchers a very narrow plank that takes you into a swimming pool with no water," sees some value in the voucher debate. He says it has focused people on a "mainstream agenda" of education issues that include improving safety, boosting reading scores, getting and keeping better teachers, increasing and using technology in schools, and preparing students for college. "It focuses on the fact that we do need to improve schools, so let's stop fighting about fringe issues brought up by extremist groups," he says. "Their motives may be legitimate, but it distracts you from dealing with the various kinds of things you must do to fix schools for all kids." ■

**Date: Feb. 23,1999**  
**To: Representative Vic Kohring**  
**From: Donna & Bill Walker**  
**2234 Kissee Ct.**  
**Anchorage, Ak. 99517**  
**Re: Education Vouchers**

**Thank you for sponsoring HB5. We support your effort wholeheartedly. All four of our children received their elementary education at Sunrise Christian School & it was the best decision we could have made for them. When Polaris K-12 opened several years ago we thought this might provide a comparable education as it was very difficult paying tuition for 4 children. But after one year, we moved them back to Sunrise--there simply was no comparison to the quality of education at Sunrise. As our children have moved into junior high & high school, they continue to be excellent students & are very involved in school, church & community activities. We credit the wonderful foundation they received at Sunrise for much of their success. The public school system could learn a lot from some of these small private schools that get by on a shoestring budget but provide an outstanding education program. Education vouchers will make this a viable option for others.**

**Subject:** [Fwd: Education Voucher bill proposal]  
**Date:** Tue, 23 Feb 1999 07:43:44 -0900  
**From:** Representative Vic Kohring <Representative\_Vic\_Kohring@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Randy\_Lorenz@legis.state.ak.us

---

**Subject:** Education Voucher bill proposal  
**Date:** Tue, 23 Feb 1999 07:24:51 -0900  
**From:** Gateway Authorized Customer <leola@alaska.net>  
**Organization:** Gateway 2000  
**To:** Representative\_Vic\_Kohring@legis.state.ak.us

Dear Representative Kohring:

I wish to let you know of my support for the bill introduced to the Alaska Legislature for education vouchers for citizens who teach their child at home or who enroll their children in a private school. I have two children enrolled in a Christian school. I am a single working mother, and the greater part of the monthly child support their father provides goes towards their tuition. I also own my home and pay my annual taxes in support of the public schools.

I send you my encouragement, appreciation and support for your sponsorship of the bill, and I'm hoping for success in this endeavor.

Sincerely,

Leola Monfrey  
3506 Carpenter Cir.  
Anchorage, AK 99517

**Ronald Nordquist**

From: Ronald Nordquist <ron.freda@worldnet.att.net>  
To: \_Vick\_Kohring@legis.state.ak.us  
Subject: ron.freda@worldnet.att.net  
Date: Tuesday, February 23, 1999 12:18 PM

In regard to Sponsor Substitute For House Bill No. 5

**Education Vouchers**

We are very much in favor of the voucher program. We have two young girls that are in a private school due to unhappy experiences with the Anchorage School District.

It would be very nice to have assistance in paying our education bills. We are property owners, also business owners, and we feel that we do pay more than our share in school taxes.

The Anchorage School District yearly budget is more than out of control.

Monies should be put for the students education, NOT for oversized Administration and their benefits.

It is very important that something be done about the cost of education in the State of Alaska, mostly in the Anchorage area.

The Nordquists

Ronald and Freda

2/18/99

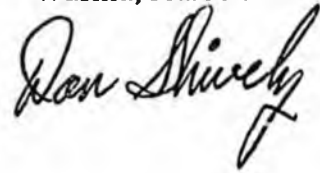
Dear Representative Kohring,

I'm writing concerning House bill 5. My sons are 16 and 18 years old and have been in private schools their entire lives. My oldest son will start collage for an Engineering Degree next fall at UAA, the other is still considering what he will do. Private education is a fine place for children to learn. We have borne the cost our selves and have been happy to do so. I do believe that we as citizens all have a right to the same funding resources regardless of where we choose to send our kids to school.

Thank you for your work on this bill.

Thank you,

Dan Shively  
PO Box 876137  
Wasilla, AK 99687

A handwritten signature in cursive script that reads "Dan Shively". The signature is written in black ink and is positioned below the typed name and address.

February 19, 1999


RE: School Vouchers

Honorable Vic Kohring  
State Capitol Room 421  
Juneau, AK 99801-1182

Dear Honorable Vic Kohring,

I am glad to see that you are introducing a bill on school vouchers. I definitely do not like some of the things my child comes home from school with. The schools here, for some reason, think that these kids have to learn the native languages and about parents molesting their children. My child is *only* in first grade. Their being taught all about environmentalism and their being taught to go around to all the stores and ask for money because businesses have deep pockets. When kids come out of the Sitka school system they do not want to touch natural resources and they all look for government type jobs or anything that is not natural resources. We do not really have any private schools here. We had one, but it had to close because they tried to keep the tuition low which made it too hard to obtain a building. The private school was not at all popular with the public schools in town. The private school did try to keep the tuition so low they never had any money. A voucher would make a better opportunity for new schools here. It would be a parents dream for a better education for our children and a better future. We are not going to get the social teachings and the slanted environmental views out of the public schools. Our only way to combat this problem is for more private schools. I hope you get somewhere with school vouchers. Most people are busy working so you probably will not hear from them but they *are* out there. Another reason why you may not hear from people (especially in small towns) is because teachers will find out which parents are causing what they perceive to be trouble and may take it out on their child. For instance, the child may all of a sudden become a trouble-maker or all of a sudden be classified as slow at reading. From the words I have heard teachers say during wage negotiations, I do not trust them. There are some good teachers out there but you don't hear from them so they are of no value.

Sincerely,



Mike Svenson

104 SHARON DRIVE  
SITKA, AK 99835

**Subject: Vouchers**

**Date: Mon, 22 Feb 1999 12:19:05 -0900**

**From: David Chapman <chapmand@mtaonline.net>**

**To: Randy\_Lorenz@legis.state.ak.us**

Dear Mr. Kohring,

We are a home school family and would like to give our opinion on vouchers.

We would only be in favor of them if there is absolutely no government intervention concerning what or how our children are taught at home. We

are not enrolled in any state supported program, and don't plan to be, and

we don't want to lose the freedoms we enjoy in this wonderful state.

Thank you very much for the fine job you have been doing in the legislature.

God Bless you and your family.

Sincerely,

David and Tina Chapman

PO Box 4088

Palmer, AK 99645

**Subject: school voucher**

**Date: Mon, 22 Feb 1999 17:17:45 -0800**

**From: Hao <hao@alaska.net>**

**To: Randy\_Lorenz@legis.state.ak.us**

From: Rick Hao 521 S Lane Anch Ak 338-1200

I support Rep.Vic Kohring bill to provide a school voucher system for the State of Alaska. This bill will help change the aptitude and attitude of education professionals and what the public demands from our public education system.

**Subject:** school vouchers

**Date:** Mon, 22 Feb 1999 08:46:47 -0900

**From:** "Dr. Kevin Tomera" <ktomera@alaska.net>

**To:** <Representative\_Vic\_Kohring@legis.state.ak.us>

I support school vouchers  
kelly tomera  
1820 stanford dr  
anchorage ak 99508  
ktomera@alaska.net

**Subject: House Bill No. 5**

**Date: Thu, 18 Feb 1999 03:50:10 -0900**

**From: Bill Malchow <malchow@alaska.net>**

**To: Representative\_Vic\_Kohring@legis.state.ak.us**

Vic,

I am in full support of this bill you are sponsoring for Education Vouchers!

Thanks,

William K. Malchow  
17824 Sanctuary Dr.  
E.R. AK 99577

(907) 696-1866

**Subject: School Voucher System**

**Date: Thu, 18 Feb 1999 11:01:48 -1000**

**From: "Andrew J Bond" <ABOND@mail.aai.arco.com>**

**To: Representative\_Vic\_Kohring@legis.state.ak.us, Representative\_Joe\_Green@legis.state.ak.us,  
Senator\_Jerry\_Ward@legis.state.ak.us**

Representative Kohring,

I was very happy to see you had proposed HB-5 to offer school vouchers. Unfortunately when I read the fine print I see that I have no chance to qualify. I can understand trying to base the payment on income level. But I think that will also cause some problems. It is still a huge burden for a family with several kids in private school making as much money as I do. I think a better system would be phase out the voucher amount as income increases. Starting at 200% of the poverty level and maybe phasing out at \$100,000 of taxable income. Those are just rough figures off the top of my head.

I can see a situation developing where families at 200% of the poverty level or below would begin to fill the private schools and force out middle income families who get no benefit. I think you need a system where everyone benefits to a certain level. Your plan might remove a large section of the "trouble makers" from the public schools and send them to private schools. I also think that even those at the low end of the income scale should have to pay some portion of the tuition rather than receiving a full payment voucher. Then they will also be making a sacrifice for their children's education rather than just taking advantage of the system.

The public schools need some competition to bring down soaring education costs and teachers salaries. This will be a great way to start getting the K-12 education budget more under control. As you well know, private schools generally provide better education at half the cost of the public schools on a per student basis.

So in closing, I sure like the voucher plan. I just think it needs modification to benefit more than just the lower income section of the population.

Andy Bond  
House 10, Senate E  
12100 Woodway Circle  
Anchorage, AK 99516  
(907) 263-4623

**Subject: HB 5, education voucher**

**Date: Sat, 20 Feb 1999 10:35:23 -0900**

**From: Peter Brautigam <peter@hartig.com>**

**To: Representative\_Vic\_Kohring@legis.state.ak.us**

I would like to express my support for education vouchers as presented in HB 5. Although private education is a choice, we should all have the same opportunity for our children to have a choice between public and private education. This would provide us all an equal opportunity.

Peter Brautigam  
Anchorage, Alaska  
peter@hartig.com

**Subject:** vouchers

**Date:** Thu, 7 Jan 1999 23:55:15 -0900

**From:** "JACKSON 6 FAMILY" <mjackson1@ideafamilies.org>

**To:** <Representative\_Vic\_Kohring@legis.state.ak.us>

DEAR REP. VIC KOHRING,

I WANT TO THANK YOU FOR THE STEP YOU ARE TAKING IN THE AREA OF THE VOUCHER SYSTEM. I KNOW YOU ARE STANDING UPON A CONTROVERSIAL SUBJECT. JUST WANT YOU TO KNOW THAT WE ARE SUPPORTING YOU IN PRAYER. LOTS OF ATTACKS HAPPEN WHEN YOU ROCK THE BOAT. I HAVE HOMESCHOoled ALL 4 OF MY CHILDREN. 2 ARE NOW IN PRIVATE SCHOOL AND 2 ARE STILL HOME SCHOoled AND ARE IN THE IDEA PROGRAM. WHAT A TREMENDOUS BLESSING THIS GALENA PROGRAM IS. ALL THOSE YEARS OF BEING ALL ALONE SO TO SPEAK AND TO THOINK THAT I NOW HAVE HELP THAT DOESN'T CONTROL ME IS WONDERFUL. I TRY TO IMAGINE WHAT IT WOULD BE LIKE TO HAVE ASSISTANCE IN PRIVATE SCHOOL, WHICH IS WHERE MY 2 OLDEST NOW ARE AND IT WOULD BE A BIT OF HEAVEN. I ALWAYS WONDERED WHY WE PAY SCHOOL TAXES AND OUR CHILDREN DID NOT ATTENDSCHOOL. I WONDER ALOT OF THINGS. I JUST WANTED TO TAKE THE TIME TO THANK YOU AND LET YOU KNOW WE AS A FAMILY ARE BEHIND YOU. STAY STRONG. REMEMBER TO KEEP FRESH AND TAKE A WALK IF YOU H AVE TO AS THE PRESSURE MOUNTS.

OUR LOVE AND PRAYERS,  
SHERRI JACKSON AND FAMILY  
907-248-0995

**Subject:** Thanks for your hard work!  
**Date:** Sat, 20 Feb 1999 20:33:42 -0900  
**From:** vicki hoyman <hoyhouse@mtaonline.net>  
**To:** Representative\_Vic\_Kohring@legis.state.ak.us

Dear Mr. Kohring,  
I want to take time to sincerely thank you for the stands you take on several issues that mean alot to me. We are a family of 6 in Palmer enjoying our 14th year of home schooling. It has been one of the greatest joys and challenges of my life. I never would have dreamed, growing up in the home of a public school teacher, that I would one day home school all my children! I thank the Lord daily for the privilege and also that I live in a state that is very "home school friendly". This year we hesitantly signed up for Cyber Lynx out of the Nenana school district, I say hesitantly because the whole program seemed to good to be true! We have found it most helpful and it has been so awesome to have some money to purchase materials, lessons etc. I know the Matsu-school district thinks all of us who signed up for these cyber schools are taking money out of their pockets but I don't know of one family that took their kids out of public school this year to join a cyber school like Cyber Lynx or IDEA. Everyone I know has been doing home school all along. I have 4 children and we have given them a quality education for an incredibly low price. Everyone in the public school fusses about lack of funding, all the money in the world can't promise a good education, it requires a healthy environment, a teacher who really loves the kids, and a contagious love for learning! You are welcome at our home school anyday! I could write volumes about the fun things we have done together, places we've went, projects we've accomplished! Thank you for supporting home schoolers! We truly do appreciate you!

Warmly,  
Vicki Hoyman

**Subject: Thanks for the call**

**Date: Sat, 20 Feb 1999 22:09:48 -0900**

**From: Steve Unfreid <unfreids@alaska.net>**

**Organization: Self**

**To: Representative\_Vic\_Kohring@legis.state.ak.us**

Thanks for the call Saturday night reference my article in the Anchorage paper. After reading today's paper and reading Charles Reynolds piece, my wife (a stay-at-home/home school mom) sent in the following (even if it doesn't get printed, it may give you another angle on which to address this issue).

Steve Unfreid

I applaud Charles Reynolds (Letters Feb 20) for his clear grasp of our state constitution--understanding that no funding should go to support "...any religious or other private educational institution."

In fact, maybe we could get together and take every public school district in Alaska to court for their teaching of secular humanism. In the Humanist Manifesto #1, it clearly states that humanism is a religion. This is seen and taught every day in subjects like biology, where the theory and scientifically unprovable belief of evolution is the only thought presented for the origin of life. This belief that man is here by chance and is thus the only entity that can save us, is a religious, not scientific viewpoint.

You can't have it both ways. Either you do as Lawrence J. Freidberger advocated in his February 18 letter, and amend our constitution to allow funding for all (and thus break the religious monopoly held by our public schools), or you have our public schools cease their religious instruction. My guess is that Rep Vic Kohring's amendment is the most fair approach.

Kathe Unfreid  
Wasilla AK  
PO Box 672518  
Chugiak Ak 99567  
745-4092

**Subject: House Bill No. 5**

**Date: Mon, 22 Feb 1999 01:19:28 -0500**

**From: "Stuart W. Holland" <swholland@compuserve.com>**

**To: "Rep. Vic Kohring" <Representative\_Vic\_Kohring@legis.state.ak.us>**

Dear Representative Kohring,

Thank you for sponsoring the subject bill to administer a pilot program of education vouchers. I have two children who are currently enrolled in a private school, of which I am a school board member. I am thoroughly convinced that private school education would be the choice for many more families if they could afford it. Your proposed bill would allow more families to afford this choice.

A secondary benefit of this program would be to improve the quality of the public education system. If more families are leaving the current system, then pressure would naturally be placed on the public educators and their governing bodies to provide the quality education that parents are seeking.

Again, thank you for sponsoring this vital legislation! May God bless your efforts to improve the overall quality of our education system.

Sincerely,

Stuart Holland

home phone: 907-272-4460

email address: "swholland@compuserve.com"

**Subject: Independent Board for Charter Schools**

**Date: Mon, 22 Feb 1999 05:14:43 -0900**

**From: Linda Sharp <lsharp@alaska.net>**

**To: Representative\_Vic\_Kohring@legis.state.ak.us, lsharp@alaska.net,  
no\_spam\_allowed@ibm.net, rjaur@alaska.net**

Dear Representative Kohring,

Have you introduced a bill for vouchers? If so, I would like to help you on it any way I can. Please send me a copy (fax 907-245-5502, mail 2710 West 34th Ave. Anchorage, 99517), if you have a bill.

Would you consider introducing a bill to change current charter school law to establish a Board for Charter Schools? I envision that the Board would be 7 to 9 people, all volunteers, equally representing our state's population. In other words, about half from Anchorage, one from Fairbanks, one from Southeast, one from Mat Su, one from Kenai and a 2 or 3 from the balance of state.

They would meet 4 to 6 times a year in Anchorage, so there would be flight and lodging expense. They would need an administrative person to handle papers and coordinate meetings and take minutes, so that would be about \$100K for wages, benefits and office operations. That could be subtracted from the DOE's allotment, as they would be replacing some DOE functions.

This Board would be a CHOICE for both existing charters and for newly proposing charters. This would replace the school districts as the sole authorizing authority, but of course, those preferring the districts could always stay or go with them also.

This is essential for our small charter to survive. We presently have to comply with all ASD Administrative procedures, and it would take us about \$150,000 a year to properly comply with all the reports, forms, procedures and meetings required to know and do that work. Our total funding is less than \$100. Education should be our mission, not administrative fulfillment.

In addition, for example, we needed a waiver to be able to consider using Viking Hall, where about 10 times a year in the evenings, for Sons of Norway social events, a liquor cabinet is unlocked to serve members up to 2 drinks per evening. ASD procedures said "no liquor on the premise." We were required to apply for a waiver to the policy.

The superintendent first decided to get a legal opinion. Then he wrote a memo to the School Board opposing it, although his legal opinion said it should be fine. Then we had to wait for the agenda to clear to allow us to appear and be heard before the School Board. This simple delay took more than two months.

You can't imagine the hours and expertise that have gone into simply finding a facility to please ASD. We were told recently by MOA Planning Officials that the ASD spends hundreds of thousands of dollars hiring MOA Planning Dept. to do what we are doing .... find a site. Then they spend \$1,000,000 to design. Then they spend \$10, \$20, \$30 million

or more to construct. We have only a few thousand dollars to accomplish it all. This is a ridiculous Catch 22..

Other people who I think would support / co-sign your bill, if you'd do it, include Reps. Dyson, James, Mulder, Ogan, Kott, Coghill, Halcro and maybe Kelly. Senators Miller, Taylor, Donley, Torgerson. There may be many others.

Please let me know if this is possible to get going and passed this year. I would do anything I could to help.

Many thanks for all you do.

Linda Sharp  
Tel. 245-5501

**Subject: Alaska PTA position on Vouchers**

**Date: Tue, 16 Feb 1999 13:12:21 -0900**

**From: Bogrens <bogren@alaska.net>**

**To: Representative\_John\_Coghill@legis.state.ak.us**

**CC: Representative\_Fred\_Dyson@legis.state.ak.us**

Testimony

To: Alaska House of Representatives Health, Education and Social Services Committee

By: Betsy Turner-Bogren; Alaska PTA, Vice President, Legislative Affairs

Date: February 16, 1999

Re: House Bill 5, Voucher System for Education

The Alaska PTA has an annual membership of over 15,000. Our association is organized to include representation from six geographic regions covering the entire state and four active councils representing Ketchikan, the Mat/Su Borough, Fairbanks and Anchorage. Delegates from across Alaska meet annually to review our Legislative Program and adopt legislative priorities.

Last November delegates to the Alaska PTA Issues Conference adopted five legislative priorities including a statement opposing the creation of education vouchers. Our Association's statement is:

"Alaska PTA believes that public funds should be dedicated to public education. Alaska PTA opposes legislation, including the creation of vouchers or tax credits for private education, that would direct State funding away from public schools."

This statement was adopted by unanimous consent. It was the only priority adopted without discussion.

Support for public education had always been a priority for the Alaska PTA. Our members recognize that the creation of an educational voucher system would undermine State support by diverting funding resources to non-public institutions. We believe that every child in Alaska deserves access to high quality public education and that it is the State's responsibility to support public education with adequate funding.

On behalf of the Alaska PTA I would like to thank members of this Committee for your work to improve the quality of public education in Alaska. We encourage you to continue your efforts to find solutions that address the concerns of the Alaska PTA.

FEB 23 1999

**COMMITTEE TESTIMONY** Regarding HOUSE BILL NO.5  
**"Voucher System for Education"**

My Name is Helene Antel Brooks. I am a wife, the mother of a student enrolled in the Mat-Su School District, an attorney, and a member of the Mat-Su School Board. I would have liked to present my views on this proposed piece of legislation in person; but, unfortunately other business commitments do not make that possible. These written comments will thus have to suffice.

It is with the utmost dismay that I find myself witness to intentional efforts by our elected representatives to dismantle the public school system. HB No. 5 is nothing more than a public attempt to validate parochial selfishness. Indeed, the public education system, not only in Alaska but across our great nation, is in need of care and revitalization. The appropriate response to this condition is to accept responsibility for it. The inappropriate response suggested by HB 5, is simply to run away. The temptation to flee public education by such means as a voucher system, is in reality a reflection of our inability to accept that we ourselves have created all of the alleged inadequacies of which we complain. As a society we have egregiously failed to support, nourish or adequately fund public education for several decades. We have diminished the potential success of our system of public education by abandoning it. The fault is not in the system; but, it is ours if public schools can no longer inspire and enable *all* young people to reach for the stars.

America was--and still is, a great experiment. It is based upon the precept that government is not something separate from the people. *Government is not they, it is we the people.* Democracy requires that we endeavor to *give all the same chances.* The weaker must grow strong and the ignorant more wise. The selfish must learn generosity. We must work together--not against each other, to strengthen our most vital public institution: education. If democracy as an institution is to live, we must recommit ourselves to it. We must not break that which binds diversity into a powerful whole by segregating ourselves into small pockets of like mindedness. Only as a diverse people united will we continue to stand.

America's system of public education gives both rich and poor, loved and unloved, the orphaned child and the child well cared for, the same chance to dream of limitless horizons. It is the cornerstone of our great nation. To even consider the voucher system proposed by HB 5, threatens to tear apart the American dream.

**I am strongly opposed to HB 5**

## POM for Representative Kohring



From: Ms Frances Jacobson  
POB 874152

Telephone: 376-8239

Wasilla, AK 99687

Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

I ENCOURAGE YOU TO VOTE AGAINST HB 5 ON TWO POINTS: 1- VOUCHERS WILL ALLOW PUBLIC MONEY TO SUPPORT PRIVATE INSTITUTIONS, WHICH WOULD BE CONTRARY TO THE CONSTITUTION; 2- PRIVATE EDUCATIONAL INSTITUTIONS ARE NOT CURRENTLY HELD TO THE SAME STANDARD OF ACCOUNTABILITY AS ARE PUBLIC SCHOOLS AND EDUCATIONAL DOLLARS SHOULD PROVIDE ACCOUNTABILITY.

Entered in MAT on 2/16/99 POMID: 607

Distribution: 32

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 2 out of 12.

# POM for Representative Kohring



From: Ms Carla Takesita  
367 N Valley Way

Telephone: 745-3589

Palmer, AK 99645

NON Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

I ASK YOU TO VOTE NO ON HB 5.

Entered in MAT on 2/16/99 POMID: 641

Distribution: 18

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 12 out of 12.

## POM for Representative Kohring



From: Ms Laurel Fortunoff  
501 McAdoo Way

Telephone: 376-1298

Wasilla, AK 99654

NON Constituent

Registered Voter: Y

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

I AM URGING ALL OF YOU TO VOTE AGAINST HB5. I DON'T FEEL WE CAN AFFORD TO GIVE MONEY TO PRIVATE SCHOOLS AT THIS TIME. I MOST PARTICULARLY DO NOT FEEL WE CAN SUPPORT PRIVATE SCHOOLS WHEN WE CANNOT SUPPORT OUR PUBLIC SCHOOLS SYSTEM. I AM NOT AWARE OF ANY STUDIES REGARDING THIS TYPE OF PILOT PROGRAM SHOWING ANY POSITIVE IMPACT ON THE EDUCATIONAL SYSTEM.

Entered in MAT on 2/16/99 POMID: 638

Distribution: 12

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 11 out of 12.

## POM for Representative Kohring



From: Ms Mary Kay Flynn  
POB 1415

Telephone: 745-4588

Palmer, AK 99645

NON Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

**URGING YOU TO VOTE NO ON HB 5. I AM ADAMATELY OPPOSED,**

Entered in MAT on 2/16/99 POMID: 633

Distribution: 18

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 10 out of 12.

## POM for Representative Kohring



From: Mrs Pattie Haugom  
307 N Chugach

Telephone: 000-0000

Palmer, AK 99645

NON Constituent

Registered Voter: Y

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

I AM VEHEMENTLY OPPOSED TO THE VOUCHER SYSTEM PROPOSAL SPONSORED BY REP KOHRING. SUCH A SYSTEM WOULD PUT AN END TO PUBLIC EDUCATION IN ALASKA. PUBLIC EDUCATION IS ONE OF THE FEW THINGS THAT DOES WORK WELL IN A STATE AS WIDLY DIVERSIFY AS OURS. IF THIS LEGISLATION WERE TO PASS, ALASKAN CHILDREN WOULD QUICKLY FALL BEHIND THE REST OF THE NATION IN EDUCATION.

Entered in MAT on 2/16/99 POMID: 628

Distribution: 12

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 9 out of 12.

# POM for Representative Kohring



From: Ms Margaret Kenshalo  
PO Box 1586

Telephone: 745-3115

Palmer, AK 99645

NON Constituent

Registered Voter: Y

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

I AM VERY MUCH AGAINST THIS LEGISLATION.

Entered in MAT on 2/16/99 POMID: 625

Distribution: 12

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 8 out of 12.

POM for Representative Kohring



From: Ms Susan Blanton  
POB 1027

Telephone: 733-2142

Talkeetna, AK 99676

NON Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

**URGING YOU TO VOTE NO ON HB 5. I DON'T BELIEVE IN FUNDING PRIVATE  
INSTITUTIONS WITH PUBLIC MONEY.**

Entered in MAT on 2/16/99 POMID: 622

Distribution: 18

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 7 out of 12.

# POM for Representative Kohring



From: Mr Cary Birdsall  
POB 403

Telephone: 733-1032

Talkeetna, AK 99676

NON Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

**I URGE YOU TO PLEASE VOTE AGAINST HB 5. IT IS DESTRUCTIVE TO FUNNEL PUBLIC EDUCATION MONEY INTO PRIVATE ENTERPRISE.**

Entered in MAT on 2/16/99 POMID: 621

Distribution: 34

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 6 out of 12.

## POM for Representative Kohring



From: Mrs Margaret L Egelus  
PO Box 162

Telephone: 746-5610

Wasilla, AK 99654

NON Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

WE DESPERATELY NEED TO REVIEW ED FUNDING. PUBLIC SCHOOLS WILL SOON BE LEFT WITH ONLY SPECIAL ED KIDS WHOSE PARENTS CAN'T TRANSPORT THEM TO CHARTER OR HOME SCH & KIDS WHOSE PARENTS DON'T KNOW HOW BAD IT'S GETTING. PEOPLE MOVING TO THE AREA WANT TO KNOW ABOUT THE LARGE CLASS SIZES, LACK OF ACTIVITIES AND INCREASING NEEDS. AS A LONG TIME VOLUNTEER IN PUBLIC SCHLS AND REPUBLICAN VOTER, I ASK THAT YOU RETHINK YOUR POSITION ON ED. & GET MORE FUNDING

Entered in MAT on 2/16/99 POMID: 592

Distribution: 3

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 1 out of 12.

# POM for Representative Kohring



From: Ms Mary Gunderson  
HC 89 Box 621

Telephone: 733-2528

Willow, AK 99688

NON Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

**I URGE YOUR OPPOSITION TO HB 5.**

Entered in MAT on 2/16/99 POMID: 618

Distribution: 34

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 3 out of 12.

POM for Representative Kohring



From: Ms Ruth McMullen  
 POB 874814

Telephone: 373-2086

Wasilla, AK 99687

NON Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
 Message:

**CURRENTLY I AM AGAINST HB 5. IT HASN'T BEEN WELL THOUGHT OUT, IT REALLY DAMAGES ALREADY-SUFFERING PUBLIC SCHOOLS.**

Entered in MAT on 2/16/99 POMID: 619

Distribution: 34

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 4 out of 12.

# POM for Representative Kohring



From: Ms Pat Gakin  
POB 871304

Telephone: 373-4717

Wasilla, AK 99687

Constituent

Registered Voter: U

Bill: HB 5 Title: VOUCHER SYSTEM FOR EDUCATION  
Message:

**I AM URGING YOU TO PLEASE VOTE AGAINST HB 5.**

Entered in MAT on 2/16/99 POMID: 620

Distribution: 34

[Main Menu](#)

[Store All](#)

[Store This One](#)

[Prev POM](#)

[Next POM](#)

Message 5 out of 12.

**Subject: SSHB5 School Vouchers**

**Date: Thu, 18 Feb 1999 09:51:22 -0900**

**From: Karl.Schleich@MSB.Mat-Su.k12.ak.us (Karl Schleich)**

**To: House HESS Committee Members;**

TO: Health, Education & Social Services Committee Members  
Alaska House of Representatives

FM: Ley Schleich, MHA, CHES  
P. O. Box 874216,  
Wasilla, AK 99687-4216

Honorable House HESS Committee Members,

This is a follow-up to my testimony February 15th during the House HESS hearing on SSHB5, School Vouchers. At the hearing I had only time to comment that I was pleased to hear the right questions being asked about Mr. Kohring's voucher legislation. The concerns raised by Mr. Rose especially mirrored my own. I would like to expand on my thoughts regarding the school voucher proposal.

I agree that "education for our children is so important that better ways to improve upon it must be found" (Mr. Kohring's words). Tweaking the system isn't enough; dramatic changes are needed to make our education system something in which we can be fully confident and proud. The sooner the better.

My two children go to a "government school" because their parents want them to become educated and believe that our public schools can do the job. Period. I submit that this is the reason almost all children go to school. We have the means to have chosen any of the alternatives to public school here. We examined them and rejected them in favor of the public schools. The claim that government laws rather than choice compel people to send their children to "government schools" disregards an inherent belief in public education that most of my friends and I still feel. The statements sound similar to what I have read from Milton Friedman and others. I would ask them, as I ask you: if public schools were producing adequately educated graduates, would we be challenging whether compulsory education is a good thing?

I strongly disagree with the premise that parents should be exempt from paying for public schools if their children do not attend one. Is it not in the best interest of all members of society to have an educated populace? Is not education the very foundation upon which democracy rests? The recognition of the need for an educated population of voters was the motivation for the formation of a public education system in our country in the first place. (Interestingly, a public education system was created in response to the perceived failure of the private schools to educate kids.) Given this, educating our nation's youth then must be seen as the obligation of every citizen of this land, whether or not they choose public education for their own children and indeed, whether or not they even have children.

I believe the voucher system is the wrong remedy for our education woes for the following reasons:

- 1) It will undermine current positive reform efforts currently under way. The Legislature saw fit to enact the mandated standards and other pieces of the Quality Schools Initiative. The assessments, curriculum alignment, and modification of teaching practices and programs is a huge undertaking statewide. To lay vouchers, complete with DOE regulations and oversight, over the QSI efforts would do it in before we even have a chance

to make it work. I would add that it would diminish the credibility of the Legislature: why did you endorse QSI if you don't believe it will result in change?

2) It lacks assurances that the education dollars will actually be spent on education, and fails to assure that the education provided would be what children deserve and need. Sure some of the money would be used exactly as you and I would want it used, but not in all cases. Vouchers would present too big of an incentive for economically struggling or greedy individuals to misuse. Regulating this would be an expensive nightmare for DOE. Furthermore, the legislation does not require private or other educational institutions to be held to the same standards we require of our public schools, and leaves much opportunity for what I call "educational abuse or neglect," whether intentional or not. The voucher approach discounts and leaves vulnerable those children whose family situation is suboptimal, whose parents or guardians cannot or will not act in their child's best interest.

3) It divides rather than unifies. Mr. Kohring's "delightful range of educational settings" to me is misguided labeling and homogeneous grouping. I believe our children (and indeed, adults too) need to learn the skills of living in a diverse population. This is no small task and cannot be accomplished if we have learning environments that don't embrace a full variety of kids with many kinds of backgrounds and a full array of talents and needs. I think we can offer children and parents adequate choices of programs, teachers, and expectations without sacrificing the benefits of living and learning together. Indeed, I believe kids learn better when they are in a heterogeneous setting, as long as their classmates can demonstrate good learning behavior.

4) It would lead to inequality. I fear that vouchers' drain on the public school resources would negatively affect public school instruction to the point that many of the higher-achieving kids would bail out of public schools, leaving the lower achieving students without role models and high standards, setting off a powerful downward spiral of performance and continued exodus of achieving students. And too, the more skillful teachers would likely become discouraged or be offered a more attractive job in an "alternative" site, and we would experience a drain of teaching talent in the public schools as well.

Why wouldn't it be the "difficult" students that would seek alternatives? Because as I understand the voucher system non-public schools would be free to deny entrance or to expel these students if their performance or behavior was deemed unworthy or if the school was not prepared to address the child's specific needs. And these students can challenge even the best and best intentioned homeschool parent/teacher. Eventually, I believe these students will be back in the public school classrooms. Would their voucher money follow them?

These are my major concerns with the voucher system of education. I believe the motivation to try vouchers as an alternative comes from a true desire to improve our children's education. I appreciate the frustration of friends and acquaintances who have struggled with meeting their children's educational needs. And although our own children are thriving in school, I can't say that we would never determine that they need a different type of schooling. But I think it's wrong to look to the government to pay for it. Vouchers may be good for some kids, but they are not in the best interest of children in general, and they can divert our attention from making the necessary significant reforms in public education.

Thank you for considering my views. I look forward to following this issue as it unfolds in Juneau and our own community.

Sincerely,

Ley Schleich

P.S. I realize that being married to a public school principal makes me vulnerable to having my opinion dismissed as biased or self-serving. Please consider my thoughts on their own merit, and know that I am many things in addition to the wife of a school administrator. My husband and I don't agree on all matters, and I am speaking for myself. I have a long history of speaking out on a variety of public policy concerns and hope you will accept my comments without regard to my association with my husband. In the same vein, I hope you don't dismiss the comments of all public school employees as union-fed self-serving bureaucrats. I think members of both "sides" of this issue have useful insights and valid points to make.



## **ACSI Position Statement Concerning Tuition Tax Credits/Vouchers**

The Association of Christian Schools International recognizes the biblical principle of parental responsibility for the education of their children. The Association therefore supports tuition tax credits and vouchers that further parental involvement and choice in education.

ACSI supports any proposed voucher or tax credit legislation which:

1) Will allow parents to choose an education consistent with their religious beliefs.

2) Will not restrict a religious school in:

- Educational philosophy;
- Composition of the governing body;
- Staff selection; or
- Curriculum content and design.

Such legislation

1) Should not regulate the school's operational policies and/or student selection or retention policies.

2) Should contain language that any such tax credits or vouchers are not direct or indirect aid or assistance to the institution, but rather are a grant-in-aid to the parent(s).

3) Should require participating schools to be nondiscriminatory on the basis of race, sex, color, national, and ethnic origin.

Adopted by the ACSI Executive Board February, 1997

Representative Vic Kohring  
February 16, 1999  
Page Two

In a 1997 verdict, the U.S. Supreme Court ruled in *Agostini v. Felton* that public school employees could in fact provide remedial services on the premises of parochial schools. These courts have basically declared that tax credits, vouchers, and remedial services benefit of the child, not the recipient schools. It is simply getting harder for voucher and tax credit opponents to insist that the "separation of church and state" forbid such programs.

Sec. 14.31.020(c) - "whichever is less" wording on lines 8-9 is helpful for your bill's successful enactment. For your information, survey results among our member schools show typical pupil tuitions as follows: kindergarten - \$1715; elementary - \$2346; junior high or middle school - \$2546; and high school - \$2909 for the 1997-1998 school year. This information may help you with your fiscal notes.

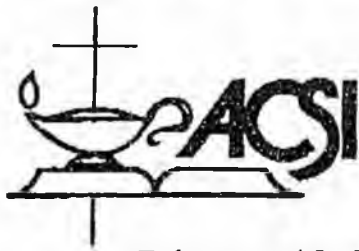
Attached is a copy of ACSI's official position on tax credit and voucher legislation as passed by our Executive Board.

Representative Kohring, the association hopes that you and the bill's additional co-sponsors will have success in this endeavor. ACSI also should be on the record as supporting the concept of all parents having access to educational vouchers. Perhaps the bill could be amended with a phase-in approach that would accomplish that equity within a few years.

Sincerely,



Burt Carney  
ACSI Director, Legal/Legislative Issues



**ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL**  
INTERNATIONAL HEADQUARTERS

*"That in all things He might have preeminence" Colossians 1:18*



February 16, 1999

The Honorable Vic Kohring  
Alaska House of Representatives  
Juneau, AK 99801

Dear Representative Kohring:

**Support for AK HB 5 - Educational Vouchers**

Our association wishes to be "on the record" as supporting AK HB 5. ACSI, a non-profit, non-denominational organization, provides services to more than 4,000 member schools, 29 of which are located throughout Alaska.

The association contends that it is time to recognize changing trends in education on several fronts—political and legal.

Increasingly there has been calls for educational reform. Legislatures have considered and acted on several reform approaches such as charter schools, stricter teacher certification standards, and stricter curriculum standards and student testing. While each of these concepts have merit, it is also time to give parents the opportunity for full school choice when they make their educational decisions. One way this can begin in Alaska is to provide low-income parents an educational voucher so they can make school choices.

The annual *Phi Delta Kappa-Gallup Poll of the Public's Attitudes Toward the Public Schools* released in 1997, showed for the first time that a majority of parents with children in public schools (55%) supported government vouchers that would pay all or part of the tuition to any public, private, or church-related school that parents choose. The same survey also showed that the voucher proponents in the general public have risen from 43% in 1996 to 49% in 1997.

On the legal front, the U.S. Supreme Court has already affirmed the tuition tax credit program in Minnesota; the Wisconsin Supreme Court has re-affirmed the voucher program for Milwaukee, Wisconsin, which included parochial school participants, and this month the Arizona Supreme Court affirmed the state tax credit for donations to tuition organizations that benefited private and parochial schools.

# ALASKA STATE LEGISLATURE



*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 573-1842  
Fax -(907) 373-4729

*Session:*  
State Capitol Building, Room 421  
Juneau, Alaska 99801-1182  
(907) 465-2186  
Fax - (907) 465-3818

REPRESENTATIVE VIC KOHRING  
DISTRICT 26

## **SPONSOR STATEMENT** **SPONSOR SUBSTITUTE HOUSE BILL 5** Representative Vic Kohring

"By any measure one wishes to apply, American schools still fail to provide many of our Nation's children with the education they need and deserve. Standardized test scores used to chart student performance have declined or remained static during the past three years. U.S. students score low in math and science when compared with their peers in other industrialized nations. The high school dropout rate remains unacceptably high.

Education reform measures have not generated the progress we need. It is now time to make basic structural changes in our system of education. President Bush and I view school choice as the cornerstone for restructuring America's system of elementary and secondary education.

The evidence favoring choice is too compelling to ignore. Often States and districts have implemented choice programs and witnessed dramatic educational improvements. Dropout rates decline. Teacher satisfaction improves. Test scores rise. Student behavior and attendance improve. Parents become more involved in their children's education.

Choice is successful because it improves schools from the bottom up. It encourages schools to develop distinctive "flavors" and unique qualities that meet the needs of students. Choice allows each school to excel at something special, rather than sinking to the lowest common denominator and suiting few.

No children, no matter their circumstances, should be held captive in a school that fails to meet their needs or is not doing a good job of educating. Choice offers youngsters a chance for a better education--and for a better life."

These are not my words, but the words of Lauro Cavazos, former U.S. Secretary of Education. I encourage your support for educational choice. Help pass Sponsor Substitute House Bill 5 for Alaska's future, its children.

# ALASKA STATE LEGISLATURE

*Interim:*

600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 373-1842  
Fax -(907) 373-4729



*Session:*

State Capitol Building, Room 421  
Juneau, Alaska 99801-1182  
(907) 465-2186  
Fax - (907) 465-3818

REPRESENTATIVE VIC KOHRING  
DISTRICT 26

## SECTIONAL ANALYSIS SPONSOR SUBSTITUTE HOUSE BILL 5

**Section 1.** Adds a new chapter establishing an educational voucher program.

Section 14.45.150 - Requires the Department of Education to administer a pilot educational voucher program.

Section 14.45.155 - Allows a parent or guardian, who are below 200% of the federal poverty level, to apply for an educational voucher from the department. The value of a educational voucher is the actual cost of the child's education or the per student amount of state aid represented by the child in that school district, whichever is less. The educational voucher will be paid to the parent or guardian of the child, who is attending private, or home school, in quarterly payments. Allows the department to adopt regulations to administer the program.

Section 14.45.160 Provides that the legislature may appropriate money for educational vouchers. Provides for a pro rata reduction in each voucher if insufficient funds are appropriated.

**Section 2.** Provides a sunset clause that will repeal the educational voucher program June 30, 2004.

**Section 3.** Establishes an effective date.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SS HB 5

Revision Date/Time (Note if correction)	Dept. Affected	Education
Title	BRU	K-12 Support
education;	Component	New - Voucher Program
Sponsor	Representatives Kohring, Coghill	
Requester	House HES	Component Serial No. _____

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	****	****	****	****	****	
Miscellaneous						
<b>TOTAL OPERATING</b>	****	****	****	****	****	0.0

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	****	****	****	****	****	0.0

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The legislation requires that the Department of Education administer an education voucher pilot program. The department is unable to evaluate the cost of the program as no data exists to show how many students would participate in the program or how that number would change over the life of the program that would sunset on June 30, 2004.

Prepared by <u>Eddy Jeans, School Finance Manager</u>	Phone <u>465-8679</u>
Division <u>Education Support Services</u>	Date/Time <u>2/16/99 11:41 AM</u>
Approved by Commissioner: <u>Shirley J. Holloway, Ph.D.</u>	Date <u>2/16/99</u>
Agency <u>Department of Education</u>	

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

January 22, 1999

**SUBJECT:** Vouchers for education (Work Order No. 21-LS0347)

**TO:** Representative Allen Kemplen  
Attn: Chris

**FROM:** Michael F. Ford *M.F.*  
Legislative Counsel

You have asked if the legislature could create a voucher system for state education. A system under which the state distributes vouchers worth a certain amount of money to be used for tuition in public or private schools would violate Article VII, section 1, of the state constitution. That section provides, in part:

No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

The Alaska Supreme Court has interpreted that section to mean that a tuition assistance program awarding students attending private colleges an amount equal to the difference between public and private college tuition is unconstitutional. Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979).

Sheldon Jackson is directly relevant to the proposed voucher system. In that case, the Court established a three-part test for determining the validity of public programs that provide economic benefit to private schools. First, the Court looks at the breadth of the class to which the economic benefits are directed. Second, the Court looks at how the public money is to be used; i.e., whether the benefit to the private school is incidental to education (as with fire and police protection) or whether it amounts to direct aid to education (as with tuition and books). Third, the Court looks at the magnitude of the benefit to private education. Significantly, the Court noted that channeling funds to a private school through an intermediary (such as the student or parent) will not save an otherwise unconstitutional program providing aid to private schools.

In the Sheldon Jackson case, the Court struck down the state's tuition assistance program as violative of all three parts of the test. The class which the tuition assistance program benefitted consisted almost entirely of private schools, the funds were to be used directly for educational purposes (tuition), the benefit conferred on these schools was quite substantial, and the fact that the money was actually paid directly to the students, not the schools, did not

Representative Allen Kemplen

January 22, 1999

Page 2

mitigate the fact that the students were required to turn the money directly over to the private schools.

The proposed voucher system suffers the same infirmities as the tuition assistance program did. Although the tuition vouchers would be given to all students in the state, only students attending private schools would benefit since there is currently no tuition for attending public school. Thus, for the class of students attending public school, the vouchers would be meaningless. The effect would be the same as with the tuition assistance program: to benefit only the private schools.

This does not imply that a program giving equal benefit to public and private school students would survive judicial scrutiny, because any direct aid to private schools is constitutionally suspect. But the fact that the proposed voucher system benefits only private schools reduces the likelihood that the system is valid.

The second part of the test would also be violated because the vouchers would be used as a direct benefit to private education (tuition) rather than an incidental benefit.

It is not clear whether the third part of the test, the magnitude of the benefit, presents a problem. That would depend on the value of the vouchers in relation to the cost of the tuition. If the vouchers are to cover the entire cost of tuition, the benefit to private schools would be substantial, and consequently unconstitutional. While there is no precise line on this issue, the voucher would appear to be a substantial and unconstitutional benefit unless the voucher was a small percentage of the actual cost of tuition.

Finally, the fact that the vouchers would be given to students or parents of students would not save the voucher system. As with the tuition grant program the vouchers may be redeemed only through the private schools. Therefore, they confer a direct benefit on the private schools, in contravention of the constitutional prohibition.

The proposed voucher system is also potentially in violation of the "establishment" and "freedom of religion" clauses of Article I, section 4 of the Constitution of the State of Alaska. I am aware that a system in Wisconsin has survived a constitutional challenge under the First Amendment of the United States Constitution. However, the Court in Sheldon Jackson noted that first amendment cases upholding forms of assistance to religious schools have no relevance to the preceding analysis of Article VII, section 1 of the state constitution. The prohibition against state aid to any private schools in the Alaska Constitution is much broader than the prohibition under the First Amendment which relates only to religious schools. Thus, the United States Supreme Court case upholding a Minnesota program of tax credits for public and private school expenses against a First Amendment challenge (Mueller v. Allen, 463 U.S. 388 (1983)), as well as the voucher system approved in Wisconsin, are not relevant to the analysis of the proposed voucher system in Alaska. These cases did not consider the kind of prohibition against direct aid to private schools found in the Alaska Constitution. In other words, even if the voucher system could survive scrutiny

Representative Allen Kemplen  
January 22, 1999  
Page 3

under the First Amendment, it would still violate Article VII, section 1 of the state constitution.

In order to survive constitutional scrutiny under the state constitution, a voucher system would have to satisfy all three parts of the Sheldon Jackson test. It is difficult to imagine a voucher system, as I understand the voucher system to work, which would not violate the constitution. The system would have to benefit students in public as well as private schools without giving any substantial direct benefit to education in the private schools. By its nature, the voucher system seems to militate against this.

Finally, the problem could be circumvented by amending Article VII, section 1 of the state constitution. You should be aware, however, that an attempt to do this in 1976 was rejected by the voters of the state in a ballot proposition. As you probably know, a proposed constitutional amendment and statutory voucher system are before the House in HJR 6 and HB 5.

In conclusion, the proposed voucher system suffers serious constitutional problems to which I see no simple solution. Unless amended, the state constitution will not allow such direct benefit to private education.

If I may be of further assistance, please feel free to contact me.

MFF:jdr  
99-030.jdr

# Memorandum

To: Co-chairs: Representative Fred Dyson  
Representative John Coghill  
Alaska State Legislature  
House HESS Committee

From: Tim Peterson – President  
Kenai Peninsula Education Association  
1124 Walnut  
Kenai, Alaska 99611  
907 – 283 – 5177

Date: 02/16/99

Re: House Bill 5 – Sponsor substitute

---

Please accept these thoughts regarding: Sponsor Substitute for House Bill 5 "An act relating to vouchers for education; and providing for an effective date."

We appreciate the concern of the legislature relative to improving education of Alaska's children. It is incumbent on all citizens of our great state to make every reasonable effort to provide a quality education for our children.

It is difficult to understand how this legislative act will meet that standard. The legislation seems to be predicated on the belief that home schooling and/or a private school education will provide an education equal to or better than that provided by the Alaskan public schools. Educational studies do not support that belief. To our knowledge there is no validated research comparing home schooling achievement in Alaska to that of the public schools.

The use of public money to pilot home schooling and private school voucher programs is unwarranted. Increased public funds should assist public schools to better meet the needs of the students through smaller class numbers, up to date educational materials, and improved programs

How many children would be eligible for the program? What is the total cost of the program? Under what conditions could the state deny participation?

Will the parent or private school be required to meet certain standards? If so, how will those standards be established? What methods will be established to measure the academic achievement of each child? What will happen if the home school does not meet the requirements? Is the state likely to be drawn into litigation regarding the voucher program? What are the costs of such litigation?

The public's right to know how their monies are being used is paramount to a Democracy. Auditing and monitoring the use (or abuse) of public funds provided to a home schooling parent or a private school will prove a major problem for the state. The costs attached to monitoring and administering such a wide-open program could be staggering.

An additional concern is whether the voucher program envisioned by this legislation meets United States and Alaska constitutional standards.

Simply defining a private school as one that does not receive state or federal funding will not correct any legal conflict with the Alaska State Constitution. Even if the parent delivers the tuition money to the private school rather than the state writing a check to the private school the effect is still state funding to a private school which violates the Alaska State Constitution.

Based on the great number of unanswered questions regarding House Bill 5 the members of the Kenai Peninsula Education Association urge the legislature to oppose House Bill 5.



Lawrence a. Wiget, Ed.D.  
Executive Director, Public Affairs  
Anchorage School District  
4600 DeBarr Rd.  
Anchorage, Alaska 99519

(w) 907-269-2255 (fax) 907-269-2340

TO: HOUSE HESS COMMITTEE MEMBERS

SUBJECT: HB 5: VOUCHERS FOR EDUCATION

DATE: FEBRUARY 16, 1999

Attached please find a copy of **A Resolution Opposing Private and Parochial School Vouchers** passed by the Anchorage School Board on April 13, 1999.

The Anchorage School Board urges policy makers to oppose efforts to use public tax dollars to finance private and parochial school vouchers. The Anchorage School Board also urges policy makers to work with local communities to ensure that our public schools provide world-class educational opportunities for children.

**Rationale.** Public schools educate every child, regardless of race, ability, religion, economic circumstance or special need. Public schools, through their elected school boards, are directly accountable to the citizens of the community for the expenditure of public funds.

Taxpayer-funded vouchers for private and parochial school tuition and fees drain scarce resources from public school classrooms and diminish revenues available for public schools.

POSITION STATEMENT

**ANCHORAGE SCHOOL BOARD  
ANCHORAGE MUNICIPAL ASSEMBLY  
ASDR 97/98-12**

**A RESOLUTION OPPOSING PRIVATE AND PAROCHIAL SCHOOL  
VOUCHERS.**

**WHEREAS,** plans to create taxpayer-funded vouchers for private and parochial school tuition and fees drain scarce resources from public school classrooms; and,

**WHEREAS,** plans to allow tax breaks for private and parochial school tuition or expenses also diminishes revenues available for public schools; and,

**WHEREAS,** the public schools in the Anchorage School District educate 93 percent of the students in this community; and,

**WHEREAS,** the public schools educate every child, regardless of race, ability, religion, special needs and economic circumstance; and,

**WHEREAS,** the public schools are directly accountable to the residents of this community; and,

**WHEREAS,** research regarding the effects of voucher plans show insignificant gains in academic achievement for voucher students;

**NOW, THEREFORE,** be it resolved that tax revenues paid into the federal, state, or local treasuries by citizens of this community should be utilized to support public schoolchildren; and,


Be it further resolved that we urge policy makers to oppose any efforts to use public tax dollars to finance private and parochial school vouchers; and,

Be it further resolved that we urge policy makers to oppose providing tax breaks for the tuition and fees of private and parochial school; and,

Be it further resolved that we urge policy makers to work with our local community ensure that our public schools provide world-class educational opportunities for all our children.

**PASSED AND APPROVED** this 13th day of April, 1998.

**ANCHORAGE SCHOOL BOARD**

  
Debbie Ossiander, President

Kathi Gillespie  
Kelly Haney  
Dave Wercil

Rita Holthouse  
Harriet Drummond  
Peggy Robinson-Wilson

Bob Christal, Superintendent



# Alaska State Legislature

Please enter into the record my testimony to the House Health, Education & Social Service  
 committee name  
 committee on HB 5- Voucher , dated 2/16/99  
 bill/subject  
System for Education

Signed: Helene Antel Brooks, Esq  
 Testifier  
self  
 Representing (Optional)  
HCO2 7516, Palmer, AK 99645  
 Address  
(907) 745-3394 (o); (907) 746-1547 (h)  
 Phone No.

1/28 Legislative Information Office

**COMMITTEE TESTIMONY** Regarding HOUSE BILL NO.5  
**"Voucher System for Education"**

My Name is Helene Antel Brooks. I am a wife, the mother of a student enrolled in the Mat-Su School District, an attorney, and a member of the Mat-Su School Board. I would have liked to present my views on this proposed piece of legislation in person; but, unfortunately other business commitments do not make that possible. These written comments will thus have to suffice.

It is with the utmost dismay that I find myself witness to intentional efforts by our elected representatives to dismantle the public school system. HB No. 5 is nothing more than a public attempt to validate parochial selfishness. Indeed, the public education system, not only in Alaska but across our great nation, is in need of care and revitalization. The appropriate response to this condition is to accept responsibility for it. The inappropriate response suggested by HB 5, is simply to run away. The temptation to flee public education by such means as a voucher system, is in reality a reflection of our inability to accept that we ourselves have created all of the alleged inadequacies of which we complain. As a society we have egregiously failed to support, nourish or adequately fund public education for several decades. We have diminished the potential success of our system of public education by abandoning it. The fault is not in the system; but, it is ours if public schools can no longer inspire and enable *all* young people to reach for the stars.

America was--and still is, a great experiment. It is based upon the precept that government is not something separate from the people. *Government is not they, it is we the people.* Democracy requires that we endeavor to *give all the same chances.* The weaker must grow strong and the ignorant more wise. The selfish must learn generosity. We must work together--not against each other, to strengthen our most vital public institution: education. If democracy as an institution is to live, we must recommit ourselves to it. We must not break that which binds diversity into a powerful whole by segregating ourselves into small pockets of like mindedness. Only as a diverse people united will we continue to stand.

America's system of public education gives both rich and poor, loved and unloved, the orphaned child and the child well cared for, the same chance to dream of limitless horizons. It is the cornerstone of our great nation. To even consider the voucher system proposed by HB 5, threatens to tear apart the American dream.

I am strongly opposed to HB 5

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

GOLDBELT PLACE  
801 WEST 10TH STREET, SUITE 200  
JUNEAU, ALASKA 99801-1894

(907) 465-2800  
FAX (907) 465-4156

February 16, 1999

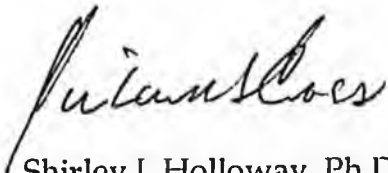
The Honorable Fred Dyson, Co-Chair  
House Health, Education and Social Services Committee  
Alaska State Legislature  
State Capitol, Room 104  
Juneau, AK 99801-1182

Dear Representative Dyson:

The State Board of Education has taken a strong position in opposition to any voucher plan that would take money from the public school system and give it to private schools. The Board is careful to note that it supports expanding parental choice within the public school system. Enclosed is the State Board of Education Motion passed January 21, 1999.

Thank you for your attention to the State Board of Education's position on this issue. Your Committee members and staff are invited to attend the upcoming Board meeting scheduled for February 24-26, at Goldbelt Place, 801 West 10<sup>th</sup> Street, Juneau. The Board plans to discuss school choice during its work session at 10:00 AM, Wednesday February 24.

Sincerely,



Shirley J. Holloway, Ph.D.  
Commissioner

cc: The Honorable John Coghill, Jr.

Enclosure

*Exact of Unapproved minutes of the  
Alaska State Board of Education meeting  
January 21, 1999*

The following motion was unanimously carried by the Alaska State Board of Education at its meeting held on January 21, 1999 in Juneau, Alaska.

The State Board of Education opposes any voucher plan that would take public money from public schools and give it to private schools. The Board supports expanding parental choice within public schools. The motion was seconded and carried by unanimous roll call vote.



# NEA-ALASKA

*Affiliated with the National Education Association*

## **SSHB 5 – Tuition Vouchers NEA-Alaska Position Statement**

SSHB 5 is an attempt to provide low income Alaskans with an educational voucher of an undetermined amount to educate children at home or at a private school. NEA-Alaska opposes SSHB 5 because it is unconstitutional, vouchers are too expensive and vouchers will not improve student performance in Alaska's public schools.

Article IX, sec. 6, Constitution of the State of Alaska states, "no money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

At a time when the State of Alaska is faced with a \$1 billion deficit, a voucher proposal extending public funding to children enrolled in private and denominational schools and home schools is an extravagance we cannot afford. Our schools are not adequately and equitably funded now.

At a time when our public schools are required to set new educational standards and will be requiring students to pass difficult graduation examinations, weakening educational opportunities of public school children by diverting fiscal resources from public school classrooms to private and home providers is counter productive. Taking money away from these efforts and giving it to students who aren't required to meet similar standards, pass tests or improve learning is inconsistent with the legislature's quality school initiative embodied in SB 36. Giving public money to private and home schools that have no accountability to the public or have no requirement to meet quality school standards is a poor exercise in fiscal and instructional responsibility.

How much will SSHB 5 cost? In 1997, a year for which data exists, there were 157,691 children between the ages of 5 and 19 of which 129,940 were

enrolled in public school, central correspondence or Mount Edgecumbe. When factoring out an estimated 15,768 five year olds and 19 year olds who are not enrolled in kindergarten or public school, we estimate that there were over 11,900 school age children not enrolled in public schools. These children are either being educated at home, or are enrolled in private or denominational schools or are simply not being educated.

It would cost \$46.8 million to give 11,900 students a voucher the equivalent of the Base Student Allocation (\$3,940). If the voucher is increased because of the other variables that determine state aid – School Size Factor, District Cost Factor and Special Needs Factor – the expense spirals upwards radically. In comparison, during the last legislative session, \$26 million was provided districts under SB 36 of which \$13.2 million was distributed to schools to address adverse effects of the school size table, definition of schools and the district cost factor.

Costs could go up even further if a cash voucher serves as an incentive for parents to remove their children, who are enrolled in the public schools, and enroll them in either a home school or private school? The number of students who may fall in this category is unknown. However, if a student exits the public schools for home or private education with a voucher in his or her pocket, public schools will lose funding. The fixed costs of operating a school and staffing a school will continue; however, each departing student will reduce a school district's Base Student Allocation.

Which school districts will be impacted the most by cash vouchers – urban or rural? In 1996-97, the last year home schools reported enrollment, 986 students attended 483 home schools that reported to the Department of Education. Approximately 82% of the home schools were located in urban settings while the balance of 18% were in rural settings including communities like Nome, Sterling, Willow and Chevak. In 1998-99, of those private religious schools reporting, 65% of private religious schools were in urban areas with 86% of the reported total statewide enrollment for private religious schools. In 1998-99, of the eleven private non-religious schools reporting, 73% were in urban areas with 83% of the reported total statewide enrollment for private non-religious schools. Given this distribution of home school and private enrollment, cash vouchers will have the greatest impact on urban schools where the largest number of home and private schools exist. If new funding is appropriated for a vouchered education

instead of a public education or if current funding is diverted from public classrooms to pay for the voucher, urban schools will be hurt most.

The only variable limiting voucher distribution is a parent's standing in relation to the federal poverty line. How many Alaskans with school age children fall above or below this line? SSHB 5 invites those with household incomes greater than 200 times the federal poverty guideline to receive an education voucher. The poverty level for a family of four in 1997, as reported by the Census Bureau, was \$16,400. We assume that any household of four with income of \$32,800 or less would qualify for a no strings attached cash voucher. If the 1997 Alaska per capita income is \$24,945, how many parents will qualify?

A significant barrier for low-income families seeking greater choices for their child's education is lack of transportation. Many families do not have the means to provide transportation for their children to attend other school alternatives, let alone private schools. The bill seems to accommodate greater benefit to those who educate at home.

If only a modest sum of money is appropriated for SSHB 5's voucher program, the bill provides for an unencumbered incentive for any qualifying parent to apply to receive the education cash. As the legislature demands greater accountability from schools, it makes no sense to add to the cost of education through cash vouchers.

Currently schools are working to implement new standards, preparing students to pass exit exams and designing new curriculum and opportunities for children. We oppose weakening those efforts through vouchers.

We believe in a strong system of public education. Schools have been critical to Alaska's economic, social and cultural development. Public education is critical to our state's future and its continued development. Public schools demonstrate the very spirit of our democracy by accepting and educating all students regardless of means or position in life. If our state does not continue to inspire that purpose, our most precious resource, our children, will be wasted.

NEA-Alaska wants to provide A+ Schools for Alaska's Kids. Cash vouchers do not contribute to making our schools A+.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SS HB 5

Revision Date/Time (Note if correction)	Dept. Affected	Education
Title <u>An Act relating to vouchers for</u>	BRU	K-12 Support
education;	Component	New - Voucher Program
Sponsor <u>Representatives Kohring, Coghill</u>		
Requester <u>House HES</u>	Component Serial No.	

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	****	****	****	****	****	
Miscellaneous						
<b>TOTAL OPERATING</b>	****	****	****	****	****	0.0

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	****	****	****	****	****	0.0

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The legislation requires that the Department of Education administer an education voucher pilot program. The department is unable to evaluate the cost of the program as no data exists to show how many students would participate in the program or how that number would change over the life of the program that would sunset on June 30, 2004.

Prepared by <u>Eddy Jeans, School Finance Manager</u>	Phone <u>465-8679</u>
Division <u>Education Support Services</u>	Date/Time <u>2/16/99 11:41 AM</u>
Approved by Commissioner: <u>Shirley J. Holloway, Ph.D.</u>	Date <u>2/16/99</u>
Agency <u>Department of Education</u>	

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

January 20, 1999

**SUBJECT:** Emergency school voucher program (Work Order No. 21-LS0312)

**TO:** Representative Fred Dyson

**FROM:** Michael F. Ford  
Legislative Counsel 

You have asked if it is possible to create a school voucher program that exists only to alleviate a temporary overcrowding situation in public schools. I believe that such a voucher system would still violate the prohibition against using public funds for the direct benefit of a religious or private educational institution contained in Article VII, section 1, of the state constitution. See Sheldon Jackson College v. State, 599 P.2d 12 (Alaska 1979). The fact that there may be a serious need for alleviating the overcrowding and that it is a temporary use of the voucher program does not mean that the constitutional restriction could be avoided.

The constitutional problem could be eliminated by amending Article VII, section 1, of the state constitution. It would be possible to include some type of constitutional exception that encompasses the overcrowding situation you have in mind.

As I am sure you are aware, there is a proposed voucher program presently introduced in the House (HB 5) and a proposed constitutional amendment (HJR 6).

Please contact me if you have further questions.

MFF:glc  
99-017.glc