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ABSTRACT

Education vouchers are a means of providing money directly to parents enabling them to pay for their children's education at the school of their choice, public or private. Three important ground rules are part of the present proposal: (1) no school should be able to charge parents tuition in addition to the voucher amount, thus preventing discrimination against the poor; (2) all students would be given an unbiased chance for admission to schools of their choice; and, (3) all participating schools should provide parents with enough information to enable the latter to make an informed choice among schools for their children. Schools that enroll poor children should receive an extra incentive in the form of extra money. Racial discrimination would be forbidden. Parochial schools could participate without violation of the United States Constitution because parents and not the government would choose where to spend the voucher funds; or, voucher funds could be limited to secular education expenses. The Office of Economic Opportunity is considering funding a five year demonstration project of education vouchers in some urban area. Exact details of a plan for local implementation must be worked out at the local level and with the Office of Economic Opportunity. (JM)

EDUCATION VOUCHERS:

FINANCING EDUCATION BY GRANTS TO PARENTS

A Preliminary Report

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by

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Preface

Adam Smith seems to have been the first social theorist to propose that the government finance education by given parents money to hire teachers. Since then the idea has enjoyed recurrent popularity. Smith's ideal of consumer sovereignty is built into a number of government programs for financing higher education, notably the G. I. Bills and the various state scholarship programs. Similarly, a number of foreign countries, notably Denmark, have recognized the principle that parents who are dissatisfied with their local public school should be given money to establish alternatives. In America, however, public financing for elementary and secondary education has been largely confined to publicly managed schools. Parents who preferred a private alternative have had to pay the full cost out of their own pockets.[1] As a result, we have almost no evidence on which to judge the merit of Smith's basic principle, namely that if all parents are given the chance, they will look after their children's interests more effectively than will the state.

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[1] A number of states make tuition grants to handicapped children who cannot be accommodated in the local public schools, so that the child can attend a private school instead. There are also states with remote rural districts that still have no secondary schools. Several Southern states have tried to use tuition grants to evade federal court orders to integrate their public schools, but these schemes have all been struck down by the courts.

During the late 1960's, a series of developments in both public and non-public education led to a revival of interest in this approach to financing education. In December, 1969, the U.S. Office of Economic Opportunity contracted with the Center for the Study of Public Policy to conduct a detailed study of "education vouchers."[2]

The first phase of the research, begun late in December, will cover six major questions:

1. How should the value of a voucher be determined, and what restrictions, if any, should be placed on private supplementation of vouchers?
2. How can we ensure that parents have enough information to make intelligent choices among schools?
3. If a school financed by vouchers has more applicants than it can accept, what procedures, if any, should be established for allocating scarce places?
4. What are the relative advantages and disadvantages of increasing parental choice by means of (a) education vouchers versus (b) direct contracts under which the state "purchases services" from private schools. ("Purchase of services" legislation has been enacted in several states and is being seriously considered in many others.)
5. Are vouchers likely to help maintain racial segregation?
6. Would vouchers violate the First Amendment prohibition against establishment of religion?

After a general introduction, the first four questions are discussed in Chapters 2-4 of the report, respectively. Chapter 5 describes specifications for a demonstration project

[2] An "education voucher" is simply a piece of paper which the government gives to a parent. The parent then gives the voucher to a school in which he has enrolled his child. The school then returns the voucher to the government, and receives a certain amount of cash, based on some pre-determined formula.

involving education vouchers. The fifth question is discussed in detail in Appendix B, and the sixth question is reviewed in Appendix A. Finally a summary of existing and proposed state aid to non-public schools is included in Appendix C.

T second phase of the research, begun late in February, will investigate the feasibility of an experimental demonstration project using education vouchers. Such a demonstration would provide all children of specified ages living in one or more communities with vouchers. The vouchers could be cashed by the school of the parents' choice. The feasibility study will suggest some guidelines for the conduct of such an experiment, and will then seek to determine whether the experiment could win community support in several alternative locations. Even if community support were forthcoming, however, it should be clearly understood that OEO has made no commitment to fund a demonstration project using education vouchers. It should also be clearly understood that OEO, not the Center for the Study of Public Policy, would determine where and under what conditions such a demonstration project might be conducted.

The present document is the product of many hands. No one who worked on it agrees with every idea presented in it, but we have all read and commented on one another's work. The contributors included:

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Finally, we are indebted to our Advisory Committee for various kinds of assistance, including criticism of an earlier draft of the report. Members of the Advisory Committee are:

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A special mention must also be given to the work of Miss Sharon Sosnick of the Center for the Study of Public Policy in overseeing the production of this report.

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1. An Overview

The Case for Competition and Choice

Conservatives, liberals, and radicals have all complained at one time or another that the political mechanisms which supposedly make public schools accountable to their clients work clumsily and ineffectively. Parents who think their children are getting inferior schooling can, it is true, take their grievances to the local school board or state legislature. If legislators and school boards are unresponsive to the complaints of enough citizens, they may eventually be unseated, but it takes an enormous investment of time, energy, and money to mount an effective campaign to change local public schools. Dissatisfied though they may be, few parents have the political skill or commitment to solve their problems this way. As a result, effective control over the character of the public schools is largely vested in legislators, school boards, and educators, not parents.

If parents are to take responsibility for their children's education, they cannot rely exclusively on political processes to let them do so. They must also be able to take individual action in behalf of their own children.

At present, only relatively affluent parents retain any effective control over the education of their children. Only they are free to move to school districts with "good schools" (and high tax rates). Only they can afford non-sectarian private schooling. The average parent has no alternative to his local public school unless he happens to belong to one of the denomina-

tions that maintains low-tuition church schools. Only a few denominations do.

The system of education vouchers proposed in this report will, we believe, encourage the development of many new alternatives, open to <u>every</u> parent. This would make it possible for parents to translate their concern for their children's education into action. If they did not like the education their child was getting in one school (or if the child did not like it), he could go to another. By fostering both active parental interest and educational variety, a voucher system should improve all participating schools, both public and private.

Under the proposed voucher system, a publicly accountable agency would issue a voucher for a year's schooling for each eligible child. This voucher could be turned over to any school which had agreed to abide by the rules of the voucher system. Each school would turn in its vouchers for cash. Thus, parents would no longer be forced to send their children to the school around the corner simply because it was around the corner. If the school was attractive and desirable, it would not be seriously affected by the institution of a voucher plan. If not, attendance might fall, perhaps forcing the school to improve.

Even if no new schools were established under the voucher system, the responsiveness of existing schools would probably increase. But new schools will be established. Some parents will get together to create schools reflecting their special perspectives or their children's special needs. Educators with new ideas -- or old ideas that are now out of fashion in the public schools -- will also be able to set up their own schools. Entrepreneurs who think they can teach children better and cheaper than the public schools do will also have an opportunity to do so.

None of this ensures that every child will get the education he needs, but it does make such a result more likely than

at present.

All these arguments have, of course, been used over and over to justify the maintenance of free markets and competition in areas other than education. Why, then, have virtually all American communities allowed elementary and secondary education to remain a monopoly or at best a duopoly?[1]

Monopoly situations are usually justified by one of three arguments:

-- "Competition would be technologically inefficient in this field."

-- "Consumers are not competent to distinguish between good and bad products in this field, so competition would lead only to more imaginative forms of fraud."

-- "Competition in this field would encourage consumers to maximize their private advantages in ways that are inimical to the general welfare."

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[1]Public subsidies are normally available for a child's education only if he attends a school managed by the local board of education. In most cases the child's family has little or no choice about which school this will be.

Church subsidies are available in many communities if the child attends a parochial school, but there is seldom much competition between public and parochial schools. This reflects the fact that neither the public nor the parochial system has any economic incentive to expand. On the contrary, when either the public or the parochial system increases its share of the market, it must either decrease its expenditures per pupil or increase its tax or tithing rate. Additional students thus mean more financial problems, not fewer. The result is that both systems have a vested interest in the other's continued survival and popularity.

The incentives affecting independent schools are somewhat more effective, since most independent schools charge enough tuition to cover the marginal cost of adding a student. Independent schools therefore have an economic incentive to broaden their appeal and please more parents. But their share of the market remains limited by the fact that they get no outside subsidy. As a result, they have little impact on the range of alternatives open to the majority.

Let us examine the applicability of these three arguments to education.

The "technological" argument for educational monopoly may have had some relevance in the days when most Americans lived in sparsely settled rural areas. It was hard to get enough children together in one place to pay a single teacher's salary. Competition could (and sometimes did) prevent any school from being established. Today, however, most Americans live in densely populated areas, where it is perfectly feasible to maintain several competing schools within reasonable distance of any family. Logistical arguments against diversity, competition, and choice in education have therefore become irrelevant.

Proponents of public monopoly also talk a good deal about economics of scale, especially at the high school level. There is, however, no solid evidence that such economies are real. Big schools can provide certain resources (a physics lab, a Spanish teacher, a swimming pool, etc.) at less cost than small schools. But nobody knows whether these resources increase the likelihood that a school will turn out competent, civilized adults. Recent disorders in many big high schools suggest that massing large numbers of adolescents together in the same place may actually be dysfunctional. The possibility that competition might result in smaller schools need not, then, be viewed with alarm. It could be very healthy.

The "gullible consumer" argument for educational monopoly is only slightly more persuasive. There are instances (e.g. prescription drugs) where consumers really cannot judge the products offered them. Rather strict regulation seems appropriate in these areas. In order to justify governmental regulation, however, it is necessary to show that the government is harder to gull than the individual consumer. This is fairly easy to do in the case of drugs. The government presumably has access to scientific evidence about the effects of each drug, and this evidence is not readily

available or comprehensible to laymen. Analogous arguments with respect to schooling seem more tenuous. The government can obtain "expert" opinions about the effects of any given school on various types of children, whereas the average parent cannot obtain such opinions. But there is no evidence that "experts" really know any more than parents about the likely effects of specific schools on specific children. There is no consensus about what causes what in education, much less any scientific evidence to back a consensus. This makes it hard to argue that the government should protect children from their parents' naivete by denying the parents choice about their children's schooling and imposing what the government's experts happen to think "best."

Even if we were to accept the argument that "experts know best," it would not follow that the best solution would be to make education a public monopoly. We do not, after all, have a public monopoly on the production or distribution of drugs, even though we assume that "doctors know best." Instead, we have a publicly regulated market, in which the patient is free to choose both a doctor and a druggist. It would be perfectly possible to establish a similarly regulated market in education. Indeed, such a market already exists--but only for the affluent. The state establishes certain basic rules about what a school has to do before opening its doors to the public. These rules cover physical safety, teacher qualifications, and the like. But in most respects affluent parents are free to send their children to any kind of school they want. It is hard to see why affluent parents should be judged competent to select their children's schools from a wide range of alternatives while poorer parents are given no options.

The final argument against competition and consumer sovereignty is that if parents are encouraged to make educational choices strictly in terms of private advantage, the cumulative result of these choices will be at odds with the general welfare. Unlike the two previous arguments, this one is in some ways persua-

sive. Creating a completely free market for schooling would almost certainly result in more segregation by race, income, and ability. It would also result in a redistribution of educational resources from disadvantaged to advantaged children. Taken together, these changes would probably leave students from low-income families further behind students from high income families than they are now. This increase in inequality would in turn tend to widen the gap and intensify conflict between racial groups, between economic groups, and between political interests.

But monopolistic control over educational choices is not the only way to avert these evils. Proponents of smog control, for example, argue that so long as the choice is left to individual consumers, not many auto purchasers will elect to pay for expensive exhaust systems whose benefits go largely to other people. But few proponents of smog control claim that the only alternative is to nationalize the automobile industry. Most simply urge legislation which forbids the sale of automobiles that pollute the air. Similarly, we can ensure integration and equitable resource allocation in education without having the state operate 90 per cent of the nation's schools. It would be perfectly possible to create a competitive market and then regulate it in such a way as to prevent segregation, ensure an equitable allocation of resources, and give every family a truly equal chance of getting what it wants from the system.

Criteria for Regulating the Educational Market

Those who want to give parents more voice in shaping their children's educational destinies can be found almost everywhere on the political and educational spectrum. Their objectives are almost as diverse as the objectives of education itself, and their proposals for breaking the present public monopoly therefore cover an extraordinary range of alternatives.

In recent years many advocates of competition and choice have united around a single slogan: "education vouchers." The idea of an education voucher is relatively simple. The government issues the voucher to parents. The parents take the voucher to the school of their choice. The school returns the vouchers to the government. The government then sends the school a check equal to the value of the vouchers. As a result, government subsidies for education go only to schools in which parents choose to enroll their children. Schools which cannot attract applicants go out of business.

Beyond this, however, differences of opinion begin. Who would be eligible for vouchers? How would their value be determined? Would parents be allowed to supplement the vouchers from their own funds? What requirements would schools have to meet before cashing vouchers? What arrangements would be made for the children whom no school wanted to educate? Would church schools be eligible? Would schools promoting unorthodox political views be eligible? Once the advocates of vouchers begin to answer such questions, it becomes clear that the catchphrase around which they have united stands not for a single panacea,but for a multitude of controversial programs, many of which have little in common.

These diverse voucher schemes can be viewed merely as different approaches to the regulation of the educational marketplace. Some schemes propose no regulation at all, counting on the "hidden hand" to ensure that the sum total of private choices promotes the public good. Others involve considerable economic regulation, aimed at offsetting differences in parental income and at providing schools with incentives to educate certain kinds of children. Still other schemes involve not only economic regulation, but administrative regulations aimed at ensuring that schools which receive public money do not discriminate against disadvantaged children. Finally, some schemes would establish extensive regulations to ensure that schools provided the public with usable information about what the school was trying to do and how well it was

succeeding in doing it.

Chapters 2 and 3 of this report examine the problems of regulating a voucher system. Before the reader plunges into these details, however, he will probably find it useful to think rather carefully about the criteria that might be appropriate for evaluating various proposals. No two readers will have the same values about what education should be doing, and none will agree completely with the standards we have applied when evaluating alternative regulatory models. The next few pages therefore describe the assumptions and values which guided us in our evaluation, and which led us to choose the regulatory system described in the final section of this chapter.

In order to deserve support from the Office of Economic Opportunity, a voucher plan should have two objectives:

-- To improve the education of children, particularly disadvantaged children;

-- To give parents, and particularly disadvantaged parents, more control over the kind of education their children get.

These two objectives are not identical. For the most part we will assume that they are compatible, but this will not be true in every instance.

These broad generalizations require some elaboration. First it is important to decide whether "improving the education of the disadvantaged" means improvement relative to the education offered advantaged children today. We believe that, at least in education, closing the gap between the advantaged and the disadvantaged is of paramount importance. This conviction is central to our proposals for regulating the educational marketplace, so the reasons for it require explanation.

A generation ago the average American finished school with roughly eighth-grade reading competence, while the bottom quarter of the population was at about sixth-grade level. Mass circulation newspapers, being aimed at the "middle majority" of the

population, also assumed something like eighth-grade reading competence. This meant that most people in the least competent quarter of the population could, with some difficulty and a bit of misunderstanding, follow a daily newspaper. Today the schools have boosted the average reading competence of people finishing school to the twelfth-grade level. They have boosted the average competence of the bottom quartile to the ninth-grade level. The gap getween the bottom quartile and the average for the population has thus widened. A comparison of today's mass circulation newspapers with yesterday's indicated that they too have raised their standards, using larger vocabularies and more complex prose than before. The net result could easily be that the least competent quarter of the population is less likely to read the same papers as the "middle majority." If this were in fact the case, the cultural, political, and social isolation of the bottom quarter would have increased, even though their absolute competence had risen.

Man is indeed a social creature. His capacity to do most of the things he cares about depends on his relationship to his fellow men. If he is less competent than they, he will find himself frustrated at every turn. If he is more competent than they, he will be in a good position to get what he wants from life. In a society of illiterates, a man who knows the alphabet is a scholar and a gentleman. In a society of college graduates, he is an illiterate. Translated into practical terms, this means that a man's satisfaction in life depends more on relative advantage than absolute attainment. We judge that this is particularly true in education. It follows that the well-being of American society depends less on its wealth, power, and knowledge than on the way these things are distributed among the population.

We recognize that many Americans reject this view. Nonetheless, if the upheavals of the 1960's have taught us anything, it should be that merely increasing the Gross National Product, the

absolute level of government spending, and the mean level of educational attainment will not solve our basic economic, social, and political problems. These problems do not arise because the nation as a whole is poor or ignorant. They arise because the benefits of wealth, power, and knowledge have been unequally distributed and because many Americans believe that these inequalities are unjust. A program which seeks to improve education must therefore focus on inequality, attempting to close the gap between the disadvantaged and the advantaged.

Having said that regulatory machinery ought to help close the gap between the advantaged and the disadvantaged, we must also say something about how this might be done.

First, America must <u>reallocate educational resources</u> so as to expose "difficult" children to their full share of the bright, talented, sensitive teachers, instead of exposing them to less than their share, as at present. Merely equalizing expenditures will not suffice to achieve this. Teachers are human, and most of them instinctively prefer children who learn quickly and easily over children who learn slowly and painfully. In order to change these values, society must make working with disadvantaged children a prestigious and highly paid career. This means that if schools that enroll disadvantaged children are to get their share of able teachers, they must be able to pay substantially better salaries and provide substantially more amenities (e.g., smaller classes, more preparation time) than schools which serve advantaged children.

Second, America must alter <u>enrollment patterns</u> so that disadvantaged children have more advantaged classmates. A student's classmates are probably his most important single "resource," even though they do not appear in most calculations of per-pupil expenditure. Children learn an enormous amount (both for better and for worse) from one another. Equally important, a student's classmates determine how much, if anything, he will get from his

teachers. If, for example, a disadvantaged child attends a school in which most children never learn algebra, his teachers will not expect <u>him</u> to learn algebra, even if he is perfectly capable of doing so.

All this implies that a competitive market is unlikely to help disadvantaged children unless it is regulated so as to:

-- provide substantially more money to schools that enroll disadvantaged children than to schools which enroll only advantaged children; and

-- prevent an increase in segregation by race, income, ability, and "desirable" behavior patterns.

The second general requirement of a regulatory system is that it give parents more control than they now have over the kind of education their children receive. We assume that increasing parents' sense of control over their environment and over their children's life chances is an end in itself both because it makes parents' lives less frustrating and because it makes them more effective advocates of their family's interest in non-educational areas.

Increasing parents' control over the kind of education their children receive should, however, also increase the chances that their children get a good education. The more control parents have over what happens to their children, the more responsible they are likely to feel for the results. This could easily make them take a more active role in educating their children at home. In addition, parents tend to care more than public servants about making sure that their child gets whatever he needs. The intensity of the typical parent's concern is, of course, often partially or entirely offset by his naivete about what would actually be good for his child or by his inability to get what he thinks the child needs. Nonetheless, we think that on the average parents are unlikely to make choices that are any worse than what their public schools now offer.

For parental choice to make a difference, however, genuine alternatives must really be available. "Good" education will always be in short supply, even if the parents are given money to buy it. Most (though not all) disadvantaged parents will want the same kinds of education as advantaged parents. When the two groups apply to the same "good" schools, disadvantaged children will not normally get their share of places. If disadvantaged parents are to feel that they also have control over the kinds of education their children receive, the market must be regulated in such a way that disadvantaged children have a fair chance of being admitted to the school of their choice.

The foregoing criteria do not exhaust the possible yardsticks for evaluating alternative regulatory systems. Before presenting our proposals it may therefore be useful to review the principal objections that others have raised to vouchers as a device for promoting competition and choice.

First, integrationists fear that vouchers would make it harder to achieve racial integration. This might result in a voucher system's being declared unconstitutional, as has already happened in four Southern states. Even if the system were not declared unconstitutional, it would be undesirable if it intensified rather than alleviated racial separation.

Second, civil libertarians fear that vouchers would break down the separation of church and state. Again, this might result in a voucher scheme's being declared unconstitutional. Even if it did not, it could unleash a series of bitter political struggles from which America has in the past been relatively exempt.

Third, egalitarians have emphasized that an unregulated market would increase the expenditures of the rich more than it increased those of the poor, exacerbating present resource inequalities instead of reducing them.

Fourth, public school men have feared that the public

schools would become the "schools of last resort" and hence dumping grounds for students no other schools wanted.

Finally, some educators have argued that parents are not qualified to decide how their children should be educated and that giving parents a choice would encourage the growth of bad schools, not good ones.

The next sections show how these problems might be solved.

A Model Voucher System

In order to understand the proposals made in this report, the reader must begin by reconsidering traditional definitions of the terms "public" and "private" in education. Since the nineteenth century we have classified schools as "public" if they were owned and operated by a governmental body. We go right on calling colleges "public" even when they charge tuition that many people cannot afford. We also call academically exclusive high schools "public" when they have admissions requirements that only a handful of students can meet. And we call whole school systems "public" even though they refuse to give anyone information about what they are doing, how well they are doing it, and whether children are getting what their parents want. Conversely, we have always called schools "private" if they were owned and operated by private organizations. We have gone on calling these schools "private" even when, as sometimes happens, they are open to every applicant on a non-discriminatory basis, charge no tuition, and make whatever information they have about themselves available to anyone who asks.

Definitions of this kind conceal as much as they reveal, for they classify schools entirely in terms of <u>who</u> runs them, not <u>how</u> they are run. If we want to understand what is really going on in education, we might well reverse this emphasis. We would then call a school "public" if it were open to everyone on a non-discriminatory basis, if it charged no tuition, and if it provided full information about itself to anyone interested. Conversely,

we would call any school "private" if it excluded applicants in a discriminatory way, charged tuition, or witheld information about itself. Admittedly, the question of who governs a school cannot be ignored entirely when categorizing the school, but it seems considerably less important than the question of how the school is governed.

Adopting this revised vocabulary, we propose a regulatory system with two underlying principles:

-- No public money should be used to support "private" schools.

-- Any group that starts a "public" school should be eligible for public subsidies.

Specifically, we propose an education voucher system which would work in the following manner:

1. An Educational Voucher Agency (EVA) would be established to administer the vouchers. Its governing board might be elected or appointed, but in either case it should be structured so as to represent minority as well as majority interests. The EVA might be an existing local board of education, or it might be a new agency with a larger or smaller geographic jurisdiction. The EVA would receive all federal, state, and local education funds for which children in the area were eligible. It would pay this money to schools only in return for vouchers. (In addition, it would pay parents for children's transportation costs to the school of their choice.)

2. The EVA would issue a voucher to every family in its district with school-age children. The value of the basic voucher would initially equal the per pupil expenditure of the public schools in the area. Schools which took children from families with below-average incomes would receive additional payments, on a scale that might, for example, make the maximum payment for the poorest child double the basic voucher.

3. In order to become an "approved voucher school," eligible to cash vouchers, a school would have to:

a. accept a voucher as full payment of tuition;

b. accept any applicant so long as it had vacant places;

c. if it had more applicants than places, fill at least half these places by picking applicants randomly and fill the other half in such a way as not to discriminate against ethnic minorities;

d. accept uniform standards established by the EVA regarding suspension and expulsion of students;

e. agree to make a wide variety of information about its facilities, teachers, program, and students available to the EVA and to the public;

f. maintain accounts of money received and disbursed in a form that would allow both parents and the EVA to determine whether a school operated by a board of education was getting the resources to which it was entitled on the basis of its vouchers, whether a school operated by a church was being used to subsidize other church activities, and whether a school operated by a profit-making corporation was siphoning off excessive amounts to the parent corporation;

g. meet existing state requirements for private schools regarding curriculum, staffing, and the like.

Control over policy in an approved voucher school might be vested in an existing local school board, a PTA, or any private group. No governmental restrictions would be placed on curriculum, staffing, and the like except those established for all private schools in a state.

4. Just as at present, the local board of education (which might or might not be the EVA) would be responsible for ensuring that there were enough places in publicly managed schools to accommodate every school-age child who did not want to attend a privately managed school. If a shortage of places developed for some reason, the board of education would have to open new schools or create more places in existing schools. (Alternatively, it might find ways to encourage privately managed schools to expand, presumably by getting the EVA to raise the value of the voucher.)

5. Every spring, each family would submit to the EVA the the name of the school to which it wanted to send each of its school-age children next fall. Any child already enrolled in a voucher school would be guaranteed a place, as would any sibling of a child enrolled in a voucher school. So long as it had room, a voucher school would be required to admit all students who listed it as a first choice. If it did not have room for all applicants, a school could fill half its places in whatever way it wanted, choosing among those who listed it as a first choice. It could not, however, select these applicants in such a way as to discriminate against racial minorities. It would then have to fill remaining places by a lottery among the remaining applicants. All schools with unfilled places would report these to the EVA. All families whose children had not been admitted to their first choice school would then choose an alternative school which still had vacancies. Vacancies would then be filled in the same manner as in the first round. This procedure would continue until every child had been admitted to a school.

6. Having enrolled their children in a school, parents would give their vouchers to the school. The school would send the vouchers to the EVA and would receive a check in return.

We believe that a system of the kind just described would avoid the dangers usually ascribed to a tuition voucher scheme.

-- It should increase the share of the nation's educational resources available to disadvantaged children.
-- It should produce at least as much mixing of blacks and whites, rich and poor, clever and dull, as the present system of public education.
-- It should ensure advantaged and disadvantaged parents the same chance of getting their children into the school of their choice.
-- It should provide parents (and the organizations which are likely to affect their decisions) whatever information

they think they need to make intelligent choices among schools.

-- It should avoid conflict with both the Fourteenth Amendmend prohibition against racial discrimination and with First Amendment provisions regarding church and state.

The voucher system outlined above is quite different from other systems now being advocated. It regulates the educational marketplace more than most conservatives would like, and contains far more safeguards for the interests of disadvantaged children. We recognize that such restrictions will be considered undesirable by some people. But we believe that a voucher system which does not include these or equally effective safeguards would be worse than no voucher system at all. Indeed, an unregulated voucher system could be the most serious setback for the education of disadvantaged children in the history of the United States. A properly regulated system, on the other hand, could inaugurate a new era of innovation and reform in American schools.

2. Seven Alternative Economic Models

The merits of the voucher system for distribution of educational funds depend in part on how the value of the voucher is determined and how schools are allowed to raise additional funds beyond the value of their vouchers. All the plans discussed in this chapter resemble one another in that they guarantee every voucher school enough money to offer a program comparable in cost to what the public schools provide. They differ in their approach to the question of how (or whether) voucher schools might increase their incomes beyond this level.

We shall consider seven alternative education voucher plans, i.e., sets of ground rules for distributing money to voucher schools. As noted above, the plans resemble one another in that per pupil spending in the voucher schools would at least equal what was spent in the public schools in the district before the voucher plan went into effect. The plans, however, regulate schools' efforts to get extra money in different ways. The seven basic models are set forth in Table 1.

TABLE 1

Seven Alternative Education Voucher Plans

1. Unregulated Market Model: The value of the voucher is the same for each child. Schools are permitted to charge whatever additional tuition the traffic will bear.

2. Unregulated Compensatory Model: The value of the voucher is higher for poor children. Schools are permitted to charge whatever additional tuition they wish.

3. Compulsory Private Scholarship Model: Schools may charge as much tuition as they like, provided they give scholarships to those children unable to pay full tuition. Eligibility and size of scholarships are determined by the EVA, which establishes a formula showing how much families with certain incomes can be charged.

4. The Effort Voucher: This model establishes several different possible levels of per pupil expenditure and allows a school to choose its own level. Parents who choose high expenditure schools are then charged more tuition (or tax) than parents who choose low-expenditure schools. Tuition (or tax) is also related to income, in theory the "effort" demanded of a low-income family attending a high-expenditure school is the same as the "effort" demanded of a high-income family in the same school.

5. "Egalitarian" Model: The value of the voucher is the same for each child. No school is permitted to charge any additional tuition.

6. Achievement Model: The value of the voucher is based on the progress made by the child during the year.

7. Regulated Compensatory Model: Schools may not charge tuition beyond the value of the voucher. They may "earn" extra funds by accepting children from poor families or educationally disadvantaged children. (A variant of this model permits privately managed voucher schools to charge affluent families according to their ability to pay.)

We will make several basic assumptions about the economic context in which any voucher system should operate:

-- We will assume that the level of tax support for education usually would rise at about the same rate under a voucher system as it has under the present system. Where this assumption is unjustified it will be discussed in connection with a specific plan. In general, however, it seems wisest to assume that the basic level of the voucher would be roughly comparable to what the public schools are now spending per pupil. Some models would augment the basic voucher by making special payments for disadvantaged children. Since expenditures on middle-class children are unlikely to decline, these special payments for the disadvantaged would increase overall expenditures, at least in the short run.

-- We will assume that the sources of tax support for education would change in much the same way under a voucher system as under the present system. We anticipate a gradual increase in the federal share of education spending, and a gradual decline in the local share. Some federal share would indeed probably be essential if the vouchers for disadvantaged children were to be set higher than the norm for all children, because only the federal government seems to have the capacity to provide such supplements on a large scale.

-- We will confine our discussion to "comprehensive" voucher systems in which the amount of public money going to any given school, whether publicly or privately managed, is almost entirely determined by the value of the vouchers it receives. This could be achieved in one of two ways:

1. A local board of education might become the EVA for its area. It would then receive the federal, state and local funds to which the local public schools had traditionally been entitled, plus whatever additional funds were available. It would disburse all its money in the form of vouchers. A variety of complex accounting arrangements must be required to ensure that certain funds

went only to public schools, but the net effect would be to make overall tax support for each voucher school in the area a function of the number and kinds of pupils it enrolled, not whether it was publicly or privately managed.

2. The EVA might be independent of the local board of education. The local board of education would continue to operate schools in its area. The EVA would make payments to the local board for the vouchers it collected from parents in the same way that it would make payments to private groups. Ideally the EVA would become the sole recipient of tax funds for education. If however, it were politically necessary, a local board could continue to receive some direct support from the local property tax. The EVA would have to ensure that these funds did not give publicly managed schools an unfair competitive advantage over privately managed schools. In order to do this, the EVA could simply require that when a local board of education submitted its children's vouchers for payment, it also reported its receipts from local tax funds. The EVA could then deduct these direct payments from the check it sent to a local board for its vouchers. This approach would eliminate local incentives to boost property taxes, however. Instead of deducting the public schools' local property tax receipts from its voucher payments, therefore, the EVA might make the overall value of vouchers in an area a function of local property taxes. The EVA could do this if it had federal or state money to augment the value of private schools' vouchers by the same amount that local taxpayers voted for public schools. If taxpayers voted an increase in local property taxes, expenditures in all voucher schools would increase. A voucher would thus end up having two parts, one of which was determined by local taxpayers, and one of which was determined by federal and/or state legislators. This would, of course, be similar to the current situation.

In addition to these assumptions there are certain economic issues which arise under any voucher system but which do not affect the relative merits of alternative systems. These include the following:

-- Some existing federal and state aid programs might be subsumed into the voucher program. The purpose of Title I of the Elementary and Secondary Education Act, for example, might well be achieved by using Title I funds to augment the value of voucher payments for low-income children. Similarly, special programs for the handicapped might take the form of augmenting these children's vouchers.

-- In order to encourage diversity, a voucher system ought to help new schools to get started. One way to do this would be to establish a loan fund that would lend schools money at low interest rates. A loan fund of this kind ought if possible to be large enough to help publicly, as well as privately, managed schools deal with capital costs.

-- In order to ensure genuine choice, a voucher system would have to enable parents to send their children to schools that were beyond walking distance from their homes. This means that a voucher system must pay transportation costs for children who attend schools outside their neighborhoods. Such payments should be added to the basic voucher, and should go directly to parents. It is not desirable to make transportation costs part of the basic voucher, since this has the effect of penalizing a school economically for enrolling children from outside its immediate neighborhood.

-- Assuming they are held constitutional, payments to church schools would be roughly comparable to payments to other schools. It might be desirable for legal reasons to make payments to church schools somewhat smaller (80 percent?) than payments to secular schools, and to require that churches contribute the balance to cover the cost of religious instruction. The impact of such a policy on the overall level of school expenditures would

be negligible. The legal implications of the First Amendment are discussed in more detail in Appendix A.

-- We assume that vouchers would be tax exempt.

We will apply four basic criteria to each model:

1. What would the model do to school expenditures?

This question has two parts:

-- How would the model affect private expenditures?

-- How would it affect public expenditures?

The overall effect of a model on school expenditures involves a calculation of trade-offs between the two.

2. How would the model affect the allocation of school resources among different kinds of pupils?

Again, this question has two parts:

-- Would the new pattern of resource allocation be more or less efficient, i.e., would it increase or decrease overall school input.

-- Would the new pattern be more or less equitable, i.e., would it benefit the currently advantaged more or less than the currently disadvantaged?

3. Would parents who are dissatisfied with the education currently available to them be able to choose an option they preferred under the proposed model? This question has three variants:

-- To what extent would parents who are dissatisfied with the level of resources now devoted to their child's education be able to enroll their children in schools with more resources?

-- To what extent would parents who are unhappy about the racial, socio-economic, academic, or cultural mix of pupils in their children's present school be able to enroll their children in schools that had different mixes of pupils?

-- To what extent would parents who are unhappy about the philosophy and style of education in their children's present schools be able to enroll their children in schools which were more to their taste?

4. How would various political interest groups, and especially the public school system, react to the proposed scheme?

We pay more attention to some of these criteria than to others. In part this is because certain criteria are extraordinarily difficult to apply. The reader will discover, for example, that we make few firm predictions about the overall effect of any model on the tax rate. This reflects the fact that a firm prediction would require not just an enumeration of the various factors that would push tax rates up or down, but an estimate of the relative magnitude of these factors. Similarly, we have said almost nothing about the effect of reallocating educational resources on the overall level of school output. Once again, the reason is that educational research has turned up no solid evidence about the relationship between school resources and the outcomes of schooling. There is even less basis for estimating the marginal return to investment in the education of different kinds of students. Lacking such evidence, we cannot say whether the nation's overall level of intellectual or social competence would be higher if we allocated additional resources to students who already do fairly well with the resources they have or to students who do relatively badly.

It would, however, be disingenuous to pretend that technical difficulties were the only reason for our putting more emphasis on some criteria than others. We think some criteria more important than others, and we think some outcomes of a voucher plan desirable while others are undesirable.

The impact of any given economic model on the overall character of the educational system will also depend in part on the ground rules regulating the recruitment, admission, and expulsion of students to various kinds of voucher schools. In Chapter 3 therefore we propose ground rules which would treat publicly and privately managed schools in precisely the same way, and which would prevent any school from discriminating against disadvantaged applicants. Most other advocates of education vouchers have proposed less regulation of the admissions process. Many have assumed that privately managed voucher schools would be free to take the most easily educated students, leaving the hard-to-educate students for the public schools. Economic models which look quite satisfactory if admissions procedures are closely regulated often look far less satisfactory if schools are given more leeway to pick and choose among applicants. The reader should keep this problem in mind when looking at the alternatives.

1. Unregulated Market Model

Perhaps the simplest and certainly the commonest proposal for vouchers is to provide every child with a flat grant or tax credit which his family could use to pay tuition at the school of its choice. The amount of the grant would be determined by legislators, but most advocates of the plan assume that the grant would be roughly equal to the present level of expenditure in the public schools. Most advocates also assume that public schools would continue to exist, and that they would charge tuition equal to the amount of the grant. This is the version of vouchers advocated by Milton Friedman and others.[1]

The effect of a free market on the level of taxation is unpredictable. The initial effect would be to raise the tax

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[1] See Milton Friedman, Capitalism and Freedom, N.Y. 1962. Chapter 6.

rate, since the taxpayers would have to pay for children now being educated at private expense. Nationally, this would increase the tax burden about ten percent, but the jump would be much sharper in some areas. This increase may, of course, take place whether or not a voucher system is established. If public money is not made available to Catholic schools, many of them are likely to close in the next few years. Their pupils will enroll in the public schools, pushing up public expenditures in precisely the same way that a voucher system would.

Since a voucher system would allow more parents to benefit from public expenditures for education, it probably would lead to broader political support for such expenditures. Under present arrangements, parents with children in private schools are seldom enthusiastic about higher taxes for support of public education. If their children were likely to benefit from such taxes, their attitude would perhaps change. This might push public expenditures up over the long run.

An unregulated voucher system would, however, set in motion other forces that might work against increased public expenditures. If affluent taxpayers took a consistent, long-run view of their self-interest, they would presumably try to keep the level of voucher payments low and finance their children's education from private supplementation. This would spare them the necessity of subsidizing the education of poor children. If affluent taxpayers all reacted in this way, the result would probably be a powerful political bloc dedicated to holding down the value of the vouchers.

Affluent taxpayers may, however, not take a consistent, long-run view of their interests. Instead, the primary conflict of interest at any given moment may be between those people who have or expect to have children in school, and those who do not. If a family however well off has several children in school, higher vouchers would almost always serve its immediate interest. Conversely, if a family has no children in school,

vouchers of a high value would never serve its interest, no matter what its income.

If the primary conflict of interest turned out to be between "parents" of all incomes and "non-parents" of all incomes, there could easily be more effective pressure to increase tax subsidies for education than at present. The number and character of the families that gained or lost from raising school taxes would remain much as at present, except that families who now have their children in private schools would acquire an interest in increasing rather than limiting public subsidies. But affluent parents with school-age children would have more interest in raising the level of public subsidies than at present. Today, the parent with a child in public school usually favors "better schools," but his interest in higher expenditures is often tempered by his doubts that higher spending is really going to benefit his children as much as educators claim. But if a parent had enrolled his child in a school that charged tuition in addition to the value of the basic voucher, he would view proposals for increasing the size of the voucher as a way of reducing his current out-of-pocket expenses. The reduction in his private spending would exceed the increase in his taxes so long as he had children in school. Direct help of this kind is likely to generate considerable enthusiasm.

All in all, the effect of an unregulated market on tax levels would probably depend on the relative importance to affluent parents of their long-term interest as tax-payers and their short-term interest as parents. This is hard to predict. Still, it is quite possible that the voucher would gradually lag further and further behind total expenditures per pupil.

The effect of an unregulated market on overall expenditures for education would depend mainly on its effect on tax support for education. An unregulated market would probably increase private contributions to the cost of education. While

some parents who now pay the full cost of private schooling would get partial or full subsidies, many parents who now get full subsidies would probably start supplementing their vouchers with private money. The increase in private expenditures could, however, easily be offset by a relative or absolute decline in public expenditures. Whether overall expenditure levels would increase or decrease is thus unclear.

A scheme of this kind would result in a reallocation of educational resources so that a smaller percentage went to the poor and a larger percentage to the well off. Families of varying income would all receive the same subsidy. This would increase slightly the share of public expenditures on education going to the poor, since current public expenditure patterns show a moderate bias in favor of schools with middle-class pupils. But this redistribution of public funds would be more than offset by the capacity of affluent families to pay substantial additional tuition. Admittedly, many schools would make an effort to provide scholarships for poor applicants, but it would be unreasonable to expect that any significant number of poor children would attend these expensive schools on scholarships. An applicant who can pay full tuition will almost certainly have a better chance of going to most private schools than an applicant who requires a subsidy.

An unregulated market would shift the decision about how much to spend on education from local school boards to families but only to affluent families, not poor ones. If large numbers of affluent families chose to spend more, an unregulated market would lead to increasing segregation along economic lines. Indeed, this is one reason many middle-class families favor voucher plans. They want to send their children to school with other middle-or upper-middle-class children, and they see vouchers as an easy and apparently legitimate way to do this.

Some have argued that resource reallocation is of limited importance so long as the basic voucher is high enough to provide an adequate educational program for everyone. This is a naive view of the educational process. First, as we have seen, an unregulated market offers no assurance that the basic voucher could be kept high; it might well tend to decline relative to the overall price of education. Second, even if the basic voucher remained high, the absolute level of expenditure in a school does not determine the resources it can command. Rather the critical question is often how the school's resources compare with its competitors' resources. Suppose, for example, that schools attended by poor children were to double their teachers' salaries over the next five years. Suppose that schools attended by middle-class children tripled their salaries over the same period. The quality of the teachers in schools attended by poor children would probably decline under these circumstances. It follows that the quality of education provided by a school does not depend simply on its per pupil expenditure, but also on how this expenditure compares with that in competing schools. In addition, if segregation increases, the relative cost of providing a given service to disadvantaged schools will increase, while in an advantaged school its relative cost will decline. We conclude, then, that no politically practical level of basic payments will assure quality education for the disadvantaged so long as other schools can spend more and can exclude the disadvantaged.

Within this context, an unregulated market could give upper-income families an almost unlimited range of potential program options. Low-income families would have a more restricted range of choices, since (a) they could not afford any program that cost more to operate than the value of their voucher, and (b) they could not generally hope to find a school where the majority of their child's classmates were from other than low-income families.

An unregulated market is likely to commend itself to middle-and upper-income families and to existing independent and parochial schools. It may also commend itself to certain low-income black groups who are interested in starting their own schools and cannot seriously believe that anything could be worse for their children than the existing public schools. The plan would be opposed by the public schools. Elimination of middle-class children from the public schools would make the lives of public school men even more difficult than at present. It might lead to a reduction in the public schools' financial resources and it could certainly lead to a reduction in the quality of teachers available in the public schools.

Our overall judgement is that an unregulated market would redistribute resources away from the poor and toward the rich, would increase economic segregation in the schools, and would exacerbate the problems of existing public schools without offering them any offsetting advantages. For these reasons we think it would be worse than the present system of public schools.

2. Unregulated Compensatory Model

In order to protect the poor against an unregulated marketplace, some advocates of vouchers have proposed making the value of vouchers higher for children from low-income families.

Theodore Sizer and Phillip Whitten have proposed one version of this plan.[2] Families with incomes below $2,000 would receive $1,500 vouchers. The value of the voucher would decline to zero as the family's income approached the national average. Families with incomes above the national average would receive no subsidy. Sizer and Whitten clearly do not envisage this plan as an alternative to the present system, but rather as a

[2] Sizer, Theodore, and Whitten, Phillip, "A Proposal for a Poor Children's Bill of Rights," Psychology Today, August, 1968.

supplement to it. They do not explain whether a child who stayed in an existing public school would bring that school the full value of his voucher, or whether he would only bring the difference between his voucher and what the public school was already receiving from other public sources for the student. Were publicly controlled schools to receive the voucher in addition to other public monies, it would be extraordinarily difficult for privately controlled schools to compete. We will therefore assume that the value of the voucher would be reduced by the amount of current tax subsidy to any given school, putting publicly and privately controlled schools on the same footing.

If this were done, the Sizer proposal would have the effect of giving the poor some opportunity to buy their way into privately controlled schools, just as the rich now do. It would not give the middle classes such an opportunity, since they would receive little or no subsidy and would not be able to pay $1,000 or $1,500 tuition from their own resources. A scheme of this kind would almost certainly be rejected out of hand by legislators.

To make the plan politically acceptable, it would be necessary to enable all parents to send their children to privately controlled schools if they chose. The simplest way of doing this while preserving the basic features of the Sizer proposal seems to be to establish a system rather like the one we proposed in Chapter 1. Each child would receive a basic voucher of $750, regardless of family income. Schools taking children from families with incomes below the national average would receive additional payments. Unlike the model proposed in Chapter 1, however, this model would allow schools to charge tuition in addition to the voucher, at whatever level they saw fit. Since few of the regulations on admissions policies proposed in Chapter 1 would be workable if students had to pay tuition, we will assume that privately controlled schools could

select their students in any way they wanted, while the public system would have to provide spaces for anyone the privately controlled schools did not accept.

In order to appraise the likely effects of the unregulated compensatory model, we must first estimate the likely effect of the system on the overall purchasing power of various income groups. Overall purchasing power will be the sum of the voucher provided by the EVA, (which would decline as income increased) and private tuition payments (which would tend to increase as income increased). As one moves up the income scale, the value of the voucher might decline faster, slower, or at the same rate that private contributions increased.

If education is sold on the open market, like housing or food, legislators are likely to take their usual attitude toward subsidizing the poor. Low-income families may be given somewhat larger vouchers than middle-income families, but the difference is unlikely to be as large as the difference in private purchasing power between low- and middle-income families. Food stamps, for example, help equalize the purchasing power of rich and poor in a grocery store, but not enough to ensure that the poor eat as well as the rich. The same pattern is repeated in housing, where the poor are sometimes given modest subsidies, but never enough to outbid the wealthy. So too in education, legislatures may provide poor parents with slightly larger vouchers than rich parents, but (as the legislation discussed in Chapter 4 illustrates) the difference is not likely to compensate the poor for their inability to spend private funds on education.

If legislatures behave as they have in the past, then, the "compensatory" features of this model would be of limited importance. Well-to-do families would be able to spend far more on their children's education than poor families. The effects of a compensatory free market model would therefore be similar to those of a completely unregulated market. There would be

differences in the degree to which the two models promoted segregation and the degree to which they widened the gap between rich and poor, but the basic pattern would be the same.

Suppose, however, that a legislative body chose to establish a compensatory voucher system which actually equalized the average purchasing power of families in different income groups. In order to do this, it would need empirical data on the willingness of families at various income levels to spend their own money for private tuition. The result of such studies would vary dramatically, according to what the family would actually buy for different prices, which would in turn depend on local market conditions at the time. Nonetheless, let us suppose that a formula were developed for predicting the average private contribution that a family with any given income will make from its own funds. Let us also suppose that a legislature fixed the value of the voucher so as to bring each income group's average purchasing power up to some specified level, say $1,000.

This would have a serious impact on the continued political acceptability of the plan. Suppose, for example, that families with $5,000 annual incomes were found to spend an average of $50 per child on tuition and therefore received vouchers worth $950 per child. Some of these families might be willing to spend as much as $100 of their own money to get their child into a better school, while other families might not be willing to spend anything. The overall difference in purchasing power between the most and least motivated parents in this bracket would still be only $100. This means that most schools which were open to one $5,000 family would also be open to the other. Now suppose the average contribution of a family with $15,000 is found to be $500 per child, entitling it to a $500 voucher. Under these circumstances some $15,000 families might be willing to spend only $250 per child of their own money, while others might be willing to spend another $1,000 per child. The net effect would be that the most motivated parents had $1,500 per child, while the least

motivated had $750. This would mean that some children of the well-to-do would not be in schools as expensive as their indigent neighbors, while others would be in more expensive schools.

This picture actually seems somewhat far-fetched, however. If legislation were designed to ensure that every family could end up with $1,000 per child by making "reasonable" effort, almost all schools would probably set their tuition at or near $1,000. Every family would then <u>have</u> to spend this much in order to get its children into a satisfactory school. Since the bulk of these payments would be coming from middle-income families, it seems reasonable to anticipate continuing pressure from these families for increases in the value of their vouchers. The effect over time would probably be to eliminate the differential between vouchers paid to middle- and lower-income families. Once again, then, what began as an unregulated compensatory plan would probably end up as a completely unregulated plan, in which almost all parents received roughly equal payments and were free to supplement them from their own funds. We have already analyzed the consequences of such a plan in the previous section.

3. Compulsory Private Scholarship Model

The Compulsory Scholarship model resembles the unregulated market in that schools would be allowed to charge whatever tuition they wished. But they would also be required to provide enough scholarships so that no applicant's family had to pay more than it could afford. Several well-endowed private schools follow this policy, as do a number of wealthy private colleges. The colleges calculate parents' ability to pay from formulae developed by the College Scholarship Service. They then guarantee every successful applicant enough financial aid from one source or another so that he can pay tuition, room, and board without getting any more help from home than required by the CSS formula.

If a scheme like this were adopted as public policy, legislative bodies would presumably establish formulae equivalent to those of the CSS. In theory, any public or private voucher school would apply these formulae to raise additional funds from its more affluent parents. If this money were allocated evenly to all sorts of pupils, the effect would be to "overcharge" the rich and "undercharge" the poor, relative to costs. There are, however, a number of practical difficulties which make it unlikely that the actual effects of this plan would differ appreciably from the effects of an unregulated market.

The basic problem is that all schools want to increase their incomes. If the basic voucher is fixed, and if the permissible level of tuition depends on a family's income, then the only way to increase the school's income is to admit richer students. If schools are required to admit a random sample of applicants, they will develop programs and recruitment policies which appeal mainly to applicants from appropriate economic backgrounds. If all else fails, schools may set higher academic standards for "scholarship" than for "non-scholarship" students <u>after</u> admission, encouraging mediocre students to withdraw if they are getting financial aid and to stay if they are not.

The foregoing analysis suggests that it is impractical to require voucher schools to subsidize needy applicants from their own funds. All schools feel they need more resources than they have. If they are allowed to charge tuition based on ability to pay, most schools will decide that they need a fairly affluent student body to provide these resources. And if that is what they want, most schools will be able to get it. The "compulsory" private scholarship model is thus likely to end up almost indistinguishable from a "voluntary" private scholarship model, i.e., the unregulated market.

4. The Effort Voucher

While it seems to be impractical to force schools to subsidize needy students from their own receipts, it might be possible to establish a system in which the EVA did so. At first glance the simplest way to do this is for each family to pay what it can afford, based on some official formula, and for the EVA to pay the rest. The difficulty with this is that if a family's liability for tuition depends exclusively on its income and not at all on what the school spends, the market no longer puts any check on school expenditures. Schools will raise tuition higher and higher in an effort to improve their programs, but parents will pay a fixed amount of tuition based on their income. The rising cost of education will therefore be absorbed entirely from the public treasury. At this point legislators will almost certainly intervene and put upper limits on what tuition a school can charge.

The most practical approach to this problem is probably the one outlined by John Coons and his associates.[3] The Coons' model gives every school a choice between four different levels of expenditure, ranging from roughly the present public school level to 2-3 times that level. Schools at the lowest level would be almost completely subsidized by the state, although at each level parents are expected to pay at least a token charge. The size of their contribution would depend both on the family's ability to pay and on the cost of the school the family chose. The government would contribute the difference between what a family paid and what the school spent per pupil.

Coons assumes that the charges for attending expensive schools, while only covering part of these schools' extra costs,

[3] Coons, John. Clune, William; and Sugarman, Steven; Private Wealth and Public Education, Harvard University Press, May 1970. Coons and his associates have developed a model statute for California.

would keep the overall tax burden under control by keeping the number of applicants moderate. Affluent families would be charged more for attending expensive schools than these schools actually cost. If, for example, schools were allowed to spend no more than $1,500, some families might nonetheless pay $2,000 or more to send their children there. The model could, however, also limit costs for affluent families to the level of expenditure in the school of their choice. Such a maximum might make the model more politically acceptable.

Coons' model seeks to allocate educational resources on the basis of parental "willingness" to pay rather than "ability" to pay. Ideally, then, schools operating at any given expenditure level would attract an economically representative student body. Schools demanding different levels of economic sacrifice would, however, attract students from very different cultural backgrounds. Schools which demanded economic sacrifices for education would attract families in which the parents were better educated than the norm for their income group, more likely to hold regular jobs, and more likely to be doing non-manual work. The values and atmosphere of these children's homes would usually support the values and atmosphere of the school, and the children would mostly be diligent, disciplined, and easy to teach. Schools which demanded lighter economic sacrifices and provided a lower level of resources would attract the opposite sorts of families.

Evaluating this proposal in terms of the criteria outlined at the beginning of this chapter, we conclude that:

-- The model's impact on the tax rate is problematic. The average tax subsidy per pupil would probably rise, but this would depend on the formulae adopted to ensure "equality of sacrifice." The model is designed to increase overall education expenditures, and it would probably succeed.

-- The model would redistribute resources away from children whose parents had relatively little interest in education and toward children whose parents had an intense interest in education. The effect of this would be to accentuate the advantage already enjoyed by children whose parents are willing to make sacrifices in the children's behalf, and to accentuate the disadvantage of children whose parents are not willing to make such sacrifices.

Whether the model would redistribute resources between rich and poor families would depend on the precise formula adopted. Coons argues that a formula could be developed which made the cost of attending a high-expenditure school so great that many upper-income families would not take this option. He believes, indeed, that the correlation between school expenditures and family income could be kept at zero. If so, this would thus represent a modest improvement over the status quo.

-- The model would allow parents considerable latitude in determining how much they wanted spent on their children's education. In this respect it is superior both to the present system for financing public education and to the other voucher models discussed in this chapter.

-- The model might well reduce the amount of segregation by race and income. It would presumably increase the amount of segregation by ability and behavior patterns. It would thus give some parents more choice about the race and socio-economic background of their children's classmates. It would ration the supply of able, well-behaved classmates by charging families more if they sent their children to schools with "advantaged" student bodies. This charge would, however, supposedly be related to ability to pay.

-- The model would allow parents a wide variety of program options, including options of varying cost.

-- The model would almost certainly be unpopular with publicly controlled schools. This is because publicly controlled schools would still be politically constrained to operate at the lowest expenditure level allowed in the model. The public schools would thus find themselves both with the children whose parents were least willing to make sacrifices for education and with the least adequate resources.

Overall, our conclusion is that while the effort voucher would lead to a substantial increase in parental choice, it would also lead to a much greater spread between the "best" and the "worst" schools than exists within most public school systems today. This would exacerbate inequalities in the outcomes of schooling, insofar as these outcomes are at all influenced by the quality of schools. Politically, the model may be attractive because it would give interested parents a better chance of getting what they want. Children with uninterested parents, on the other hand, would be much worse off than today, first because they would go to schools with less resources, and second because they would have more disadvantaged classmates. While a system like this might be popular in the short run, its long-term effect on the next generation seems to us undesirable.

5. "Egalitarian" Model

What we have called the "Egalitarian" approach to vouchers would provide vouchers of equal value to all children and would prohibit any school which cashed the vouchers from charging tuition beyond the value of the voucher. It seems reasonable to assume that the value of vouchers would resemble the present and projected levels of per pupil expenditure in public schools.

Both publicly and privately managed schools would, of course, be able to solicit money for special programs from federal and state agencies and from foundations. Privately managed schools might also be able to obtain money from their church if they were affiliated with one, from rich alumni if they had any, and from rich parents of children in the school if there were any.[4] Both publicly and privately controlled schools could, of course, also obtain the additional funds by working together to persuade legislators to increase the value of the vouchers.

An Egalitarian voucher would tend to equalize the allocation of educational expenditures among children from different income groups. It might not eliminate disparities between districts, but it would equalize expenditures within districts. Since most studies of resource allocations within districts indicate that rich children get slightly more than their share of the money, while poor children get slightly less, the Egalitarian model would produce a small improvement over the status quo in this respect.

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[4]The possibility of obtaining contributions from rich parents and alumni would presumably make schools somewhat more favorable to applications from such pupils than to applications from the less affluent. So long as contributions remained voluntary, however, the experience of existing private schools and colleges suggests that wealth would have a significant effect on admissions policy only when the size of the anticipated contribution was very large. Existing private schools and colleges do not appear to be influenced by the fact that Parent A could be expected to contribute $200 to the building fund whereas Parent B can not be expected to contribute more than $20. They do appear to be influenced by the fact that Parent C can be expected to contribute $20,000 to the building fund whereas Parents A and B can only be expected to contribute $200 and $20 respectively. The number of parents sufficiently rich to influence admissions decisions through potential capital contributions is small. We doubt that any politically practicable system can be devised for offsetting the advantage of being born with such parents. The bureaucratic machinery and regulations needed to eliminate this injustice would almost certainly cause more problems that it would solve.

It does not follow, however, that the Egalitarian voucher would actually equalize the allocation of educational resources, as distinct from educational expenditures. There is considerable evidence that it costs more to provide a given resource to a poor child than to a middle-class child. Teachers, for example, often prefer to teach middle-class children, and many will accept a job with such children at a lower salary than they would accept if they were going to have to teach lower-class children. Similarly, physical resources seem to last longer in middle-class than lower-class schools. This means that equal expenditures do not ensure equal resources; on the contrary, equal expenditures probably ensure unequal resources.

The Egalitarian voucher would not change the locus of control over educational expenditures. The basic level of expenditure would still be determined by a combination of federal, state, and local legislators. Individual parents and small voluntary groupings of parents would still have relatively little influence on expenditure levels.

The effect of an Egalitarian voucher on parental ability to choose a school with a desirable mix of pupils would depend on the extent to which schools were allowed to exercise discretion in selecting among applications. If schools received exactly the same amount of money per pupil, they would in most instances want to recruit and admit those pupils who cost least to educate. School administrators also know they can get better teachers and make their resources stretch further if they can recruit talented, well-behaved students than if they cannot. A school administrator's most rational strategy, given limited fiscal resources, would therefore be to make his school as exclusive as possible. Exclusion would, however, tend to be based more on the characteristics of students and less on the characteristics of parents than in the models discussed up to this point.

Were this to happen, parents with talented and well-behaved children would clearly have more choice than they now do about the mix of pupils to whom their children would be exposed. Parents with children who have trouble in school would have relatively little choice, since they would be excluded from over-applied schools, both public and private. This would be less sure if strict regulations were put on discriminatory admissions policies, but even then the pattern would persist to some extent. Parents with talented, well-behaved children are not, however, always advantaged economically. It is not easy to tell whether a system that promoted segregation along academic and behavioral lines would give low-income families more or less choice than the present system of neighborhood assignments.

Within the limitations imposed by equalization of per pupil expenditure, the Egalitarian voucher would shift the locus of control over school programs away from the local board of education to a combination of parents and semi-public schools. It seems clear, for example, that an Egalitarian voucher would encourage the survival and growth of Catholic schools. It would also encourage the growth of all-white schools unless administrative and constitutional prohibitions against discriminatory admission policies were energetically enforced.

It is important to emphasize, however, that an Egalitarian voucher scheme would <u>not</u> provide unlimited program options, because it would not provide enough money to do what many parents and educators think necessary. Existing independent, non-parochial schools almost all spend more money per pupil than do the public schools. Since most of these schools have no significant source of revenue other than tuition, accepting all voucher students would mean cutting their expenditures to about the same level as the public schools. Such a cut would mean abandoning what most independent schbols regard as their most important asset, namely

their high ratio of staff to students.[5] Most independent schools would probably accept only a limited number of voucher students. (If, as we propose in Chapter 3, cashing vouchers was contingent on a non-discriminatory admissions policy, most independent schools would probably decline to take any voucher students.)

While the refusal of independent schools to accept vouchers is not in itself a problem, it does suggest that the Egalitarian voucher fails to satisfy the interests of one group of parents who are now acutely unhappy with the public schools. These are parents whose fundamental complaint is that spending on public education is too low. Such parents complain that public school facilities are inadequate, that classes are too large, and that children receive insufficient personal attention in the public schools. There is no way to solve these problems without spending more money, and an Egalitarian voucher does not offer parents this option. Such parents' only recourse under an Egalitarian voucher scheme would be the same as at present: enroll in a private school at one's own expense, or move to a district which supports education more generously.

If we assume that relatively few independent schools would choose to become voucher schools under an Egalitarian voucher scheme, we must ask whether any appreciable number of new voucher schools would be established. The answer to this question is not obvious. We suspect that most of the upper-middle class parents who patronize existing independent schools want a brand of

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[5] Independent schools almost all have smaller classes and hence spend more money per pupil for teachers' salaries than do the public schools. Teachers' salaries in private schools are generally lower than in public schools, because many teachers are willing to take lower salaries in return for smaller classes and other advantages. The expenditure per pupil on teachers' salaries nonetheless usually exceeds public school expenditure.

education which requires substantially more resources than the electorate is willing to vote for public education. Such parents would probably not be much interested in creating voucher schools that had to stay within the budget limitations established by taxpayers.

But not all dissatisfied parents are preoccupied with the level of resources available for their children. Some are dissatisfied with the way in which these resources are used. Many black parents seem to fall into this category, in that their primary demand is for schools they can call "ours" rather than "theirs." A number of business firms have also shown interest in trying to operate schools at roughly the same cost as the public schools. Some claim that innovative staffing and instructional patterns could achieve considerably more at about the same cost as the present public system. There is no way to determine whether this claim is really accurate except by letting them try.

If an Egalitarian voucher appealed mainly to Catholics interested in parochial schools and blacks interested in black-controlled schools, it would probably not have a major disruptive effect on the existing public schools. Nor would it necessarily arouse intense political opposition from school boards and school administrators. If public school men were assured that privately managed schools would (a) have to operate on more or less the same budget as the public schools, and (b) have to take their share of "hard to educate" children, they might well expect to hold their own in competition with these schools. Public school systems in cities with large black populations might reasonably anticipate the departure of substantial numbers of black children to privately managed schools, but if this exodus reduced the political turmoil now engulfing public education, many public school men might think it a net gain. Public school opposition to vouchers usually derives from fear of a massive exodus of the middle-class students. An Egalitarian voucher scheme would probably not have this effect.

Taking all these observations together, we reach the following conclusions:

-- The Egalitarian model would produce less segregation by race, income, and ability than any of the unregulated models. But unless stringent restrictions were placed on the right of over-applied schools to select their own students, the Egalitarian model would still produce more segregation by ability than most existing public school systems.

-- The Egalitarian model would result in a much more equitable allocation of educational resources between rich and poor than the unregulated models. But because it would probably increase segregation by ability, the Egalitarian model would also increase cost differentials for many resources. As a result, it might produce a less equitable distribution of actual resources between rich and poor children than the present system, and it would almost certainly produce a less equitable allocation of resources between quick and slow learners.

-- The Egalitarian model would do less than the unregulated models for parents who dislike the existing public school system because the public schools devote inadequate resources to their children. On the other hand, the Egalitarian model would provide more satisfaction than the present system to those parents whose complaints have to do with the way schools are run rather than the resources at their command.

6. Achievement Model

All of the foregoing models assume that the value of a voucher is determined by the characteristics of the family or the child receiving it. There is another possible approach, however, under which the value of a voucher is determined not by how much the school "needs" to educate the child, nor by how much the parents "want to spend" on the child, but by whether the

school actually succeeds in teaching the child what the state (or the parent) wants taught. This approach, traditionally known as "payment for results," has recently been revived by a number of business firms. Such firms have sought (and in several cases received) contracts with school boards. Under these contracts the firm teaches specified subjects to certain children and is paid more the more the children "learn" at least as measured on achievement tests.

The basic assumption behind this model is that society can measure the effects of schooling and that we should therefore reward schools which produce good effects while penalizing schools which produce bad effects. We do not accept this assumption. We do not believe that it is possible to measure the most important effects of schooling, and we do not believe it is desirable to reward schools for producing relatively unimportant effects.

The only reliable measures of elementary schools' effects are standardized cognitive tests. These measure such things as vocabulary, reading comprehension, arithmetic skills, and so forth.

Attitude measures are not generally thought to be very reliable at this age level and their validity for predicting subsequent behavior is almost completely unknown. The question, then, is whether elementary schools should be rewarded for producing high test scores. The answer to this depends first on the intrinsic importance of test scores, and second on the effect of such a reward system on the overall character of schools.

We know very little about the importance of elementary school children's test scores to their later lives. Test scores predict subsequent grades in school with moderate accuracy, but that is hardly a basis for taking them seriously. A child's scores also predict the number of years of school he is likely to complete with considerable accuracy. His scores predict his

subsequent occupational success rather poorly, though the relationship is still significant, at least for whites.

The difficulty is that test scores measure both a general aptitude factor that is unaffected by schooling and specific skills that are subject to school influence. One cannot tell from available data whether the general aptitude factor or the specific skills lead to later success. Thus we cannot tell whether a school that boosts a child's test scores is appreciably improving his life chances. This kind of research could be carried out, but it is far from obvious what it would show. In general, even if we were to assume that schools which boost test scores also boost life chances, the available data show such a weak relationship between test scores and adult success that it would be foolish to make boosting scores the primary goal of schooling.[6]

Our skepticism about test scores is reinforced by repeated findings that the correlation between years of schooling completed and later success is much higher than the correlation between test scores and later success. Employers, in other words, pay more and give more important work to people with low scores and a lot of schooling than to people with high scores but little schooling. People who have spent a long time in school appear to have values, habits, and attitudes which make them more useful to the average employer than dropouts, even if the dropouts are good readers, verbalizers, counters, and so forth. The available data do not tell us whether people actually learn these habits, values, and attitudes in school, or whether schools simply retain people who already have them while screening out people who lack them. One thing is clear, however. The

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[6]For an analysis of the best available data, see Otis Dudley Duncan, "Ability and Achievement," Eugenics Quarterly, March 1968.

difference between the educated and the uneducated is not primarily a matter of test scores, at least as far as employers are concerned. This being so, it seems foolish to encourage schools to act as if test scores were their most important output.

Some advocates of payment for results accept the view that test scores are not very important in themselves, but argue that a school which maximizes test scores is also likely to develop other characteristics that will give students more control over their lives. This argument may be correct, but we have seen no evidence for it. We have already seen that the individuals who do well on tests are not especially likely to be the individuals who do well in later life. We can therefore see no reason for assuming that schools which produce high test scores will be the same as schools which produce high incomes, happy parents, concerned citizens, or whatever else a school ought to produce.

One final difficulty deserves attention. We know very little about the non-school influences that affect students' test performance. Socio-economic status and race are known to be important, but a precise measure of their importance is not available. Yet if schools are to be paid on the basis of how much they boost students' test scores, some system must be devised for ensuring that this does not induce schools to take white, middle-class children whose test scores are likely to rise rapidly, and to reject black, lower-class children whose test scores are likely to rise more slowly. There is no theoretical obstacle to developing equations which predict individual achievement on the basis of diverse non-school factors. We could then reward schools when their students exceeded the predicted level, and penalize them when their students fell below the predicted level. But this would be extremely difficult to do politically.

Our overall conclusion, then, is that we need far more research on the validity of test scores as measures of school output before we initiate a program which encourages all schools to place more emphasis on such scores and less emphasis on other outputs of schooling that both parents and educators have traditionally thought important. This does not, of course,mean that no school should be encouraged to establish contractual arrangements in which payments were proportional to gains on standard tests. But this would be a matter of choice, not a district-wide requirement.

7. Regulated Compensatory Model

The Regulated Compensatory Model resembles the Egalitarian Model in that every child would receive a voucher roughly equal to the cost of the public schools of his area. No voucher school would be allowed to charge tuition beyond the value of the voucher. If schools wanted to increase their expenditure per pupil beyond the level of the vouchers, they could seek subventions from churches or from federal agencies and foundations for special purposes. They could also increase their incomes by enrolling additional children who were in some way disadvantaged. The extra costs of educating these children would be defrayed by the EVA. The EVA would pay every school a special "supplementary education fee" for every child with special educational problems.

The most difficult question about the Regulated Compensatory Model is how to decide which children have special problems. Some cases are obvious, such as the physically handicapped. But no family wants its child officially labelled a "behavior problem" or a "slow learner," even if this means that the child's school gets more money to spend on his education. We have considered several solutions, none of which is entirely satisfactory.

The first possibility would be to approach the problem directly. An over-applied school is likely to discriminate against applicants whom it expects to have trouble -- and hence to cause trouble -- in the school. In most cases this means that the school expects the child to be a slow learner; in some cases it means the school expects misbehavior. The most direct way to help slow learners would be for the agency administering the vouchers to give every child a standardized test (e.g. Metropolitan Readiness) before he entered first grade. The agency would not reveal the child's score on this test to the child, his parents, or the schools to which the child applied. His score would simply be placed in his file. A formula would then be adopted for adjusting the value of each child's voucher according to his test score. Vouchers might, for example, start at $750 for children who scored at or above the national average. They might rise to $1500 for children at the very bottom of the scale. But nobody would know the value of any specific child's voucher. When a school turned in its vouchers, the administrative agency would compute their total value and send the school a check. It would not tell the school which of its students were "worth" more and which were "worth" less. (A school could, of course, institute its own testing program if it wanted to do so, and this would give it a rough idea how much any given child was bringing in.)

It is important to emphasize that while the amount of money available to specific schools would depend on the initial ability of their pupils, the amount of money the school spent on any particular pupil would not necessarily depend on his ability. The school could, for example, use its extra resources to provide <u>every</u> child with small classes. This might encourage parents with able children to enroll them in these same schools. Such students could, in turn, both ease the school's problems in attracting staff and serve as directly useful resources to less adept classmates.

The principal difficulty with this scheme is that mental tests are understandably unpopular with many parents. Minority groups are particularly likely to reject their use. Whether such objections would be muted by the fact that the testing program resulted in spending more money on minority children is uncertain.

If direct testing of pupils were impractical or politically unacceptable, the next best alternative would probably be to collect socio-economic data from families with children in each school. Families might, for example, be required to state their taxable income for the previous year when turning in their vouchers. If this were a sworn statement and was supposed to correspond with figures submitted to IRS, cheating would probably not be a major problem. The agency administering the voucher scheme could then make additional payments for each low-income child.

The difficulty with this scheme is that children from low-income families are not necessarily hard-to-educate children. The correlation between income and scores on the Metropolitan Readiness Test, for example, seldom exceeds 0.4 and is considerably less in many populations. If a school had a large number of applicants among whom it could pick and choose, it could quite easily choose a first grade whose average score on most standard tests was quite high, even though its median family income was low. This possibility would be only slightly reduced if statistics were also collected on parental occupations and education.

The best way around this problem would be to insist that schools admit applicants randomly. This would not, of course, rule out selective recruitment and publicity. But schools whose location, program, or publicity attracted large numbers of poor applicants would almost certainly also attract large numbers of low-IQ applicants. Thus a combination of non-discriminatory

admissions and incentives for enrolling low-income pupils might achieve the same result as direct incentives for enrolling low-IQ pupils.

Another version of the Compensatory Model might be more acceptable to those who take a strict view of the First Amendment "establishment of religion" clause. This version would inflate the value of each child's voucher if he came from a low-income family. The difficulty with this approach is that it might be harder to sell politically than a system which paid bonuses to schools for enrolling these same children. Suppose, for example, that family income were deemed the only practical way of discriminating between the advantaged and the disadvantaged. Many middle-income families would probably object to having their vouchers worth less than vouchers assigned to indigent neighbors. They would rightly cite innumerable cases in which their indigent neighbors' children were no more difficult to educate than their own, and would argue that they were being discriminated against simply because they worked harder and earned more. If, on the other hand, the bonus was paid to the school rather than to the individual, and if schools were not allowed to discriminate on the basis of ability, many of these inequities might even out. Barring deliberate selection, schools with low median incomes will almost always have a harder overall job than schools with high median incomes. This is fairly easy to demonstrate to any interested parent -- though demonstrating it obviously does not ensure that parents will accept the principle that the schools with the toughest problems should get the most money.

If the EVA wanted to place primary emphasis on economic sanctions and incentives and did not want to regulate admissions procedures at all closely, another version of the Regulated Compensatory Model might be appropriate. If admissions procedures were left unregulated, privately-managed schools would have a considerable advantage over their public competitors in attracting

middle-class parents, because they would be freer to exclude students whom they judged undesirable for some reason. In order to offset this advantage, it might be desirable to charge middle-class parents for attending a privately-managed voucher school. Charges would be based on an official formula which determined ability to pay, but could not exceed the basic voucher (e.g., $750). Parents who sent their children to a publicly managed voucher school would be admitted free, no matter what their income. Children from families with below-average incomes would be admitted free to either publicly or privately managed voucher schools. The net effect would be to penalize affluent families for leaving the public system, but not to penalize others. This seems appropriate if other regulations place the publicly managed system at a competitive disadvantage. It would not be appropriate if publicly and privately managed schools were all on the same competitive footing, as we have urged.

In the short run, a compensatory scheme of this kind would substantially increase both the tax burden and the overall level of expenditure on education, since it would involve spending more money on the disadvantaged and could hardly involve spending less money on the advantaged. In the long run, on the other hand, it might have the opposite effect, since it might reduce the interest of advantaged parents in increasing expenditures for education.

Such a scheme would also lead to an increase in the percentage of educational resources going to the poor. If, as seems likely, it also led to a greater measure of socio-economic integration than the present system, a Regulated Compensatory Model would presumably result not only in redistributing expenditures but also in redistributing resources.

The Regulated Compensatory Model would give schools considerable latitude in determining their own expenditure levels. It would also give parents considerable choice about the expenditure level of the school in which they enrolled their children. In both cases, however, the price of choosing high expenditures would be dealing with large numbers of disadvantaged children.

A scheme of this kind would also be likely to produce more racially, economically, and academically mixed schools than the present system, giving more parents a choice as to the kinds of classmates they wanted their children to have. But again, the price of choosing more advantaged classmates would be that the school had less adequate economic resources.

This is not to say that integration is likely to be complete. We doubt, for example, that any politically feasible system of economic incentives could induce over-applied schools, public or private, to enroll their share of the children with severe behavior problems or severe mental retardation. Economic incentives might, on the other hand, persuade over-applied schools to accept children whose only fault was an IQ of 95 or an unusually large repertory of four-letter words. We expect, in other words, that economic incentives could reduce or perhaps even eliminate discrimination against pupils who belong to the "middle majority." Since incentives will not suffice for dealing with extreme cases, special schools, which might be either publicly or privately managed, would still have to take responsibility for most of these children.

Finally, the Regulated Compensatory Model would provide parents of all kinds with a fairly wide range of program alternatives. The only real option that would be excluded is the school which combines unusually affluent children with unusually ample resources. While this is doubtless the option many people really want, it is not an option that can possibly be available to most people under <u>any</u> system. Furthermore, a system that makes such

schools available to a privileged few cannot hope to attain the other goals which we think important.

The basic difficulty with the Regulated Compensatory Model, of course, is political, but even this difficulty may not be as serious as it looks. Its principal political virtue is that it might well be attractive to the public schools. This could be especially true in cities where large numbers of parents have already deserted the public schools for independent or parochial alternatives. The Regulated Compensatory Model would offer all voucher schools substantial additional funds for undertaking to educate the most disadvantaged segments of the population. Instead of exacerbating the flight of the middle classes, a model of this kind might help the public schools finance a program that would hold such parents.

A Regulated Compensatory Model might not be as attractive as the Egalitarian Model to most parochial schools, since they seldom enroll many really difficult children. Nonetheless, the compensatory model would give the parochial schools substantially more public money than they are getting now. It would also give them more than they would get under most proposed "purchase of services" schemes. The only important reason for them to oppose it would be if it imposed unacceptable restrictions on their admissions procedures.

The major opponents of the Regulated Compensatory Model are likely to be middle-class parents who would like to be able to take their children out of the public schools, get a voucher of a certain value, and then be able to use their own money to make the child's new school more affluent than the public system. In the long run, such parents could be a potent political force.

EDUCATION VOUCHERS

Education vouchers, in their simplest form, would provide support to parents which they could use to purchase schooling for their children. Instead of public education funds being given directly to school boards or schools, the funds would be divided into a fair share for every school child. Parents would receive a voucher which would enable them to pay for their child's education at the school of their choice -- be it public or private. A local voucher agency would cash the vouchers which parents signed over to the particular schools.

Three important ground rules are added to our version of the basic voucher system:

1) No school should be able to charge parents tuition in addition to the voucher amount. This would prevent discrimination against the children of poor families who could not afford such extra tuition charges.
2) In order to give all students an unbiased chance for admission to schools of their choice, participating schools with more places than applicants would enroll all applicants. Schools with more applicants than places would accept a portion of their students, say half, by their own criteria and the other half randomly.
3) All participating schools should provide parents with enough information (e.g., class size, facilities provided, etc.) to enable parents to make an informed choice among schools for their children.

Extra money should be given to schools which enroll poor children.

This "bonus" could be modeled on the present Title I program. This is intended to provide an incentive to schools which enroll large numbers of poor children.

Racial discrimination would be forbidden in voucher schools. Vouchers could be used at parochial schools without violating the church state provisions of the United States Constitution because (1) parents not the government would choose where to spend the voucher funds or (2) voucher funds could be limited to secular education expenses.

The Office of Economic Opportunity is considering funding a five year demonstration project of education vouchers in some urban area. Exact details of a plan for local implementation must be worked out at the local level and with OEO.

Conclusions

In weighing the seven alternatives outlined above, four general conclusions stand out:

-- The effects of various models on the tax rate and on the overall level of educational expenditure are uncertain without detailed estimates of the schedule of payments for different categories of schools and children, and detailed projections of likely parental choices among the alternatives available under each scheme.

-- While most of the proposed schemes appear at first glance to give the poor a larger share of total educational resources than the present system, this appearance is often deceptive. While the more adequately regulated models would lead to more equal expenditures, most would also lead to more segregation by ability and/or income. A scheme which leads to more segregation will raise the relative price of most resources for disadvantaged children. Such relative price increases would probably offset the effect of equalizing expenditures. Only the Regulated Compensatory Models seem likely to give the poor a larger share of the nation's educational resources.

-- Any system which gives schools discretion in choosing among applicants will inevitably reduce the range of choices open to parents whose children are deemed "undesirable" by most educators. Lotteries and quota systems might partly offset the effect of educators' preferences for certain kinds of children. But some system of economic incentives is also needed to ensure that schools give disadvantaged students a reasonable chance of getting into the school of their choice.

-- The fundamental political and pedagogic danger posed by most voucher plans is that a few publicly managed schools would become dumping grounds for the students whom over-applied schools, both public and private, did not want. The over-applied schools would become privileged sanctuaries for students whom educators enjoy teaching. In order to avoid this danger, a voucher system must provide economic incentives for enrolling "undesirable" children.

The seven models analyzed in this chapter by no means exhaust the full range of possibilities. Neither have we examined all the possible consequences of each model, especially given the variety of possible assumptions about admissions regulations to accompany each economic model. We hope to cover these issues more fully in our final report.[7]

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[7] Three alternatives at least deserve brief mention:
(a) The "California" Model. This model makes eligibility for a voucher conditional on the local public school's having mean reading scores substantially below the national average.
(b) The "Escalator" Voucher. This model makes the overall level of tax support for the EVA contingent on the overall level of private expenditures for tuition, by guaranteeing a fixed ratio between the two.
(c) "Incentives for Integration." This model makes the value of a school's voucher partially contingent on how close its student body comes to some "optimal" racial, economic, or academic mix.

3. Matching Pupils to Schools

Proponents of vouchers have not given much attention to procedures for matching pupils to schools. This is unfortunate, since the problem is in many ways more complex and potentially controversial than the creation of economic ground rules for a voucher system.

The matching of pupils to schools has three discrete stages: "application," "admission," and "transfer." In the "application" stage, voucher schools seek applicants, and applicants appraise schools. Schools may recruit actively, or they may rely on such passive means as word of mouth, newspaper coverage of their activities, or the appearance of their buildings. Schools may also recruit selectively, aiming to attract unusually well behaved children, black children, white children, or children with certain talents. The danger at this stage is that many families may fail to obtain the information they need to make reasonable choices. The more sophisticated will find out about the "best" schools and apply to them even if they are not near their homes. But most disadvantaged families may well end up "choosing" the school nearest them unless there is some machinery for informing them that other schools are available that might serve their children better.

When applications close, some schools will have more applicants than they have places, while others have more places than applicants. We will call the first schools "overapplied" and the second "underapplied". At this point we enter the "admission" stage. Overapplied schools must accept some pupils

and reject others. Unless some regulatory system prevents it, these schools will accept the children they regard as "desirable" and reject those they regard as "undesirable." We will call this "selective" admission in that it will inevitably discriminate against some categories of applicants and in favor of other categories. Children who are rejected by their family's first choice school must go to their second, third,or fourth choice. (We assume that under any voucher system a local board of education would continue to exist, and that it would continue to ensure that there were enough places in its district for every child who did not want to attend a privately managed school.)

After school opens, the matching process enters the "transfer" stage. Schools will find that they would like to get rid of certain children. They ask these children to withdraw -- usually at the end of the year but sometimes more precipitously. Some parents will also find that their child's school is not what they had hoped. They may withdraw their child, either at the end of the year or before. In some cases these children will be able to get into another school. In other cases they will have great difficulty. The rules governing both suspension and expulsions therefore require careful attention if every child is to be given an education.

One of the great unanswered questions about the voucher system is whether the overall problem of matching pupils with schools will be large or small. To some extent a voucher system contains a mechanism within itself for dealing with surplus applicants. If a given type of school has excess applicants, other similar schools can spring up to serve these applicants. On the other hand, a look at existing private schools makes it clear that competition of this kind cannot be expected to do the whole job.

Some private schools have more applicants than places despite the fact that there are hundreds of competing institutions.

Sometimes this is because they have large endowments and provide services other schools cannot match. But applicant surpluses could not be entirely eliminated by a redistribution of educational resources. Certain private schools would still have the same appeal as an exclusive club. Many parents want their children to attend these schools simply because they are difficult to get into. The family knows that if its children do get in, they will have more carefully selected classmates than at most other schools. They also know that because the school is hard to get into, it has a prestigious diploma. This will be true to some extent of any overapplied voucher school, public or private.

The three stages of matching will be discussed in detail in the succeeding sections.

Application

A voucher program depends on parents' intelligently choosing the right school for their child. Therefore, two things must be provided as part of any voucher program.

-- Parents must be informed of all the available alternatives.

-- Parents must be able to obtain accurate, relevant, and comprehensible information about the advantages and disadvantages of each alternative.

Experience with other "free market" situations suggests that these developments will not take place spontaneously. Unregulated markets seldom ensure that consumers are aware of every available product, and they almost never provide consumers with sufficient information to evaluate these products. Low-income families are particularly unlikely to be informed of the full range of choices open to them, and thus are particularly susceptible to misleading and irrelevant claims.

Voucher schools are likely to recruit selectively if they can, and this may have more impact on the eventual mix of students than either a school's admissions policy or its expulsion/withdrawal policy. Some may make information about themselves available in a selective manner, e.g., by advertising in a newspaper which has predominantly middle-class readership. Others will make claims designed to appeal to a particular clientele; e.g., "The curriculum emphasizes Afro-Americans' culture." Some will simply encourage certain parents when they bring their child to the school, while discouraging others. A school can easily make an "undesirable" parent feel unwanted at this stage without violating any enforceable law or regulation. Similarly, it can give potential applicants an IQ test. It can then tell parents whose children do poorly that the child would probably have trouble doing the work, and that he would really be happier in some other school.

No system can eliminate these practices entirely or avoid all their undesirable consequences. Some system of public regulation can, however, help. It seems reasonable to assume that no two local EVA's will establish precisely the same regulatory machinery or guidelines. Nonetheless, certain general problems will exist in every jurisdiction, and it is therefore appropriate to suggest some possible mechanisms for solving them. Ideally, each EVA should:

1. Ensure that every family is informed of the range of alternatives open to it before applications close for any school.

2. Ensure that "objective" information is collected about each school which will answer parents' questions as well as they can be answered.

3. Ensure that this information is available to parents both in a clear, comprehensible printed form and through face-to-face contact with counselors who can explain

the printed information to those who do not understand it.

4. Ensure that misleading advertising claims are controlled and that "objective" information provided to parents is correct.

5. Investigate claims of fraud, discrimination, and deception, and take appropriate remedial act' . where these claims are verified.

1. Making Parents Aware of Their Choices

If schools advertise and recruit selectively, many parents will be unaware of the choices open to them. The EVA must therefore provide some way of ensuring that parents know how the voucher system operates, and that they know about all the different schools.

Because the EVA will have to establish some procedure for distributing vouchers, it seems logical to distribute information at the same time. This would ensure that any parent who had a voucher had also received information about what he could do with it.

There are at least three possible ways of distributing both vouchers and information: through the mails, through the schools, and through EVA offices. (If the EVA were responsible for a large district, it might be desirable to establish a number of neighborhood offices.) Individual communities would doubtless prefer different procedures. Distribution through EVA offices seems generally preferable, however.

Suppose each parent had to visit an EVA office in order to receive a voucher. The EVA could then ensure that parents not only receive information about all available schools but also that it be explained to them. Voucher "counselors" could

explain the written information the EVA provided on schools, and answer any questions. EVA personnel would probably be more objective than school personnel, since they would have no personal interest in either recruiting children for a particular school or discouraging them from applying to it.

The problem with this approach is getting parents to the voucher office. At present, a parent usually calls or visits a school to enroll his child. Under a voucher system, schools would refer such parents to the EVA so that they could obtain a voucher. One problem with this approach is that parents often wait until the first day of school to enroll their children. A voucher system requires earlier applications and decisions, so that schools can make plans before September.

Each local EVA will therefore have to inform the parents of all children of the requirement that they visit a voucher office and apply to a school sometime in the spring before the child is to enter. A general mailing is an obvious device. In some communities this would have to be supplemented by some form of personal contact. Some local authorities would undoubtedly adopt other procedures. No matter what procedures are adopted, though, some children will show up for school in the fall who did not apply the previous spring. These may be children who have moved into the district during the summer, or children whose parents were somehow missed in the dissemination of voucher information. This problem will vary in magnitude and will presumably diminish as parents become familiar with the system. Still, the problem will never disappear entirely. It will, moreover, often be especially serious among disadvantaged families.

Late enrollees must also have some choice about where they attend school. Schools might therefore be required to reserve a certain number of places for them. The number of such places, and the way in which they are filled, would depend on the character of the local community.

2. Providing Information

In order to exercise intelligent choice, parents must not only know that there are alternatives open to them, but they must also know what the alternatives are like. The EVA must therefore establish an agency to collect and distribute information about schools. This agency should see that (1) information is collected, (2) the information is what parents need, (3) the information is accurate, and (4) the information actually gets to parents.

The easiest way to ensure that schools provide information to the EVA is to make the provision of information a requirement for cashing vouchers. The question of what information the EVA should collect is more complex.

Federal and state agencies which helped to underwrite the vouchers would doubtless require that the EVA collect certain kinds of information. They might, for example, demand financial information about each school which would enable any interested person to determine how each school spent its voucher money. A school run by a private company would have to report its profit rate; a school run by a local board of education would have to report how much of its income had been diverted to children in other schools; a church school would have to report how much of its income had been paid to a religious order for the services of teaching sisters; and so forth.

Local parents would also want the EVA to collect information relevant to their choice among schools, and the EVA should have full authority to do this. Such information would fall into two categories: information that facilitated comparison of schools with one another, and information that facilitated judgments about whether schools lived up to their own unique claims.

In order to allow comparisons among schools, the EVA would presumably collect certain information from all voucher schools. Is the building fireproof? Does it have a gym? Does it have outdoor play space? What percentage of the teachers are certified? How old are they? How many have Master's degrees? Is reading taught primarily by phonics? Is the program consciously modeled after Summerhill? How many pupils are there in the average classroom? How long is the school in session each day?

The EVA will probably also be asked to collect information about student achievement. Information of this kind is subject to serious abuse, and considerable effort must be made to ensure that it is not misleading. The absolute level of achievement in a given school is largely determined by factors over which the school has no control, such as family background. Furthermore, the overall level is not always a reliable indicator of performance for specific kind of students (e.g., minority students). If schools are to be compared in terms of test scores, then, their relative effectiveness with groups from specific socio-economic and ethnic backgrounds should be compared, not just their overall scores. A testing program should also provide information about students' performance on standardized tests before they entered the schools as well as after attending it, so that differences in initial ability can be taken into account. The technical problems involved in such presentations are not overwhelming, but they require more attention than they usually get from local school districts.

In evaluating schools' unique claims, the EVA might ask schools to suggest their own measures of success. If, for example, a school claimed to develop "responsible citizenship," it might suggest that the EVA count the number of its alumni arrested in the previous year. If the school claimed special success in preparing children for college, the EVA might ask the school to provide evidence of such success.

Items about which advertisements make frequent claims should be automatically checked by the EVA. Thus, if many schools make claims about average class size, the agency should establish a definition of average class size and collect information about it.

The data collection agency should be governed in such a way as to make it responsive to the requests of particular interest groups. Thus, if one interest group wanted to know how many American flags schools owned, it should be easy to collect this information. Some parents might use this information in evaluating schools, while others would ignore it. Honoring reasonable requests for information from interest groups should ensure that more diverse and informative data is gathered.

The agency must also have the power to verify the data it collects. It should be empowered, therefore, to investigate any complaints that the information released by a school is false. If it finds deliberate fraud, it might be authorized to require the school to publicize a retraction. Other appropriate sanctions could also be provided. Because the EVA has the power to certify that a school is not eligible to receive vouchers, it should be able to demand adherence to its regulations.

3. Distributing Information

In addition to collecting data, the agency must take responsibility for distributing it. It should presumably publish a booklet containing the information it has collected about each school. It must make this booklet as readily accessible as is possible, with the data presented in easily comprehensible form. The booklet ought presumably to give schools some space to describe themselves, too. It might also mail a newsletter at reasonable intervals, with corrections and additions to the basic information.

The EVA should not, however, rely on mailings alone to distribute information about schools, any more than it can rely on mailings to inform parents of the existence of voucher schools. It should establish counseling services in EVA offices which would help parents understand the basic materials and answering questions about the school.

4. Monitoring Claims and Policing Discrimination

Schools will presumably advertise and recruit privately. If parents are to make sensible choices, there must be some assurance that schools are presenting themselves to parents truthfully and fairly. The EVA's data collection provides some check on such advertising. Schools should be forbidden, for example, from making advertising claims contrary to the EVA data.

Local EVA's could set other standards for truth in advertising. The experience of the Federal Trade Commission suggests these will be difficult to enforce; nonetheless, some effort is better than none.

5. Providing Advice

Parents will, no doubt, want information as to which school is "best". Not all parents will be able to visit all schools, nor will they necessarily feel confident in their appraisals. It does not seem appropriate, however, for the EVA to provide such advice. This is a field best left to private groups: newspapers, counseling agencies, consumers' unions, the Women's Civic League, etc. Such groups will naturally be interested in school curricula. The EVA might want to facilitate parents' access to private interest groups by providing them with space in its offices at the time parents are registering their children to ensure greater diversity

in viewpoint than would be provided if a single public agency had to reach consensus as to which were the best schools. In addition, private interest groups should help police the EVA, ensuring that it responds to complaints and does not make "subjective" judgments of quality in the course of providing information.

In summary, the responsibility of the EVA during the application phase is to counter a variety of potentially harmful effects of school recruiting practices. The EVA must ensure that all parents know that they have choices and what their choices are. It must also provide recourse for those who have suffered from unfair treatment by the schools. These responsibilities suggest the need for a data collection agency, a counseling service, and a complaint administration within the EVA.

Admission

We will examine seven possible sets of ground rules for regulating admissions procedures:

1. No regulations whatever.
2. Lottery among applicants for at least 50 percent of all places.
3. Lottery among applicants for almost all places.
4. First come, first served.
5. Quotas based on characteristics of applicants.
6. Quotas based on characteristics of districts or neighborhoods.
7. Admission based on geographic proximity.

The impact of these seven admissions systems would obviously depend in part on which economic model was chosen by the EVA. We will assume that the regulated compensatory model is in operation. This would give schools additional money for taking

children from low-income families. (Alternatively, they might get additional money for taking children with low test scores. This would be harder to sell politically, but as we shall see, it would have pedagogic advantages under certain circumstances.) They could not charge tuition under our preferred mode. In some cases we will consider other economic models, but we will not attempt an exhaustive treatment of all possible combinations of economic models with admissions systems.

We will apply four general criteria when evaluating possible admissions procedures.

1. Would the proposed regulations ensure that schools did not discriminate against any category of disadvantaged applicants? If a voucher system is to serve the interest of disadvantaged parents and children, admissions regulations must at least prevent schools from discriminating against such applicants. It is true, of course, that economic incentives may encourage schools to admit low-income applicants, but economic incentives of this kind will not suffice to ensure that schools admit truly disadvantaged children. Incentives which reward the admission of low-income applicants will initially result in schools' seeking out families which are short on cash but long on other "desirable" characteristics, such as literacy, initiative, and self-discipline. Unless some machinery is established for preventing discrimination on the basis of IQ and behavior patterns, overapplied schools will get big bonuses for taking the most easily educated children of poor families, while leaving the others to underapplied schools.

2. Would the proposed regulations convince disadvantaged parents that their children had a fair chance of getting into any voucher school to which they applied? Economic incentives will not persuade disadvantaged parents that

there is no discrimination. Such parents may not bother to apply to a popular school simply because they will think they have no chance of getting their child in. Admissions regulations ought, if possible, not only to ensure non-discrimination in fact, but ought also to be designed so that all parents perceive that discrimination is not taking place.

3. Would the proposed regulations ensure that all schools end up with racially, economically, and academically mixed student bodies? Regulations preventing discrimination against the disadvantaged should, when coupled with economic incentives, do at least as much as the present neighborhood school system to ensure racial, economic, and ability mixing in schools. In theory, however, a voucher system could go much farther and try to establish a pupil assignment system which required such mixing in every voucher school, even when its applicants were almost all of the same race, income group, ability, or whatever. We are not enthusiastic about such regulatory efforts. Certain voucher schools will attract large numbers of disadvantaged children, while others will not. This seems perfectly acceptable if the matching process is voluntary on the part of both schools and parents. If disadvantaged children were excluded from certain schools, or if schools enrolled large numbers of disadvantaged children only because they had no other applicants, the division of labor would be involuntary and probably destructive, but if schools are deliberately established primarily for disadvantaged children, and if disadvantaged parents prefer these schools to predominantly middle-class ones, we would not favor an arbitrary attempt to impose racial or economic integration by administrative fiat.

This judgment may seem inconsistent with our earlier argument that disadvantaged children generally benefit from attending school with advantaged classmates. The key phrase, however, is "generally." Logic, observation and the available data suggest that most disadvantaged children in existing public schools are better off when their school also enrolls advantaged pupils than when it does not, but what applies to "most" children does not necessarily apply to any particular child, and what applies to the existing public system would not necessarily apply to future voucher schools. Certain disadvantaged children may do better in schools where they do not have to compete with advantaged children. If schools dealing with disadvantaged children had different kinds of teachers, different curricula, and different relationships to their community, the number of children who were better off in such schools than in schools with predominantly middle-class students might be even larger, Disadvantaged parents should, therefore, be free to enroll their children in either an "advantaged" or "disadvantaged"school, as they see fit. It is, however, important to keep in mind that the only way to give these parents a real choice is to prevent predominantly white, middle-class schools from discriminating against disadvantaged applicants.

4. Would the regulations encourage or discourage the establishment of new schools for the voucher system? More particularly, how would they affect the nature of the new voucher schools that were established? We expect the establishment of a voucher system to make possible the establishment of new schools. We further expect these to be new schools of two quite distinct kinds, business enterprises and social or educa-

tional experiments. A complete absence of admissions restrictions would be best for encouraging the establishment of new voucher schools, but our concern for the internal justice of the voucher system makes some restrictions necessary. Any given restriction will, however, have some effect on the climate favoring the establishment of new schools. Our essential criterion has been to opt for admissions procedures favoring random admission of children. Under such a rule, the schools will be discouraged only if they had counted on keeping out children whose education would be expensive or difficult. We have, however, limited this effect by building in mechanisms for the encouragement of compensatory education for disadvantaged children, the one case in which selective admissions and specialized curriculums might be the most desirable.

We turn then to the seven alternative systems for regulating the admissions process.

1. No Regulation

If no admissions regulation were established, the results would vary according to the economic model. In an unregulated market where every school could charge as much tuition as it wanted, schools would almost all admit students according to a double standard. Poor students would compete for scholarship places; students who could pay the full tuition would have far more places open to them. The result would be a combination of economic and academic segregation. The students who were most advantaged by either criterion would then get the most resources, while the students who were least advantaged would get the least resources. We have discussed the consequences of such a system in Chapter 2.

If we assume a regulated compensatory model, on the other hand, schools would have considerable incentive to attract and admit low-income students. There would, however, be no special incentive to admit hard-to-educate children. Most voucher schools would, therefore, try to select poor children who were also bright and well-behaved. Thus, even a compensatory model would have several unpleasant consequences if there were no additional regulations on admissions:

First, overapplied schools would probably end up segregated by ability and behavior, which would also mean some segregation by race. Disadvantaged parents would see these schools, whether publicly or privately controlled, as bastions of privilege, to which only "token" low-income children were admitted. Few disadvantaged parents would bother to apply. The net result could easily be to erode rather than to strengthen the legitimacy of the schools.

Second, low-IQ children and children with behavior problems would probably be left to the less desirable schools. These schools would have ever-increasing difficulties in attracting staff and offering an adequate program. The more segregated the system became in terms of ability, the less likely a disadvantaged child would be to learn anything at all.

Third, most existing public school systems would expect privately operated voucher schools to concentrate on advantaged children no matter what the system of economic incentives. They would, therefore, expect to be left with a disproportionate share of all disadvantaged children and would oppose the plan.

Fourth, the federal courts might declare the whole plan unconstitutional. The Supreme Court has indicated that vouchers cannot legally be used to aid private schools which exclude children on the basis of race. A federal district court has taken this argument even further, holding that the judiciary cannot be expected to police discrimination by individual private schools.

This implies that a voucher plan must include appropriate administrative machinery for preventing discrimination by race in order to meet Constitutional requirements.

2. Fifty Percent Lottery

Under this system a school with more first-choice applicants than places is allowed to fill up to half its places by any criteria it wishes, so long as these criteria do not discriminate against any racial minority. It must then fill its remaining places by a lottery among all first-choice applicants not already admitted.[1] Fifty percent of vacant places might be exempted from the lottery for three reasons:

First, families with one child in a school should be allowed to enroll the child's younger brothers and sisters if they want to.

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[1]There are several alternative theories about how a lottery ought to be conducted. One theory maintains that parents will expect schools to cheat. In order to allay such suspicions, admissions must be based on something parents can check up on. Birthdays would be ideal for this purpose. As in the draft lottery, the 366 days of the year would be drawn from a hat in some random order. Every school would then be required to admit applicants in this order. A parent whose child was drawn early could presumably find out if others with lower priority got admitted ahead of him.

An alternative theory maintains that the ideal mechanism is one which does not depend on any identifiable characteristic of the child, and is independent for each school. According to this theory, the best way to run a lottery is for every parent to put his child's name in a hat. Somebody would then pull as many names out of the hat as there were places in the school. This would be simple, direct, and non-invidious.

The choice between these and other "fair" methods should obviously be made by the agency running the voucher system on the basis of what parents themselves find most acceptable.

Second, parents who establish a school must be guaranteed a place for their children. Otherwise, parents are unlikely to make the effort needed to set up schools. So long as some reasonable maximum number of "founders" is established, and so long as these founders are listed when the school is incorporated, no serious difficulties should arise.

Third (and this is more controversial), some students have special talents. A school with a particular program may feel that a particular student would make a special contribution to its program, and hence to the education of other students. If, for example, a school specializes in music, it may want a cellist for its orchestra. If the school is bi-lingual, it may want to discriminate in favor of children whose native language is not English, on the grounds that it takes a certain "critical mass" of such children to make the overall idea of the school work. If a school is almost all white, it may want to discriminate in favor of its few black applicants in order to ensure that there are enough blacks to give one another support. (While a non-discriminatory requirement with respect to race should be applied to schools' "free choice" selections, schools with very small numbers of black or white applicants ought to be allowed to discriminated in their favor, for reasons given in the text.) This whole line of argument is a logical corollary of the proposition that a student's classmates may be his most important resource.

How far a school should be allowed to pursue this logic is unclear. If schools selected students on the basis of what they would do for one another, we would be inclined to give educators considerable leeway. Experience suggests, however, that schools tend to select students on the basis of what they will do for the school. Schools prefer students who will make the teachers' lives pleasant, not students who will enrich their classmates' experience. Schools can, however, always generate pedagogic rationalizations for their policies, whatever these may be.

One school says it must select bright students in order to have an accelerated curriculum. The question, then, is how to evaluate schools' claims that their particular variety of selective admission is essential.

Ideally, schools should be free to admit selectively so long as their criteria do not reinforce other patterns of "invidious" discrimination in the school system or in the larger society. The idea of favoring cellists over pianists, for example, seems harmless because it does not aggravate any of the more general problems of the educational system. The idea of favoring Spanish-speaking or black applicants seems acceptable to us for the same reason. The idea of discriminating against children against whom everyone else also discriminates is less acceptable. The education of disadvantaged children is a public responsibility in which every school that receives public funds ought to share.

As a practical matter, however, it would be hard to establish machinery for certifying one school's reasons for selectivity as "non-invidious" while ruling out another school's reasons as "invidious." It seems administratively simpler to allow all schools up to 50 percent free choice on all matters but race and to require all schools to admit at least 50 percent by lot. The 50-50 division is plainly arbitrary. If a lottery is to provide anything like a fair chance, however, we think it would have to cover <u>at least</u> 50 percent of the places in a school.

In discussing a lottery of this kind, several points are frequently misunderstood. First, a lottery among applicants to a school should not be confused with a lottery among all students in a district. We are <u>not</u> proposing that students be assigned to schools by lot, but only that a school be forced to choose among its applicants by lot. The lottery, in other words, maximizes the choices actually open to disadvantaged parents by limiting the schools' ability to reject parents' choices.

Second, the lottery only applies to a school which refuses to expand. If a school wants to be sure of having places for all applicants of a certain type, (e.g. those living in the neighborhood), it can always solve its problem by expanding and accepting all applicants. This is what public schools usually do.

Finally, it is worth emphasizing that allocating half of all places by lot does not necessarily imply rejecting any appreciable number of applicants. If a school has 110 applicants for 100 places, it admits 50 in whatever way it wants and holds a lottery for the other 50 places. A non-favored child thus has five chances in six of getting in.

The principal drawback of a lottery is that many privately controlled voucher schools would consider the diminution of their control over entry undesirable. Those parochial schools which now admit students selectively might find a lottery so unacceptable that they would refuse to participate in the voucher system. We have no doubt that lottery requirements would discourage some people from starting voucher schools. Educators with a primary interest in helping disadvantaged children would, however, be less put off by a lottery requirement than others.

3. Near Complete Lottery

This model allows schools to admit siblings, children of official founders, and children of staff automatically. All others would be admitted by lot. If a school wanted special kinds of students, it would have to get them by selective recruitment. ("Classes are conducted in Spanish.")

This model has the advantage of reducing the possibilities for discrimination in the admissions process and encouraging disadvantaged parents to feel they have a fair chance. It might, however, prevent the development of certain desirable types of program diversity. It would also prevent "benign quotas."

Suppose, for example, the school has 50 applicants for 20 places. Suppose that 5 of these applicants are black. The school might well want to admit all 5, so that the black students would not feel isolated amidst so many whites. Under a complete lottery, however, the chances are it would get two blacks, and it might get one or even none.

A full lottery might also make it more difficult to give the staff a sense of involvement and control over "its" school. Staff control is a mixed blessing, but it creates an atmosphere which not only staff members but many parents value. A full lottery might seriously inhibit the establishment of new private voucher schools, and it might make participation unattractive to some existing parochial schools.

4. First Come, First Served

"First come, first served" has the apparent virtue of rationing places by giving them to the people who care the most. As a practical matter, however, it is not so simple. Reduced to its logical absurdity but practical reality, "first come, first served" would mean that really popular schools would begin registering children at birth. If children were registered at birth, the next question would be what class they could register for. Consider an example: a school has four times as many potential customers as places. It begins registering children on January 1, 1971, for a first grade that will enter in September, 1977. All its places may be gone by the end of March. Must it then allow parents to apply for the first grade that will enter in September, 1978? If not,"first come,first served"turns out to be a device for allocating scarce places partly in terms of birthdates (i.e., the lottery in a new guise), and partly in terms of foresight. This would probably work against the interests of the parents whom a voucher system is supposed to help.

5. Quotas Based on the Characteristics of Applicants

This model regulates admissions by making a rule that schools cannot discriminate against applicants on the basis of certain characteristics which would be specified by the EVA (or by state or federal legislation). Discrimination based on race, income, IQ, religion, and sex would be obvious candidates for elimination.

Having established these rules, the EVA would require parents to send it duplicate copies of their applications to schools. The applications would include information about each of the characteristics for which discrimination was forbidden. The EVA would then compute the average level of "advantage" of applicants to each school by various criteria. The average level of the students actually admitted to the school could not exceed the level of those who applied by a significant margin on any criterion. It could presumably be lower. Thus, if the average income of applicants' parents was $6700, the average income of families whose children were admitted could not exceed $6700, although it could be less.

This model is in some ways a logical variant of the lottery models in that it allows schools to select by any criteria they think appropriate, so long as these criteria do not reinforce an officially prohibited pattern of discrimination in the larger society. Deciding what kinds of discrimination to outlaw would, of course, be politically and administratively difficult. We can see no way, for example, to define "behavior problems" with sufficient precision to prevent schools' discriminating against applicants who have them. It might also be politically objectionable to categorize 5-year-olds on the basis of IQ scores, even if the avowed purpose was to prevent discrimination against those with low scores. Forbidding discrimination with respect to religion, while possibly necessary to ensure the constitutionality of aid to Church in religious schools, would require parents to report

their religion, which governmental bodies generally have been loath to do. Racial quotas may raise similar problems.

Even if an ideal quota system could be devised, it would leave the actual choice of pupils in the hands of educators, whom many disadvantaged parents mistrust. For this reason, quotas would probably do less than a lottery to ensure the legitimacy of the overall system in the eyes of many parents.

In fact, quotas could never be established to cover every form of invidious discrimination. Quotas are, therefore, less likely than the lottery to ensure that certain categories of disadvantaged applicants have a fair chance of admission to the school of their choice. In particular, the inability of a quota system to prevent discrimination against children whose behavior does not conform to school norms would make it hard for these children to find a school that would take them in. While a few voucher schools might specialize in disturbed children, and a few other schools might take a small number out of idealism, most such children would probably end up in one or two underapplied schools. These schools would, in most cases, be publicly managed since private groups would probably be reluctant to take on the responsibility.

A quota system would have the virtue of allowing schools to discriminate in favor of disadvantaged children if they wished to do so. A school with a handful of black applicants and a desire to achieve racial balance, for example, would be free to admit a higher percentage of blacks than had applied. It would only be forbidden to admit fewer. Schools which wanted to move towards some ideal "mix" could thus do so if they were overapplied.

Another advantage of a quota system is that overapplied schools would probably prefer it to other systems of regulation. A quota system would allow a school to take any particular applicant it wanted, so long as it then took another applicant whose

attributes balanced those of its first choice. If a school wanted a very bright child, it would be free to take him so long as it also took one or two children of below-average intelligence as well. A quota system would also allow a school to select on all kinds of "non-invidious" bases, such as speaking Spanish or interest in music, so long as this selection did not promote segregation along such lines as race, ability,or family income. Most educators would probably prefer an arrangement of this kind to one which left them no discretion whatever.

The public system, on the other hand, might have the opposite reaction. While overapplied schools (both public and private) would be able to pick and choose among applicants, the public system would probably have more than its share of underapplied schools, which only filled up when no more places were left in popular schools.

6. Quotas Based on District Characteristics

Under this model, every school would be required to admit a mix of students which was "representative" of the district in which the school was located. Some definition of the term "representative" would be laid down by law or by the EVA. The criteria might include racial mix, economic mix, IQ mix, and so forth. No school would be eligible to cash vouchers unless it came reasonably close to district-wide ratios.

Taken in the pure form stated above, this system is clearly unworkable, since few schools could meet such standards. Schools that were physically located in the ghetto could not possibly attract enough white applicants to qualify, and schools located in white residential areas would probably find it impossible to attract their share of ghetto residents, many of whom value convenience or solidarity more than integration.

One could, of course, modify the quotas so as to make them easier to meet. The logical modification would be to base each school's quotas on the characteristics of its immediate neighborhood instead of its entire district. "Neighborhoods" might then be defined as including everyone within, say, a mile of the school. This approach would, however, do little to prevent discriminatory admissions policies. The housing market is highly discriminatory. A rule which merely forbids schools from being more discriminatory than the housing market is thus no rule at all. It would be ridiculous to pretend, for example, that a school which has 20% black applicants and which takes none of them is non-discriminatory simply because it is in a 100% white neighborhood.

We, therefore, conclude that quotas based on anything other than the characteristics of applicants are unworkable and undesirable in the admissions process. Their role, if any, is as a target towards which schools might be encouraged to move by means of economic incentives.

7. Admission Based on Geographic Proximity

Several black community schools established in recent years have tried to establish their "public" character by announcing that everyone in the neighborhood would be eligible for admission. While this is a perfectly reasonable principle when applied by a school in a poor area, it has a different meaning when applied by a school in a rich area. As long as residence is determined by factors over which families have relatively little control, and over which children have no control whatever, one cannot legitimately make residence the basis for school assignment. Most parents will, of course, choose schools near their homes even if they have a much wider range of choices, but that is no justification for eliminating the choice. Parents should be given the option of living in one place and sending their chil-

dren to school in another place if that is what they want.

A system which gives priority to the claims of children who happen to live near a school discriminates against children who live further away. In practice, this is just a roundabout excuse for letting schools in white, middle-class areas discriminate against children who are poor, black, or ill-behaved by middle-class standards. It seems clear that this would not serve the interests of disadvantaged parents or children.

Conclusions About Admissions

The most promising device for preventing discrimination appears to be some kind of lottery. The precise percentage of places to be covered by such a lottery should be explored in more detail with prospective teachers and administrators or private voucher schools and with public school systems. It should not, however, be less than half.

-- While quota systems based on the characteristics of a school's applicants have many logical advantages and would probably appeal to overapplied schools, they might not be acceptable to local boards of education or to local political leaders.

-- The other approaches to matching students with schools explored in this chapter are unsatisfactory.

Transfer

All schools, both public and private, enroll some children whom they would rather not have. A voucher system which provides more different kinds of schools and more choices for parents might reduce the proportion of misfits, but it would certainly not eliminate them altogether.

Not only do all schools enroll some students they would like to be rid of, but all schools <u>do</u> get rid of some students.

Most private schools do this by persuading the child to withdraw, usually at the end of the school year. Public schools do it by transferring the child to a "special" school (or class) for the severely "retarded" or "disturbed."

In the past, private schools have been free to set their own standards of academic competence and personal behavior. When students failed to meet these standards, the private school could and did ask the child to leave. In most instances, this meant that the child either transferred to another private school or to a public school. If the child would not leave, he was expelled, but that was not usually necessary. Often no effective distinction can be made between expulsion and "withdrawal under pressure."

Public schools, on the other hand, are often required to go through a formal bureaucratic proceeding before putting a child into a special school for the "retarded" or "disturbed." In practice, many children are shunted into such institutions simply because the public schools do not know what else to do, and their parents do not know how to make an effective protest. Other children are simply "suspended" on a more or less indefinite basis. Still, a child is thought to have a right to be in a public school until somebody proves otherwise.

If privately controlled schools are made eligible for public subsidies, and if they are asked to take some share of the district's disadvantaged children in return, many are likely to encourage students they do not want to withdraw. This would partially frustrate one purpose of a voucher system. Once the word got around that disadvantaged applicants were likely to be forced out, the number of applications from disadvantaged students would also fall. Like discriminatory admissions, systematic expulsion/withdrawals would leave the burden of educating "difficult" children to underapplied schools, while allowing the overapplied schools to choose only the students whom they found it easy to deal with.

There are two ways to tackle this problem. First, there should be economic incentives for schools to retain students whom they have admitted. Second, there should be administrative regulations controlling expulsions and involuntary transfers. We prefer economic incentives to administrative regulations, but we do not think that the system can depend entirely on either one alone.

A wide variety of devices could be invented for discouraging expulsions. If, for example, children were expelled during the year, they could be allowed to take the full value of their voucher to their next school. This would give the next school an incentive for taking the child and would give the last school an incentive for not expelling him. The sums of money might be as high as $1500, which could make a difference to a principal.

Schools could also be awarded bonuses for high retention rates. This would avoid the impossible problem of making a distinction between expulsions and withdrawal under pressure. On the other hand, it might be quite complex to distinguish between schools which had high withdrawal rates because they served a transient population and schools which failed to deal with certain kinds of students.

There are, of course, some children whose education is so difficult that the staff would pay nearly anything to be relieved of the responsibility. This will be particularly true in overapplied schools. We can see no effective way to prevent schools from sorting such children out if they want to, nor are we convinced that it is in the student's best interests to remain if the school wants him out. Once a school makes its desire to be rid of a child clear, parents will fear that the child will be harassed and made even more miserable than he already is. They will almost always withdraw him if any alternative exists. Therefore, some formal machinery should be established for deter-

mining whether children are either (a) so emotionally disturbed that regular schools cannot be expected to handle them, or (b) so mentally retarded that regular schools cannot be expected to teach them anything. This machinery should do more to protect the student's rights than the machinery that now exists in most public systems. Therefore, it should probably make provision for the appointment of somebody to act as the child's advocate and include lay as well as professional representatives on the adjudicating board. Any voucher school that wanted to get rid of a child would be able to do so if it could persuade this board that the child was beyond its powers to help. At that point, the child would be assigned to a special school. The value of the child's voucher might also be increased substantially to cover the additional costs of such institutions.

The foregoing discussion assumes that the procedures for transfer of students would be uniform for both privately and publicly managed schools. We can see no justification for providing publicly and privately managed schools with the same amount of money and then allowing one set of schools to shirk the responsibilities that normally fall on the other set. Uniform standards do not, of course, actually help deal with emotionally disturbed or retarded children. Nonetheless, we can see no reason why this issue should be any harder to handle in a voucher system than in the present public system.

4. Vouchers and other State Plans for Aiding Private Schools: A Comparison

Connecticut, Hawaii, Pennsylvania, Ohio, and Rhode Island have recently enacted statutes which provide general purpose aid to privately controlled schools.[1] Many other states are seriously considering such legislation, and in several states passage of such bills appears imminent. Almost all of this legislation has been designed to prevent the collapse of the Catholic school system. In almost every instance, the legislation has been justified by two general arguments: it will save the taxpayer money, and it will preserve diversity and choice for parents. It has been opposed on the grounds that it would end the separation of church and state, exacerbate cultural schisms, and intensify racial segregation. Since many of these arguments have also been used for and against voucher proposals, a review of such state legislation may help put the merits and demerits of the voucher system in perspective.

We have not had the time or resources to analyze all the bills submitted to every state legislature in this area during recent years. Our analysis is therefore confined to the five statutes now enacted and to seven pending bills. These bills come from California, Illinois, Iowa, Massachusetts, Michigan, Missouri,

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[1] A number of other states have legislation paying for textbooks, transportation, and other specific components of education, but these will not be reviewed here. Neither will we review Southern voucher programs designed to circumvent court-ordered public school integration. For citations to the legislation and summaries see Appendix C.

and Wisconsin, and were selected for analysis either because they appear to be close to passage or because they contain unusually interesting features. Summaries of the five acts and seven bills appear in Appendix C.

In general, the bills and acts take one of two forms: contracts for the purchase of secular services, or per-pupil payments to parents for private school costs. Purchase of secular services contracts usually provide that the state will pay a lay teacher some portion of his salary for time spent teaching secular courses. The contracts, which sometimes also include teaching materials and the costs of standardized testing, are negotiated between the state department of education and either the school or the particular teacher. Payment is usually provided after the service has actually been rendered. The pupil payment plans provide parents with vouchers which can be negotiated for "secular educational services" at approved private schools. The amount of the voucher sometimes equals what the state would pay a local school board for educating the child, but sometimes it is simply an arbitrary amount. A third form of aid, used in Hawaii, provides tax credits for parents who send their children to private schools.

The California bill is in many respects similar to the voucher systems outlined in previous chapters. It is not designed to save the taxpayer money but to encourage educational innovation and aid disadvantaged children. Unlike both the voucher systems discussed elsewhere in this report and the other legislation reviewed here, however, it would provide no assistance to church-related schools.

All the other bills and acts reviewed here differ in several fundamental respects from the voucher systems we have described. They are designed to save the taxpayer money. None provides enough money to finance new or innovative schools. They are also designed to preserve the existing range of public and parochial alternatives, not to broaden it. Indeed, with the

exception of the California legislation, we believe that the legislation reviewed here would have exactly opposite effects from the voucher system outlined in previous chapters. Most restrict aid to private schools whose staffing and program resemble the public schools in critical respects. They allow private schools to differ from public ones in two questionable respects. First, private schools would still be free to charge tuition even though they received public money. Indeed, private schools would have to charge tuition to survive economically. This means they would remain economically exclusive. Second, private schools would be free to exclude students whom they judged difficult to educate for one reason or another, forcing these children back into the public system.

Under these circumstances, it seems misguided to criticize vouchers for aiding church schools. Such aid is already being given, and it will continue to increase. The question is whether we can devise forms of aid which will encourage diversity in other schools as well as keeping church schools alive. The long-term effect of most present and proposed state legislation would be the creation of several separate systems, all financed from the public treasury, all with rather similar programs but differing in the kinds of pupils they included and excluded. This is precisely opposite from the voucher system we have proposed, which would prevent schools from being economically or socially exclusive but would give them great latitude in devising programs for the students who chose to enroll.

The remainder of this chapter reviews these bills and acts with respect to seven specific criteria: (1) the level of aid provided; (2) the degree to which the aid equalizes the purchasing power of rich and poor; (3) the degree to which the legislation would encourage uniformity rather than diversity of educational programs; (4) the amount of due process available to recipients of aid who believe they have been unfairly treated;

(5) the restrictions on discrimination in school admissions; (6) the extent to which parents would be made conscious that they had a choice among schools; (7) the amount of information that would be available to parents about these schools.

1. Levels of Aid

Only the California legislation reviewed provides enough aid to cover the cost of operating a school. The purpose of the other bills and acts is to save money by maintaining the present level of private expenditures on education. Per/pupil payment plans now in operation thus pay amounts ranging from $48 to $200 per pupil. Purchase of services agreements vary considerably in the percentage of teachers' salaries which may be paid by the state, but in no case does the payment cover the full cost of all teachers' salaries. Hawaii's maximum tax credit is $20 for persons with adjusted gross incomes under $3000. California's proposed voucher plan, on the other hand, would provide $1000 to parents of disadvantaged children.

The result is that only schools with access to church or private funds can survive. For those who do not seek religious education, the aid which is provided favors parents with incomes high enough to make substantial expenditures for private schooling. In this situation, the prospects for educational diversity are not encouraging. About 90% of the nation's private school pupils attend church-affiliated schools. Except for a small number of schools catering to the relatively affluent, these schools are the only ones which can depend on systematic private funding. Most parents, therefore, have only two basic choices -- the public system and the religious system. It is still possible, of course, for a parent to seek or to begin a different private school, but the low level of public aid available provides almost no opportunity to do so.

This bias in favor of church schools and relatively

affluent individuals will not be alleviated by the approaches presently enacted or under consideration. It seems likely, in fact, that those who favor this limited aid will be able to maintain the economic and political leverage which was used to support the enactment of "parochiaid" legislation in the first place. The poor and middle-class, on the other hand, because they are not provided with a basic economic and political franchise for schooling, will not gain a substantial influence over the future of private schooling.

In addition, these plans further divide the electorate into those who have a vested interest in increased expenditures for public schools and those who would like to limit public school financing while maintaining a modest level of aid to private schools.

Were an educational voucher system to be adopted, providing for the financing of all schools (public and "private") through per capita vouchers equally available to all parents, the situation would be different. Every parent in that situation would have roughly equal economic bargaining power, and all parents would have the same vested interest in the level of public support for education.

2. Equalization

Connecticut has attempted through a percentage payment formula to put disadvantaged persons in a somewhat better bargaining position. Its aid statute provides a basic reimbursement of 20% of the salary of lay teachers teaching secular subjects. If the enrollment of the private school reaches 1/3 educationally disadvantaged children, the percentage of salary paid increases to 50%. At 2/3 educationally disadvantaged enrollment, the figure is 60%. Although this plan does provide an inducement to private schools to include disadvantaged children, it does not change the fundamental bargaining position of these children. They must

still depend upon money contributed by the church or higher-income parents at the school to pay for their education because, although the aid for a disadvantaged child is greater than for a wealthy child, it is not great enough to pay his way. The education of these disadvantaged children, therefore, remains in the hands of schools with access to private funds.

An increase in the power of disadvantaged persons could also be achieved by paying the entire cost of salaries, as opposed to paying a flat grant which is less than total cost and, therefore, invites unequal supplementation by parents. No statute provides this, but Pennsylvania approaches it by paying the "actual cost" of teachers' salaries "not to exceed the minimum for public school teachers." Schools are still free to charge tuition in order to increase their total budgets, but at least there is sufficient money available that low-income persons could join in starting a school and maintain salaries without outside assistance. Pennsylvania makes it easier for disadvantaged parents to maintain their own schools; Connecticut provides an inducement for established schools to take in disadvantaged children. The power equalizing is incomplete in both cases.

Unfortunately, even this small equalizing benefit in the Pennsylvania statute is threatened by the reimbursement procedures of the act. Section 5607 provides that if in any fiscal year the amount of money in the fund which comes from horse-racing revenues is insufficient to cover the total validated requests of private schools, reimbursements shall be made in the proportion which the total amount bears to the total fund. This means that the amount a school gets will in reality be less than adequate to cover actual costs of salaries, and the poor person will be back where he was with the limited flat grant. The legislature remains in control of this decision through its power to set the percentage of horse-racing revenue allocated to the fund. Connecticut, on the other hand, provides payment procedures which ensure that -- up to a point -- claims based on the presence of disadvantaged children are honored first.

It is unclear whether more power equalizing is achieved by a percentage formula with a 60% maximum (Connecticut) or a flat grant formula (Pennsylvania) limited by pro-rata shares. What is clear is that neither gives independence and effective choice to low- and middle-income persons attending non-religious schools. The education vouchers proposed in Missouri, New Mexico, Wisconsin, and Illinois provide even less money than the Connecticut and Pennsylvania purchase of services agreements. Plans like Rhode Island's, which provides only a 15% salary reimbursement with no increasing percentage for enrollment of disadvantaged children, are even worse because they contain no inducement for private schools to enroll children of the poor.

Many purchase of service plans define "secular" services very narrowly. The Pennsylvania statute, for example, limits reimbursements to "mathematics, modern foreign languages, physical sciences, and physical education." In such cases, the total available aid is, of course, limited to a percentage of the total support needed to run a school. A narrow definition of "secular" may be viewed as helpful in avoiding First Amendment problems of aiding religious schools, but when it applies to non-religious private schools as well, the protection is unnecessary. The accompanying reductions of aid are also a distinct disadvantage to the poor. States which have broad definitions of secular subjects (such as Rhode Island, Connecticut, Wisconsin, Michigan) tend to give less advantage to religious schools and, therefore, to create more favorable conditions for diversity.

3. Diversity Versus Uniformity of Program

Diversity suffers a further setback because of the restrictions on recipients imposed by most of the various acts and bills. Ohio is one of the more painful examples. Its statute provides for a contract between a school district and lay teachers

of those secular subjects which the state board requires in the non-public schools. To qualify for reimbursement, the teacher and school must comply with the following items:

1. Teachers must hold state certificates.
2. The State Superintendent of Public Instruction shall review courses, programs of student and teacher evaluation, and achievement tests from time to time.
3. "No services, materials, or programs shall be provided for pupils in non-public schools unless such services, materials, or programs are available for pupils in the public school district."
4. "...services, instructional materials, or programs provided for pupils attending non-public schools shall not exceed in cost or quality such services...as are provided for pupils in the public schools of the district." (emphasis added).

Not all statutes and bills are quite this overtly anti-competitive, but it is common to find provisions requiring teacher certification, approval of texts, satisfactory performance on standardized achievement tests, compliance with building and health regulations, and general equivalency with public school curriculum. Attendance requirements are the same as for public schools in almost all the states considered, and are generally set out in code sections separate from the aid statute or bill. In addition to these requirements, there are various accounting procedures and secularizing requirements designed to prevent violations of the First Amendment.

An additional problem with the aid plans of the various states surveyed is that they provide no assistance to parents or educators seeking to start new schools. Neither in the form of low cost capital loans nor technical assistance is any counter-weight to the favoritism for established, parochial, and expensive schools provided. In fact, two of the plans require periods of

up to three years before a new school may become eligible for aid (see the Connecticut and Illinois bills).

4. Due Process

In view of the fact that failure to comply with state requirements can result in denial or termination of substantial aid, it is disturbing that only Connecticut provides a notice and hearing procedure for schools which feel aggrieved by the decision of the state's chief education official. Connecticut's law provides a detailed mechanism for dealing with such grievances. In particular, it provides for written notices when aid is denied, written appeals for a hearing on the denial conducted by a hearing officer, representation by counsel, transcripts of hearings, written decisions, and appeal of decisions to the superior court of the state. The same procedure is required for suspension of aid for alleged violations of the statute.

Adequate procedural remedies seem especially important in those statutes which provide minimum requirements for the receipt of aid, but do not specifically say that, on meeting these requirements, the private school shall become "entitled" to aid. The Pennsylvania statute, for example, sets up a special fund for the purchase of services and mentions three "conditions for payment." It also states that the Superintendent of Public Instruction shall "establish rules and regulations pertaining" to payment. In addition to this general discretion, there is also discretion inherent in the vagueness of the conditions themselves -- such as that instructional materials shall be approved by the Superintendent.

It is not difficult, therefore, to imagine situations in which a school might feel that a decision rejecting its request was arbitrary or in excess of the authority granted by the statute. Unfortunately, where discretion is too wide, even a hearing procedure such as Connecticut's may provide protection in only the

most grievous cases.

5. Discrimination in Admissions

The provisions of the statutes and bills preventing discrimination by schools on the basis of race, national origin, color,or other invidious grounds do not inspire confidence. Most require a certificate of compliance with Title VI of the Civil Rights Act of 1964. Only in Connecticut, however, is reference made to specific enforcement procedures. Although it may be expected that the Fourteenth Amendment will apply to any private school's receiving state aid directly, and perhaps even indirectly, the absence of specific standards and procedures for filing and disposing of discrimination complaints makes effective anti-discrimination action difficult.

Pennsylvania's statute makes no mention of discrimination, but the regulations issued by the state (see Q and A booklet Jan. 1969, #24) indicate that a state executive order prohibiting discrimination in state contracts by race, religion, age, sex,or national origin applies to the contracts for secular educational services. The regulations then go on to explain that a religious or denominationally affiliated school may "recognize the preference of parents" to have students of the same religion at the school. The legal status of this ruling is unclear.

Connecticut's act contains the only complete statement about discrimination. In addition to compliance with Title VI, the act requires open enrollment at all schools receiving aid. Open enrollment is defined as the "offer of admission to any qualified student meeting its academic and other reasonable admissions requirements...without regard for race, religion, creed or national origin. (section 3h)." In addition, the regulations (s. 10-281n-7(d))state that academic and other reasonable requirements shall "not be such as to result in a preference in admission to

students on the basis of race, religion, creed or national origin." The state commissioner of education is empowered to give notice and hold hearings to suspend aid for any violation of the provisions of the act.

Unfortunately, there do seem to be loopholes in this set of provisions. The regulations state that preference may be given by a school to the children of parishioners or other regular contributors (except those who only pay tuition). The school need provide open enrollment only for the same percentage of places as the state aid represents of total operating cost. The additional provisions make it possible for schools attended by the children of well-to-do families to escape even their proportional requirement while still receiving 20% aid. The requirements relate to the "total operating cost" so that at an expensive school, the proportion of aid (20% of a minimum state average salary e.g.) will be lower than at a school which pays lower salaries and spends less on other operating costs. In addition, the regulations are based on the "total number of students admitted," but a parent is allowed to exclude his child from such a count. A well-to-do parent can afford to exclude his child from the pupil count thereby increasing the percentage of disadvantaged children enrolled, increasing the percentage of aid to the school and decreasing the "total" enrollment of the school. As a result, the number of open enrollment places required drops.

6. Effectiveness of Parental Choice

Aid in the form of purchase of secular services works against effective parental choice. To begin with, the teacher or school usually receives the aid on the basis of expenditures, without regard to the number or type of children served. This means that a school has no incentive to enroll additional children. As long as <u>some</u> children attend, the teacher receives a part of his salary from the state. Unless large enough numbers of chil-

dren withdraw to require a reduction in staff, the choice of the parent thus has almost no effect on school finances. The power of parent choice -- and the force of competition -- is diminished. (Connecticut is an exception to this rule. It gives bonuses for enrolling certain students and limits the pupil/teacher ratio to 25 students per teacher.)

A second and more subtle dilution of parental choice is the fact that parents are not given concrete evidence of their power to affect school financing. Parental choice does not alter the flow of aid very much in purchase of service arrangements; but even if aid of this sort were calculated on a per capita basis, the parent would not clearly see that his choice had an actual effect on whether or not the school was aided. Most parents, especially low-income parents, are accustomed to believing that it is they who need the school, not the school which needs them. Without some tangible evidence of the power to choose, therefore, there may be much less bargaining between the parties.

The California bill does not suffer from this flaw. According to its terms, a school in an economically disadvantaged area which falls below certain minimum performance standards prescribed by the Director of Compensatory Education becomes a "demonstration school." The parents of children attending the school become entitled to certain alternative choices and receive a tuition voucher valued at $1000. The Director must inform all parents of their eligibility to receive such vouchers, which are negotiable at any approved "provider of educational services." This plan solves both choice problems previously mentioned because it calculates aid per capita and provides parents with a concrete "negotiable" instrument. In addition, the amount of the voucher seems sufficient in itself to pay the costs of at least some schools, and the aid is delivered only to disadvantaged areas.

Several other bills presently under consideration by

state legislatures would provide some evidence of aid directly to the parent. Missouri Senate Bill 375 (1969) and Iowa House Bill 571 (1969) reimburse the parent directly for money he pays to a private school under certain conditions. Wisconsin Senate Bill 346 (which passed the Senate this year but will not be considered in the House until 1971), does not specify the actual form of aid delivered but does provide for "grants to resident parents." Illinois House Bill 2350(which passed the House in 1969 but was killed in the Senate in June), would deliver to each qualified school "educational opportunity grants" at the end of the year. Grants would be paid for according to warrants which parents had executed and given to the school at the beginning of the year. Although these bills would provide both per capita aid and visible evidence of power to parents, unfortunately none of them provide enough money to make parental choice effective except in those schools which need only small additions to their private sources of funds.

7. Information for Parents

Effective parental choice is also limited by the failure of all proposals to prescribe means for providing parents with adequate information regarding the schools available to them. In a situation in which new alternatives exist for parents, the provision of information about "products" is essential. Although considerable uniformity of schools may be imposed by the regulations in much of the legislation, it is nonetheless important for parents to make informed choices regarding those aspects of education which do vary. On this subject, the legislation reviewed is almost completely silent. Even the requirements that standardized testing be conducted at schools receiving aid is not accompanied by a requirement that this limited performance evaluation be made readily available to the public. There is no requirement that all parents be informed of the qualifications of teachers,

the type of program, the budget, the philosophy, or the past performance of the available schools aided by tax monies. This omission seems to reflect an unwillingness to encourage increased parent selectivity and interschool competition as well as reluctance to tell all parents that they have alternatives to public education.

Advantages of a Voucher System

Many of the objections raised in this chapter to "purchase of services" and "mini-voucher" systems would be avoided under our proposed voucher system:

1. If the voucher covers the full cost of education, non-public schools will not be forced to rely on financial support from religious organizations or affluent parents. Lower- and middle-class parents would, therefore, have genuine choices available to them. New, diverse non-public schools would be more likely to arise since their operating costs could be fully covered by voucher payments.

2. Under our preferred economic model, the vouchers of disadvantaged children would be worth more than those of advantaged children. This should induce non-public schools to enroll low-income children and would make the bargaining power of the poor more nearly equal to that of the middle class.

3. Our proposed admissions procedures would discourage discrimination on the part of schools in two ways: (a) the EVA would have the power to investigate complaints and to invoke sanctions against schools which practiced racial discrimination; (b) admissions to a school would be partially determined by lottery. This would give parents some assurance their children were being treated fairly by the schools to which they applied.

4. Vouchers would be given directly to parents, providing them with tangible proof of their power to choose a school for their children. Moreover, the EVA would be required to provide enough information to parents that they could make an effective choice among alternatives.

Many of the advantages of our voucher plan would, of course, be eliminated if the state legislators or local EVA's imposed unnecessary restrictions on voucher schools.

The Supreme Court has recognized that "the fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only."[2] But such standardization could also result if non-public schools were required to serve the same ends or to use the same approaches as public schools. Diversity in schools therefore must be not only tolerated but actively supported.

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[2]Pierce v. Society of Sisters, 268 U.S. 510 (1925).

5. The Demonstration Project[1]: Specifications and Evaluation

This chapter proposes specifications for a meaningful experiment with education vouchers. These specifications are derived in part from the preceding discussion and in part from arguments outlined here. The effects that these specifications would have on both the form of the demonstration and the ease of evaluating its success or failure will be apparent. The first section of the chapter describes general specifications for a demonstration; the second section outlines the evaluation mechanisms which we believe would make it possible to judge the relative success or failure of the demonstration with some confidence.

Specifications

Duration

1. The demonstration should continue for a minimum of of five years and probably should last for eight years.

Parents in the demonstration should be convinced of the relative stability of the voucher program. Although sophisticated parents will realize that the Federal government cannot guarantee

[1] In the text we use the terms "demonstration,""project," and "experiment" interchangeably. We generally employ the singular form, although as the text makes clear, we do recommend that more than one area be used for demonstration purposes.

that money will be available for more than one year, some public commitments should be made to ensure at least minimum consumer confidence.

A demonstration of less than five years would discourage applications for admission to schools other than those run by the board of education. Parents would consider it too much bother to transfer children both into and then out of an elementary school. Further, parents might believe that their children would be harmed by changing schools too often.

Moreover, commitment to less than five years would make it extraordinarily difficult to establish new schools. Even if there were adequate funds to cover initial starting costs, and experts available for advising would-be school founders on how to get started, the task of finding a building, personnel, and clients for a short-lived operation would put off all but the hardiest reformers and businessmen. Because it would take several years for new schools to establish themselves and build reputations, it would be several years before parents could make intelligent choices among new schools. If, at that point, the new schools were already phasing out of existence, no real tests of parental preferences would be possible.

Although five years is the minimum acceptable project length, eight years would be preferable. At the beginning of the demonstration period parents would need time to become familiar with their alternatives. Toward the end of the demonstration, parents would be naturally reluctant to enroll their child in a school which might not exist in one or two years. Eight years would ensure full participation for at least one complete "class" of students. We estimate that a demonstration longer than eight years would yield only slight gains in information. Hopefully, the effects would be large and unambiguous. In that case they should be evident after eight years. If the effects were small, the correct strategy would be replication, not extension.

2. <u>There should be a planning period of at least one year preceding the demonstration</u>.

A variety of tasks would be required before the demonstration begins. Political machinery responsive to the interests of the parents in the area should be established to control the experiment. Specifically, mechanisms for distributing and redeeming vouchers should be arranged. An information gathering and disseminating agency should be established to collect information about participating schools and to ensure that all parents have access to that information. Educators and parents should be given time to organize and to establish new schools. Time would be required for building or remodeling, hiring staff, and attracting students. Finally, the organizations carrying out evaluations should be given time to collect preliminary information.

Location

Every effort should be made to have more than one demonstration site. There is no substitute for even a partial replication. Whatever the number of sites, certain criteria are relevant for each.

1. <u>If possible the demonstration should be carried out in an area with a population that is heterogenous with regard to social class and race</u>. Such an area would be desired for two reasons.

First, unless vouchers were available to both black and white children and to both rich and poor children, the effect of a voucher system on segregation by race and class could not be tested.

Second, the greater the heterogeneity of the population, the more diverse the demand for schools would be and the greater the range of choices for individual parents.

2. The demonstration area should be confined to the boundaries of a single municipality.

For one thing, the task of negotiating with more than one school district or municipal government seems impossibly complex. In addition, the impact of the program on local politics, while difficult to appraise under any circumstances, would be easier to appraise if a single municipality, or a self-conscious, self-defined area within a large city, were covered.

3. Because alternative schools might be difficult to establish even in an eight year period, demonstration should probably be located in an area where a number of existing private schools were willing to become voucher schools for the duration of the project. In this way, some assessment of parental choice would be assured. Further, the prior existence of alternative schools is an indication that parents would be interested in such options.

Eligibility of Pupils

1. The demonstration should include only kindergarten through sixth-grade pupils.

Many people believe that the early years of a child's education are the most crucial in determining what he will eventually achieve or become. Perhaps because of this, parents seem to be most concerned about the quality of education received by their children when they are young. They are, therefore, likely to be more willing to accept the responsibility of choosing schools implicit in a voucher program at the elementary level.

In addition, the costs of elementary schools are less than those of secondary schools. Assuming limited funds, a demonstration project confined to elementary schools would therefore reach more students. Moreover, elementary schools are easier to set up than secondary schools. Accreditation

requirements and the need for special facilities are less extensive. Elementary schools are generally smaller than secondary schools. Both these points suggest that more schools would be established in a limited demonstration if secondary schools were excluded.

2. All children of appropriate age in the demonstration area should be eligible for vouchers. A random or stratified random sample of children within the demonstration area does not seem politically possible.

Type of Voucher

The compensatory formulae for determining the value of vouchers and levels of tuition described in Chapter 2 should be used in the demonstration. No voucher schools should be allowed to charge tuition above the value of the vouchers. Pupils attending parochial voucher schools should receive vouchers worth no more than the cost of their secular education. All schools should be eligible for compensatory funds if they enroll disadvantaged students.

Admissions Procedure

The discussion of admission procedures in Chapter 3 applies to a demonstration as well as to a large-scale project.

1. Voucher schools should be allowed to fill a limited number or percentage of their places in any way they see fit.

This percentage,although it should be no more than half, should be large enough to ensure that children of parents who helped establish a school would be admitted, as would pupils with siblings already in a school. We also believe that schools should be able to select certain pupils according to non-discriminatory criteria based on educational objectives.

2. Voucher schools should be required to fill at least half their places by a lottery among applicants. A lottery seems to be a practical system for ensuring that voucher schools take their share of "difficult" children. It is also important that parents perceive that their children have an equal chance. Many parents now assume that their children have no chance of getting into a selective school, and therefore do not bother to apply. If significant numbers of places were known to be distributed by lot, more disadvantaged parents might apply to such schools.

3. Children should not be arbitrarily expelled from a school during the school year. Appropriate mechanisms are outlined in Chapter 3. The suggested procedures include a review board to ensure that pupils are guaranteed due process rights, and economic incentives to schools to keep students.

Mechanisms For Aiding Parental Choice

An agency should be set up to collect information about schools and to distribute this information to parents. All schools participating in the demonstration should be required to make this information available. The information-gathering agency should collect and validate two types of information on a continuing basis throughout the demonstration. First, certain common information should be collected from all schools participating in the demonstration. This information probably would include descriptive characteristics of the school (size, pupil/staff ratio, racial and social class composition, age of building, etc.). It might also include some objective measures of pupil performance (test scores). The nature of this information should be determined by the agency administering the experiment by taking into account: (a) the information desired by parents, which should be made available to the public, and (b) the information desired solely by OEO, which could be confidential.

A school should also be able to define its own criteria of "quality" or success (tests of musical or artistic performance, data about special extra-curricular activities) and request the information-gathering agency to verify this data and include it in publications about the school. The information-dispensing agency should devise ways, probably involving personal contact, to make all collected information available and understandable to all parents in the demonstration.

Administration

Some agency should have overall responsibility for administering the voucher plan. This education voucher agency (EVA) should be representative of the community. Its particular form would depend on the nature of the site chosen for the experiment. Above all, it should have legitimacy in the eyes of the parents and educators. It would have two basic functions:

-- It would have overall fiscal authority. This would include overseeing the administration of vouchers to all parents. It would also include allocating funds to the information collecting and dispensing agencies, to the review board and to any other agency set up for the demonstration, and allocating funds for starting costs to new schools, and for transportation costs to all students in the demonstration requiring such funds. Last, it should redeem vouchers and distribute funds to eligible schools. In addition, it might wish to fund its own local evaluation effort. OEO's overall evaluation should, however, be funded directly by OEO.

-- It would have authority to make necessary administrative decisions. It would have final authority over each of the agencies to which it allocates funds. It would also certify schools for participation in the demonstration. This is likely to be a complicated problem. Guidelines for certification should be established. Participating schools should accept a voucher as full payment of tuition. They should agree to a lottery system if they are over-applied. They should agree to the decisions of the review board on expulsions. Aside from these requirements, schools would presumably have to meet the established state and local criteria for accreditation with regard to building codes, teacher certification, curriculum, etc. We strongly recommend that the EVA obtain waivers of unnecessarily restrictive state and local education regulations. The reason is clear. If extensive curriculum and teacher certification requirements were imposed on every participating school, the trend would be toward uniformity rather than diversity. This would discourage innovative schools and would reduce the overall level of choice available to parents.

Costs

It is impossible to estimate the cost of a demonstration project with any accuracy before selecting a site, contacting existing schools, and surveying the likely choices of parents in the area. For illustrative purposes, however, let us make the following assumptions:

1. In order to find out very much about parental choices and the character of the "education market in one area," we would need at least 10 privately controlled secular voucher schools, several parochial voucher schools, and several neighborhood public schools. This mix would allow the development of genuine competition and "product differentiation," and would test the capacity of parents to discriminate between a fairly wide variety of alternatives. If the average voucher school enrolled 200 children, 2,000 families would need to be willing to remove their children from public or parochial school for the experiment.
2. In order to obtain 2,000 families interested in such schools, we assume that we would need an area in which there were at least 12,000 children between 5 and 11 years old. We assume, in other words, that about a sixth of the population would choose privately controlled voucher schools under the ground rules we have proposed. This figure is arbitrary but enables us to develop rough estimates.
3. Let us suppose that the area were 30% Catholic. Assume further that 1/3 of the Catholics in the area would attend public school, and 2/3 parochial schools, all of which would elect to become voucher schools in order to cash vouchers.
4. Let us assume that the basic voucher were set at $750 per child. Assume also that "compensatory" payments for low-income children began when the parents' income falls below the national median, and that such payments rose to a maximum of $750. Let us assume that two-thirds of the demonstration area children were from families with below-average incomes,

and that they carried an average compensatory payment of $300 per child. This would make the average expenditure in the demonstration area $950 per pupil. If 12,000 pupils were covered, the overall annual expenditure in the area would be $11.4 million.

5. Let us assume that per pupil expenditure in the public schools at the beginning of the experiment were $500 per pupil, and that 80 percent of the children in the area were in public schools at the beginning of the demonstration. The public schools are thus presumed to be spending $4.8 million at the beginning of the experiment. They would be required to commit themselves to maintaining this level of effort.
6. Let us assume that parochial schools would not be entitled to a full voucher because their audited expenditures for secular purposes (exclusive of compensatory benefits) come to only $500 per pupil rather than $750. This would save $250 apiece for some 2400 children, reducing the original $11.4 estimate by $600,000 to $10.8 million.
7. The overall cost of the school programs being $10.8 million, and the local contribution being $4.8 million, the cost to OEO would be $6.0 million, plus administration, evaluation, planning, etc., per year.

It must be recognized that these estimates are very rough. Different assumptions would have great influence on the estimates. Also, we must assume that costs would rise steadily from year to year.

Summary

We have sketched some initial specifications for an OEO voucher project. We suggest that wherever possible, a demonstration should follow the guidelines set out in the previous chapters for a large-scale project. We therefore argue for a compensatory voucher program, for a partial lottery for admissions, and for mechanisms aiding parental choice. In addition, we recommend that a demonstration continue for a minimum of five and preferably eight years; that it be located in an area heterogeneous with respect to social class and race and within the boundaries of a single municipality; and that only elementary school children be eligible for vouchers. We estimate that a demonstration area should include about 12,000 eligible children. We estimate the annual costs to OEO of such a demonstration would be in the range of $6 to $8 million.

In addition, we have set out a very tentative administrative structure. But we anticipate that this would be modified once a site had been selected.

Evaluation

An evaluation of a voucher demonstration project should include three components:

-- A political and educational history of the demonstration,
-- An evaluation of the specific objectives of the program, and
-- An assessment of criticisms of the voucher plan.

This section suggests criteria, mechanisms, and designs for carrying out these three tasks.

1. General Recommendations

-- An OEO demonstration project might become the model for future large-scale voucher projects. This suggests that mechanisms for the demonstration should be similar to those regarded as desirable for future projects. It should be recognized, however, that it might be easier to ensure equal opportunities for poor parents in an OEO demonstration than in a large-scale system. The proposed mechanisms for establishing equal choice and access to schools (i.e., restrictions on tuition, a lottery to allocate scarce places, compensatory grants, and an efficient information gathering and dispensing agency) may be less important to legislators than to OEO, and therefore might be abandoned entirely in a non-OEO project. It might also be easier to get temporary suspensions of building codes, certification requirements, and the like for a demonstration project than for permanent legislation. Nonetheless, a demonstration should try to demonstrate what ought to be done, rather than being a prototype of what is most likely to be done. If any other approach were followed there would be little likelihood of evaluating the full potential of a voucher system.

-- Any demonstration would be idiosyncratic. The political climate, the racial, ethnic, and social class mix of the area, the number of available alternative schools, and the amount of dissatisfaction with the public schools would all affect the findings of an evaluation. Great care therefore be taken in making inferences from the results of any one demonstration. It is unlikely that the results would be the same in a permanent, large-scale project, even if it were carried out in the same area. <u>This suggests that more than one demonstration area should be funded</u>.

-- Any single evaluation of a demonstration would have certain shortcomings. Evaluators, no matter how hard they try, must still make somewhat arbitrary decisions about which objectives they examine, and what methods of evaluation they use. OEO should, therefore, retain several groups of evaluators. Each group should independently define objectives and the way they are to be evaluated. At least one of the evaluation groups should be particularly responsive to the interests of the parents. None should be fiscally dependent on the agency administering the project.

-- Even if these recommendations were followed, a demonstration might appear more conclusive than it really is. Claims of what it proves about any particular issue, therefore, should be kept to a minimum.

2. Monitoring the Political and Educational History and Consequences of the Demonstration

July 1970 - August 1971 - The Planning Year

Political conflict might be great. Many groups would be attracted by the Federal and state monies available for the demonstration. Each group might have its own ideas about the desirable form of demonstration. Though political pressures might force the abandonment of the recommended voucher plan during the planning year, it is more likely that compromises in the structure of the demonstration would be reached to appease powerful groups. An analysis of the political situation during this period would be critical for an understanding of what people expect, want, and will get from a tuition plan. If the demonstration were seriously altered or terminated prematurely, this analysis might suggest why and how to establish a new demonstration in another location.

Other data also should be available to evaluators. People would want to start new schools, to decide whether to send their children to alternative schools in the following year, and to understand the implications of the "new" scheme. The information collecting and dispensing agencies should set up early in the "planning" year, and should keep complete records. These records should be available to evaluators as baseline data for the overall evaluation.

September 1971 - June 1980 - During and After the Demonstration

During this period similar evaluations should be carried out. A political history should be kept and descriptive information gathered about the demonstration. To a large extent the information gathered by the information-collecting agency should suffice. As the demonstration progressed a number of potential problems could be examined.

-- The admissions mechanism could be examined. By the second year of the demonstration, the evaluators should begin to be able to estimate the importance of over-application to specific schools and the overall effect of the lottery mechanism on parental choice, levels of enrollment, segregation, etc.

-- The economic model could be examined. Again early in the demonstration evaluators should be able to estimate the equalizing effect of the"compensatory" model on the services children receive in schools.

-- The adequacy of the information collecting and dispersal agencies could be examined. Early in the project there should be some indication as to the overall effectiveness of the mechanisms in making pertinent information available to all parents.

These evaluations should have a feedback effect on the demonstration. If they suggested that the agencies were not performing efficiently, it would seem reasonable to alert people and to attempt to correct performance. This path, however, should be taken with caution. Preliminary indications of a problem might be misleading and corrective measures, therefore, inappropriate. Further, substantial tinkering would complicate the already difficult business of generalizing from the results of the demonstration to other voucher projects. We think, however, that a demonstration of the voucher project should attempt to set an "ideal." The benefits of such corrective measures then should generally outweigh possible costs in generality. It should be noted that the amount of "corrective" action required to keep the agencies performing efficiently would in itself be an important subject for evaluation.

The effects of the voucher plan on parts of the education system other than parents and students should also be examined. An analysis of the attempts to establish new schools should be made. The role of teachers' professional organizations in the history of the demonstration should be analyzed. Some estimate should be made of the effect of the plan on the salaries, turnover rate, and attitudes of teachers in the demonstration area.

Finally, the introduction of a new scheme for financing schools would have effects reaching beyond the schools. If parental feelings of efficacy were increased, this might be reflected in higher registration and voting rates. Local political candidates might have to take a stand one way or another on the value of the voucher scheme. Financial incentives tested in a demonstration might create opportunities for new political alignments. Assessment of these changes would be valuable in estimating the overall impact of the voucher scheme.

In summary, there should be a descriptive and historical component in the evaluation of the demonstration. Although

this is not a typical evaluation function, special circumstances demand it. To many, the demonstration would be considered a "success" when the first voucher was administered. Yet, until the demonstration was operating, no amount of talking or writing would convince people either that a voucher scheme was feasible, or that it would create outcomes different from those of the present system. Even when the demonstration was going, there would be little hope of accurately evaluating its influence unless careful attention was paid to its effects on the surrounding environment.

3. Evaluation of Specific Objectives of the Demonstration

An evaluation should assess the success of a voucher demonstration in reaching the two stated objectives:

- A voucher system should improve the education of children, particularly disadvantaged children.
- A voucher system should give parents more control over the kinds of schooling that their children receive, particularly the parents of disadvantaged children.

Two general strategies could be used to assess these objectives (which were discussed in detail in Chapter 1). The first might be labeled the "black box" approach. Measures of the quality of education available in the demonstration area could be taken before, during and after the demonstration. The problem with this approach is that it would not show whether or not the voucher scheme itself influenced the outcomes. We would not know, for example, whether the situation would have changed without the voucher scheme, whether the reason for change was the experimental nature of the program, or whether the increase in expenditures for education was the cause of change.

This second strategy involves testing the validity of the assumptions underlying the argument that the voucher plan would lead to improved education and greater parental control. If the

assumptions were found to be valid, we would have some assurance that the plan, rather than the circumstances surrounding the demonstration, was causing any changes. We suggest using the second strategy. It requires gathering additional data and greater expense than the "black box" approach, but we think the advantages outweigh the costs.

The arguments for the voucher plan rest on three assumptions which should be evaluated:

(1) A voucher scheme would lead to a greater diversity of educational alternatives.

(2) Poor parents, given financial resources and insured equitable admissions treatment, would be able to exercise greater choice among the alternatives, thereby requiring the schools to be more responsive to their children's needs. This should result in parents' having greater control over the education that their children receive.

(3) The diversity of educational alternatives and the increased responsiveness of schools to children's needs would lead to improved education, particularly for poor children.

(1) A voucher model would lead to a greater diversity in education.

There are three possible sources of diversity. First, given freedom and financial resources, educators might create large numbers of schools that are significantly different from those now operated by local boards of education. Second, through the exercise of choice, parents might force schools to be more responsive (accountable) to their particular interests, thereby increasing diversity. Third, the decentralization of fiscal control might increase the number of administrators making decisions and, therefore, potentially increase diversity.

In the evaluation, it would be important first to consider whether the voucher scheme increased diversity, then the sources of the increase could be investigated. Three categories

for assessing diversity seem helpful:

-- Diversity in conventional inputs, e.g., adult/pupil ratio, qualifications of teachers, characteristics of student body, age and nature of building and equipment, curriculum characteristics.

-- Diversity in the objectives of schools: Do they focus on the three R's? on "learning to learn"? on music? on discipline?

-- Diversity in the outputs of schools: Do some schools teach math better than others? Do some schools produce better informed citizens?

A distinction can be made between "perceived" and "real" diversity. Either might occur without the other. That is, parents and educators might "perceive" that the voucher scheme had spawned diverse schools without "objective" measurement finding the diversity and vice versa. Both types of diversity are important. "Perceived" diversity can lead to "perceived" choice, which in turn might lead to parents' feelings of greater control over their environment; "real" diversity might lead to greater choice and, therefore, greater control. The measurement of "perceived" diversity is relatively straightforward. Ways in which schools might differ should be detailed. Parents, educators, and other interested persons should be asked which differences were apparent and whether the new scheme was in part responsible for them.

The measurement of "real" diversity is somewhat more difficult. Although there is a large body of literature dealing with the problem, most previous attempts have been inadequate. Nevertheless, it would be important to obtain objective measures of the three categories suggested above.

Assessment of the three sources of "real" diversity does, however, present problems.

In the demonstration project, it would be important to assess whether the market structure of the voucher scheme would encourage educators to set up new and different schools. As noted

earlier, the limited duration of the demonstration would discourage many innovators from starting schools. Specifically, educators starting new schools would need to consider what to do when the demonstration was over; they would have to take into account the large starting costs of new schools; and they would have to consider the problems in building a reputation for the school in a short time. For these reasons, extensive aid should be given to help the development of new schools. Thus, although it would be possible in a demonstration to determine whether the new schools were different from the old, it would be impossible to assess whether educators would set up new and different schools in a larger-scale project.

The second potential source of "real" diversity might be easier to examine in the demonstration because the responsiveness of schools to the wishes of the parents probably would not be greatly influenced by the fact that a demonstration was limited in duration and scope. The measurement problem would be, however, nonetheless difficult.

Multiple measures of schools' responsiveness should be made. A school might be responsive either to the wishes of individual parents or to the collective wishes of parents with regard to hiring and firing of teachers, to curriculum introduction and modification, etc. A number of control groups should be used for comparison purposes. Specifically, at least three sets of comparisons should be made. The responsiveness of schools in the voucher area during the demonstration should be compared (a) to the responsiveness of the schools in the area prior to the demonstration; (b) to the responsiveness of the schools in a nearby and similar non-voucher area; (c) to the responsiveness of schools in an area where decentralization legislation is just going into effect. Furthermore, the schools in the voucher area should be divided into "old" and "new", publicly and privately controlled, etc., for comparisons with the control schools.

The third possible source of "real" diversity is, in part, a given. That is, because financial control would be decentralized, there would probably be greater diversity than before in certain decisions: e.g., teacher salaries, textbook purchases, amount of time devoted to certain curriculum matters. Judging just how much of the overall diversity is due to fiscal decentralization, however, might be very difficult.

In summary, it does <u>not</u> appear possible in a demonstration of limited duration to test the proposition that new schools would automatically spring up in reaction to the new buying power of parents. It would be possible, however, to examine whether the "new" schools that did arise differed significantly from the old schools. This would be itself a partial test of whether parents had more choice. It would then be possible to examine whether parents were aware of the available choices and whether they reacted to the choices. It should also be possible to assess whether schools in the demonstration were more responsive to parental pressure.

Finally, it might be possible to assess whether decentralization of fiscal control led to greater diversity of schools. There would be, however, great problems in considering each of these issues -- perhaps the greatest being the definition of diversity and thereby the definition of choice.

(2) Parents would have more choice about the education that their children receive. This would lead to parents having greater control.

The second argument has two parts. First is that the voucher plan would extend to all parents, rather than just the rich, the opportunity to send their children to alternative schools. This would allow parents both <u>actually to place</u> their children in new or different schools and to <u>threaten</u> to place their children in new and different schools. Therefore, both the old and

the new schools would have an incentive to be more responsive to the wishes of the parents. The second part of the argument is that parents would exercise their choice in such a way as to obtain greater control over their children's education.

Unless choice exists, there is no reason to believe that the schools would be more responsive to the needs of the child and certainly no reason to think that parents could exercise choice. The economic model, the admission mechanism, the information collecting and dispensing agencies, and the review board were all designed to encourage "real" choice.

Real choice for parents can be presumed to exist if:

-- Real diversity exists.

-- Everyone can afford alternative schools. The guidelines in our preferred model are designed to accomplish this, but there is no guarantee that they would succeed. If other economic models were used, or the value of the voucher were set too low, the poor might not be any better off than they are in the present system.

Choice, however, would not lead to greater control on the part of parents unless two further conditions were present. First, parents would have to realize that they had a choice and would have to be prepared to use it, both individually and in groups. (The extent of parents' "perception" of choice and of their willingness to exercise their choice, therefore, should be measured.) Second, teachers and principals would have to be aware that parents could and would choose different schools. Otherwise they would have no incentive to be responsive to the wishes of the parents. (Some assessment of teachers' and principals' perceptions, therefore, also should be made.)

Evaluating these issues might take great ingenuity. The task, however, would be necessary if the effects of the voucher scheme were to be estimated. In order to attribute changes in the quality of education to the establishment of a voucher plan, we would have to be able to demonstrate that diversity of educa-

tional alternatives led to parental choice, which in turn led to increased parental control and increased school responsiveness to the needs of children.

(3) Children, particularly poor children, would receive improved education.

Improvement presumably would occur because parents would be able to choose from a range of alternative, and could, therefore, either select more appropriate schools for their children or force their present schools to be more responsive to the needs of their children. Before we could relate diversity in choice and parental control to improved education, however, some way of measuring "improved" education would have to be developed.

One way of measuring improved education would be simply to ask parents and children whether things had gotten better. The response of various types of parents could be contrasted and control groups set up, tested, and studied. Teachers and principals could be similarly questioned.

It is unlikely, however, that this would be entirely satisfactory. Everyone likes to think that objective measures tell us more than subjective perceptions. To "objectively" examine the question of "improved" education, however, would require that some prior value judgments be reached as to what was "improved" education. This suggests, as we noted earlier, that multiple evaluations are important and that the judgments of each evaluator should be made as independently as possible.

Presumably, multiple evaluations would lead to the collection of large amounts of data. Although the evaluators would be independent, attempts should be made to reduce duplication and bother to parents, students, and school personnel.

The analysis of school quality should not be limited to a study of conventional measures of inputs and standardized tests

of achievement. The longitudinal nature of the project would allow for a much more detailed and comprehensive approach. Specifically, samples of students might be systematically followed throughout their school years. Measures might be taken of their early achievement and ability, and data gathered on their home environments and on their school experience. These measures could be related to the later achievement of the students, to their admission to high school or college, to their completion or withdrawal from high school,to their attitudes and aspirations.

Many problems, of course, would remain. Specifically, parents would have exercised their choice of schools, thereby mingling the effects of schools with the effects of choice. Some schools might not wish to divulge certain information. The sample size would be small, at least in comparison to some recent surveys. Control groups might not be comparable in certain ways. Finally, the experimental nature of the demonstration might have unexpected effects on the students, the parents, and the schools. Nonetheless, the suggested data should provide an adequate base for estimating changes in the quality of education.

4. Assessment of Criticisms of the Voucher Plan

Three particular aspects of a voucher demonstration should be reviewed:

-- The effects of the demonstration on segregation by race, social class and ability should be assessed. This assessment could be made without collecting data beyond that already suggested. The extent of each type of segregation among schools before, during, and after the demonstration could be measured. These measures could be compared to each other and to comparable measures gathered in control locations. All of this is relatively straightforward. Difficulties would arise if subjective criteria were applied.

-- The effect of the voucher plan on church/state relations might be easier to examine in a demonstration. In the context of the demonstration, suits holding that the voucher plan was unconstitutional might be brought before the courts. If the courts were to decide to hear the cases, much of the ambiguity presently surrounding the constitutionality of the plan might be removed. Of course, information should also be gathered about the effects of the plan on parochial schools.

-- The effects of the voucher scheme on the allocation of resources within a single school district could also be examined without collecting data beyond that already suggested. No estimate, however, of the effects of the plan on resource allocation over a large area would be possible.

Summary

Three general evaluation tasks have been proposed. First, a political and educational history of the demonstration should be maintained. The history should include an analysis of the political pressures for and against the voucher plan. It should also include information about the effectiveness of the mechanisms proposed for admission to schools, for the distribution of vouchers, and for the collection and dissemination of information. We suggest that this latter information should be used as feedback to the demonstration. If agencies were not performing adequately, they should be so informed, and their performance corrected.

Second, the evaluation should test the success of a demonstration in reaching two objectives:

-- A voucher scheme would improve the education of children, particularly disadvantaged children.

-- A voucher scheme would give parents more control over the kinds of schooling that their children receive, particularly parents of disadvantaged children.

Although the demonstration would not provide definitive answers to these hypotheses, we argue that analyses of the assumptions underlying them would indicate the probable effects that the voucher plan had on school quality and parental control.

Third, an assessment of the principal criticisms of the voucher scheme should be carried out. Specifically, the effects of the voucher plan on segregation by race, social class, and ability, on church-state relations, and on resource allocation in the demonstration area should be monitored. The results of these analyses should not, however, be automatically generalized

Appendix A

Education Vouchers and the First Amendment

Our focus here is the First Amendment prohibition of "establishment" of religion. One question will be the center of investigation: What features of the voucher program best protect it from successful constitutional challenge?

There is no longer any question that religious schools serve important and allowable public functions. The issue has been to what extent the government may support or facilitate the public and secular activities of otherwise religious bodies without violating the First Amendment. Four major Supreme Court cases have dealt with this issue and each of them has found the support constitutional. Bradfield v. Roberts[1] (construction grants to a hospital controlled and staffed by members of the Catholic Church); Quick Bear v. Leupp[2] (payment of cost of salaries and maintenance of a Catholic school on an Indian reservation); Everson v. Board of Education[3] (state provision of free transportation to students in religious schools); Allen v. Board of Education[4] (state provision of free textbooks to students in religious schools). Though the specific facts and reasoning varied in each case, the common concern was a reconciliation of the prohibition against the government's establishment of religion with the government's

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[1]175 U.S. 291 (1899).
[2]210 U.S. 50 (1905).
[3]330 U.S. 1 (1947).
[4]392 U.S. 236 (1968).

legitimate interest in the public welfare. That education vouchers adequately promote that interest is argued in the body of this report. Here the burden is only to demonstrate that the voucher program escapes the prohibition of the Establishment Clause. Two arguments demonstrate this.

First, the essential feature of the voucher program -- its reliance on individual freedom of choice -- makes it constitutionally immune. The first premise of this argument is that private acts which may benefit religion are not constitutionally prohibited. The second premise is that the voucher program puts effective control of the educational funds in private hands. Therefore it is arguable that a voucher program is not unconstitutional even if benefits were to accrue to the religious schools receiving the vouchers.

Second, and in the alternative, the program envisioned by this report does not confer unconstitutional benefits on religious institutions. The vouchers are to cover no more than the cost of secular education. Allen and other cases make it clear that this is a constitutional expenditure even when religious institutions are instrumental in its effectiveness.

I. Education Vouchers Legally Embody Only Private Support of Institutions and Are Therefore Constitutional.

The First Amendment begins "Congress shall make no law..." and the Fourteenth decrees "No state shall make or enforce any law...." The Constitution proscribes only government support of religion; non-government support is obviously not barred. This is the principle upon which Quick Bear v. Leupp was decided. In that case the plaintiff, a Sioux Indian, sued the Commissioner of Indian Affairs to enjoin execution of a contract between the Commission and the Bureau of Catholic Indian Missions. The contract was to provide the Bureau with funds to pay teachers and maintain buildings in a Catholic school on the Sioux reservation. The

promise of funds had been incorporated in a treaty requiring the federal government to provide schools and teachers for each group of 30 Indians who wished to be educated. The Court upheld the expenditure and contract arguing that, though the funds were appropriated each year by Congress, they were, in effect, not spent by the federal government but only administered by it. The Indians had an absolute right to the funds and the government had no choice but to allocate them once the Indians determined their disposition by choosing the schools they wished to attend.

Although the monies in contention in Quick Bear aided the school in toto, the Court found the appropriation constitutional. Because the Sioux were entitled to the monies, the Indians, not the government, had chosen the recipients. The voucher program, like the Quick Bear circumstances, incorporates individual choice between the government and subsequent recipients of government originated funds.

Thus for aid to a religious school to be held constitutional, Quick Bear indicates that two factors must be shown: entitlement to the money and private choice as to its ultimate recipient. Each of these is in fact characteristic of the voucher program.

Entitlement

The statutory program envisioned in this proposal would, as a matter of right, allow every school-aged child to use vouchers at eligible schools. This is the requisite entitlement. That the rights in Quick Bear were based on a treaty rather than statute should not matter legally because the Supreme Court made no mention of the unique status of treaties. The decision turned on the fact of, not source of, entitlement.

Though treaty rights are unique, the same reasoning can and has been applied to governmental duties of lesser constitutional stature. Most states have long had constitutional provisions binding them to provide education for the young. In states in which

no such provision exists, statutory entitlements could serve as well. Thus the Supreme Court of Pennsylvania, in Schade v. Allegheny County Institution District,[5] upheld the allocation of funds to sectarian institutions which cared for neglected or dependent children. The Court held that payment of these public funds was not a governmental "appropriation."

> The cost of the maintenance of neglected children either by the State or the County is neither a charity nor a benevolence, but a governmental duty.[6]

Similarly, a voucher program intended to satisfy this duty need not be considered an unconstitutional "appropriation" to a religious institution.

The entitlement of the young to state-purchased education would be, in fact, no less significant under the voucher program than it was in Quick Bear. The students would have a statutory right to the voucher funds, a right in most cases buttressed by the specific provisions of the state constitutions. Thus the requisite entitlement would exist.

Free Choice of Recipient

Though the Supreme Court in Quick Bear did not dwell on the point, the constitutional immunity of the government-church contract was based at least partially on the fact that private individuals selected the church-run school. If the government transfers funds to an agency or person having complete or near complete control over its use, it is arguable that the government has not extended benefits to any subsequent religious recipient; the private payer has. Both Everson and Allen are explainable on these grounds. The Court noted in each case that any benefit accruing to religious schools (e.g., increased enrollment) was an

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[5] 386 Pa. 507 (1956).

[6] Id. at 512.

incidental by-product of conferring the primary benefit on the school children. That is, the state action was the provision of free busing and textbooks only to the children; the possible benefits to sectarian schools occurred only through and after the intervening exercise of private choice.

The primary consideration here seems to be the breadth of free choice involved. The greater the intermediate individual discretion, the greater the likelihood of avoiding an unconstitutional connection between the government and the private institution. In Everson and Allen the students received free transportation and books regardless of which accredited school they attended. If the government provides citizens with vouchers and leaves them free to use them at all accredited schools, subsequent benefits to the institutions themselves therefore may not be considered state action. Thus, as in Quick Bear, if students and their parents freely chose to attend religious schools and transferred their vouchers to those schools, there would be no constitutional prohibition against the state to honor those vouchers.

To counter the Quick Bear rationale it might be argued that education vouchers do not provide sufficient distance between the government and the religious schools. This argument might rely on the Court's rejection of vouchers in segregation cases under the Equal Protection Clause of the Fourteenth Amendment. The courts have refused to recognize private subvention when vouchers were used to aid segregated schools. Yet this line of cases is distinguishable for at least two reasons.

First, rejection of vouchers has occurred only in jurisdictions in which there was a history of de jure segregation -- segregation resulting from state law or administrative action. (See Appendix B) These cases dealt with state-wide attempts to continue invidious racial discrimination, whereas no like purpose is implicit in the religious features of the voucher program. In those jurisdictions the states were assigned by the courts the strict positive duty to end separation of the races in schools as

rapidly as possible. Therefore, governments in those states were not free to allow private choice which perpetuated segregation of races in schools.

Second, the nature of the government's constitutional interest in segregation is substantially different from its interest in religion. While the former is clear and not counterbalanced by an equally strong opposing interest -- i.e., opposition to invidious racial discrimination is unmitigated -- the latter requires some balancing of the mandates of the Establishment and Free Exercise clauses of the First Amendment.[7] The government has an obligation

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[7] Compare Cooper v. Aaron, 358 U.S. 1 (1958) (Equal Protection):

> The constitutional rights of children not to be discriminated against in school admissions on grounds of race or color declared by this court in the Brown case can neither be nullified openly and directly by state legislatures or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingenuously or ingeniously."
>
> [S]tate support of segregated schools through any arrangement, management, funds or property cannot be squared with the Fourteenth Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. Id. at 17, 19.

with Zorach v. Clauson, 343 U.S. 306 (1952) (Establishment and Free Exercise):

> To hold that [the state] may not [adjust public activities to sectarian needs] would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for the government to be hostile to religion and to throw its weight against the efforts to widen the effective scope of

(continued on next page)

to oppose invidious segregation where the state is involved to any degree whatsoever. In religious matters, the countervailing pressures of the Establishment and Free Exercise clauses require a delicate balancing of interests. The resolution of these countervailing First Amendment interests by the political and administrative arms of government therefore is likely to be given great weight by the courts. While even state indifference in racial matters may itself be forbidden,[8] this is certainly not the case in religious matters. Neutrality, rather, is required. Thus the outcome and reasoning of voucher cases centering on racial issues have little if any bearing on religious ones.

If money, rather than vouchers were given directly to parents, as is social security, the connection between the government and religious institutions would indeed be attenuated. In order to restrict the money to educational use, vouchers are probably necessary. This utilization of vouchers instead of cash need not increase government involvement, however. Voucher funds could be maintained in special separate accounts, for example, thereby closely approximating the administrative procedures upheld in Quick Bear. The only "connection" in such a case would be that

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religious influence. Id. at 312.

The Solicitor General in argument before the Supreme Court stated that Everson, Zorach, and the Sunday Closing Law Cases "contemplate an accommodation between the two freedom of religion clauses, so that a degree of establishment is allowable to avoid hampering free exercise." 38 L.W. 3273 (January 27,1970). He noted the special statutory provisions indicative of the reconciliation of these two clauses, e.g., tax exemptions for churches and ministers, exemption from the draft, etc.

[8] See Reitman v. Mulkey, 387 U.S. 369 (1967).

the government would cash the vouchers, primarily as an administrative convenience. No government agency, eigher legislative or executive, would then have any discretion in the matter of whether or not funds flowed to a religious school.

This arrangement in fact would be analogous in many respects to the present income tax deductions for contributions to charities; contributions to religious groups are eligible for deduction as well as contributions to secular non-profit groups. Further, such deductions are not conditioned on use of the money for secular activities by the benefitted religious groups; they may build churches with the funds if they so desire. The deductions appear to be constitutional for two reasons: first, the benefit is not exclusively available to religious charities; and, second, the religious group benefits from the deduction only through the voluntary decision of the taxpayer to channel his contributions to that group.

Aid to the parent could, of course, be given instead in the form of a tax credit or a negative income tax payment which could then be used for educational expenses. In either case, the decision-making role rests with the private party, the parent, and not with the government. The relationship is presumably most attenuated in the case of a negative income tax, but the problem might arise that some funds made available for education would be spent for other things. The tax credit, on the other hand, has the disadvantage of not being available to the poor, or at least not to the same extent as it is to the more affluent. In addition, both the tax credit and, possibly to a lesser extent, the negative income tax might create cash flow problems. Cash might not be conveniently available to families at the time when tuition payments were due. Once again, the poor would suffer most. The voucher system avoids these problems without decreasing parental choice as to schools.

These considerations indicate that any voucher program which is to avoid the proscriptions of the First Amendment must

assure that freedom of choice exists in fact as well as in theory. This means a student must always have access to a non-religious institution. This will normally be the case because maintenance of public schools is required by most state constitutions. If, however, some students who did not want to attend religious school were forced, by lack of space or any other factor, to do so, successful Free Exercise and possibly Establishment challenges could be mounted.

In conclusion, it can be argued that the voucher program, as a way of facilitating private free choice, is immune to successful attack on Establishment grounds. Quick Bear v. Leupp seems directly on point and controlling. Voucher programs that have fallen before Equal Protection challenge are based on a constitutional interest -- racial equality -- which is historically and philosophically distinguishable from religious values.

Once the freedom of individual choice is assured, the voucher program probably can be defended from Constitutional attack. It is the choice of private parties that determines to whom the state pays money, and, without government selection of the recipient of the funds, the government can in no way be accused of violation of the Establishment clause even if a benefit accrues to the recipient of the funds.

II. Education Vouchers Limited to the Cost of Secular Education in Sectarian Schools Confer No Proscribed Benefit on Those Institutions.

Even if the intervention of the freely choosing parent is not sufficient to protect vouchers from constitutional attack, the proposal offered in this preliminary report would be constitutional because it is designed in principle and practice to cover no more than the secular costs of religious schools. In the absence of the intervening agency theory of Argument I, the government itself would be considered a contributor to the operation of sectarian educational institutions receiving vouchers. This factor has never

been considered sufficient by itself to condemn government action. Police and fire protection, transportation of pupils, free textbooks for pupils, school lunches,[9] and health services have all been noted by the Court as conferring some aid on religious institutions.[10] Thus some standard is required to distinguish between aid which is allowable under the Establishment clause and that which is proscribed by it.

The test by which proposed government action is to be appraised was set forth in Allen v. Board of Education:

> The test may be stated as follows: what are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the

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[9] 60 Stat. 233 (1946) as amended 42 U.S.C. 1759.

[10] See Everson v. Bd. of Educ., supra note 3, Allen v. Bd. of Educ., supra note 4.

Emerson, Haber, and Dorsen have found that, "Programs of federal aid to religious institutions prior to 1965 included aid to private denominational hospitals under the Hospital Survey and Construction Act, 60 Stat. 1041 (1946) as amended, 42 U.S.C. 291; see Drinan, Religion, the Courts, and Public Policy 37 (1963); lunches to parochial school children under the National School Lunch Act, 60 Stat. 233 (1946) as amended, 42 U.S.C. 1759; payment for the education of Supreme Court pages in private schools, 60 Stat. 839 (1946), 2 U.S.C. 88a; grants and loans for tuition and educational materials to private schools, regardless of their religious character provided for Korean War Veterans, 72 Stat. 1177 (1958), 38 U.S.C. 1620, and in connection with the National Defense Education program, 72 Stat. 1590 (1958), as amended, 20 U.S.C. 445; and loans and grants for construction by private colleges and universities, 64 Stat. 78 (1950), as amended, 12 U.S.C. 1749a; 77 Stat. 366 (1963), 20 U.S.C. 714. For a more comprehensive list of federal projects which in part bestow financial aid on religious institutions, see Hearings before the Subcommittee of the Senate Committee on Labor and Public Welfare, on S.370, 89th Cong., 1st Sess. 146-157 (1965)..." Political and Civil Rights in the United States, Vol. 1, 1967, p.769.

> Establishment Clause there must be a secular legislative purpose and primary effect that neither advances nor inhibits religion. Abington v Schempp, 374 U.S. 203,222 (1963). (emphasis added)[11]

This test was first enunciated in the Schempp decision (ruling unconstitutional a regulation providing for prayers in public schools), but until the Allen case it was not certain that it would apply to government appropriations as well as regulations. It is now certain; and the test, once clarified, can be used to appraise a voucher program. Quite obviously such a clarification requires explanation of its constituent terms -- purpose and also primary effect.

Purpose

The initial source of information regarding the purpose of legislation is the declaration of purpose in the statute itself. In Allen that was all that was required, and the Court has been explicit in stating its reluctance to look further.[12] Following the traditional rule in constitutional adjudication, motives of the legislators are not considered.[13] Thus in McGowan v. Maryland[14] (upholding a Sunday closing law), the Court conceded that the original motivation for the act was religious; yet it ignored this fact and considered the current or modern purpose and effect, i.e. providing a common day of leisure.

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[11] 392 U.S. at 243.

[12] See, Day Bright Lighting Inc. v. Missouri, 342 U.S. 421 (1952); Ferguson v. Skrupa. 372 U.S. 726 (1963); Williamson v. Lee Optical Co., 348 U.S. 483 (1955).

[13] Daniel v. Family Security Life Ins. Co., 366 U.S. 220, 224 (1960).

[14] 366 U.S. 420 (1961).

The purposes of the voucher scheme are implicit both in the problems that gave rise to its being proposed and in the organization of the program. It is a scheme designed to promote better education, not religious proselytizing. That this is a legitimate secular purpose is not open to question.

> It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose.[15]

One of the lessons of Allen is that private and secular schools may be used within a program designed to achieve that public purpose. The voucher program is just such a program. Since its purpose is clearly allowable, constitutional attack could only be based on its primary effect.

Primary Effect

The Allen test also demands that the act have no "primary effect which advances" religion. The Supreme Court has found such an effect in only three education cases.[16] The practices struck down in these cases were religious exercises in the public schools which are obvious examples of state programs' having a primary effect of advancing religion. Though none of these three cases involved government appropriations, an important insight into the significance of "primary" can be gained from them. In each the government was directly and immediately involved in the religious

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[15] Everson v. Board of Education, 330 U.S. at 7.

[16] See Abington v. Schempp, 374 U.S. 203 (1963), Engle v. Vitale, 370 U.S. 421 (1962), and Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203 (1948).

exercises. They were often conducted by public school teachers and on state property. By contrast, in the four cases in which appropriations were upheld (Bradfield, Quick Bear, Everson, and Allen) this sort of direct and immediate involvement was absent. The voucher program is clearly analogous to these latter cases.

A careful appraisal of the constitutionality of the voucher program requires a more exacting analysis of the Court's treatment of the appropriation cases. This analysis will show what are the critical features in those cases and will relate those features to the voucher program we are considering.

Although each of the four appropriation cases might be rationalized on a number of grounds, two major factual questions seem central to determining the constitutionality of any program attacked on Establishment grounds:

(a) What is the form of the grant?

(b) Who is the primary beneficiary of the grant?

What is the form of the grant?

If the Court determines that the grant is from the government, not from a private individual, then the question of its form arises. Recent cases have implied that the form of a grant from the government may partly determine its constitutional status. Justice Douglas wrote in Schempp, "The most effective way to establish any institution is to finance it."[17] Direct grants of money to religious institutions would seem, at first, to be more suspect than goods and/or services. Everson dealt with transportation; Allen, with secular textbooks. The busing allowed in Everson was inherently non-religious; the textbooks in Allen could be. Yet to decide, therefore, that federal monies cannot be granted

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[17] 374 U.S. at 229 (emphasis in original).

to sectarian schools would be to ignore the reasoning of these cases and to rely on surface language. In each case the Court's decision rested not on the form of the aid, but on the use to which it would be put, i.e., whether or not it was to be used in religious activities. Grants of money are more suspect only if they can be spent on religious activities. But presumably no federal grants of any form -- money, goods, or services -- can be used in this manner.[18]

Once it is determined that the support is governmental, the use of the voucher aid rather than its form is of central importance. Various ways of limiting funds to constitutional uses suggest themselves. One would couple the voucher program with a purchase of services arrangement whereby the voucher monies could only be used in paying actual costs of secular activities even though they occurred in religious schools. Another would be provided by paying less than the cost of the secular activities. (This would assure that the federal support would not fully account for the secular activities, much less the sectarian ones.) Statutory and administrative prohibitions against use of public money in sectarian activities in the schools would further guarantee the safety of the program from constitutional attack. These possibilities are discussed in more detail in later sections. Here it is enough to conclude that form itself will not condemn our preferred voucher program.

Who is the primary beneficiary of the grant?

It is clear that the prime beneficiaries of education vouchers would be the children, for it is their education which is

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[18] In rather special circumstances such as the case of military or prison chaplains and religious facilities such grants may be allowable. These, it must be admitted, are exceptional cases.

supported by the vouchers. Furthermore, the crisis occasioned by the closing or curtailment of the private sector of education would be a tremendous burden on the continued effectiveness of the public sector, and the education of all children would suffer. To avert this problem may require, but certainly must permit, government support of the private educational institutions insofar as they perform secular educational functions. The question must be asked then: Does a religious institution[19] benefit per se when it is the recipient of state funds? Is the recipient of the voucher funds necessarily a beneficiary of the program? The answer to each question is no.

There is certainly a linguistic distinction between a recipient and a beneficiary. The former is the one who receives the money or goods and the latter, the one for whose benefit the money is spent. In Bradfield, the hospital corporation was the recipient; the indigents, the beneficiaries. A similar distinction runs throughout American law and is accepted and relied upon.

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[19] It is necessary at this point to indicate possible criteria for defining "religious institutions." Although federal courts have yet to develop these criteria, some state courts have done so. Four receive general support:

1. Stated institutional purpose.
2. Relation between the institution and a religious organization.
3. Degree of control of the church over the program of the schools, and
4. Place of religion in the program of the school.

See C. Antineau, Religion Under the State Constitutions, (1965) pp. 24-9 and cases cited therein. The Supreme Court has determined controlling or working for the institution is not determinative. See Bradfield v. Roberts, 175 U.S. 291 (1899). The Bradfield decision is also important because the religious symbols and garb that would be apparent in the institution were virtually ignored by the Court.

It might be argued, however, that in Bradfield the Court noted that the hospital charter precluded religious activities. Such is obviously not the case in religious schools. Further in Allen and Everson the Court took special pains to state that the private parties were the sole recipients as well as the beneficiaries. Thus in a voucher program, a religious institution which is the recipient of the grants, might also be considered a beneficiary of them.

An evenhanded reading of Everson or Allen however does not support this conclusion. The mere fact of receipt of government funds does not mean receipt of a benefit. If the institution must reciprocate with secular services of equal or greater value, no benefit is bestowed upon the institution. Rather, the benefit flows to the person who is served.

The Establishment Clause proscribes government action which "advances" religion. A voucher scheme limited to the cost of secular services may be viewed as conferring upon the non-public school no augmentation of its religious activities. Any benefits that may accrue to the institutions are like those accompanying police and fire protection, or free bussing and textbooks. State courts have often recognized this fact:

> So long as [the state grants] involve the element of substantial return to the State and do not amount to a gift, donation, or appropriation to the institution having no relevance to the affairs of the State, there is no constitutional provision offended.[20]

> Only actual increased cost to such schools occasioned by the attendance of beneficiaries is to be reimbursed. They are not enriched by the services they render. Mere reimbursement is not aid.[21]

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[20] Murrow Indian Orphans Home v. Childers, 197 Okl. 249, 171 P.2d 600 (1946).

[21] State ex rel. Atwood v. Johnson, 170 Wisc. 251, 176 N.W. 224 (1930).

> One who pays less for benefits or services than the actual cost of the same is not making a donation by such a payment.[22]

A similar conclusion was reached in Cochran v. Louisiana State Board of Education[23] (cited favorably by the Supreme Court in Allen).[24] There the Court was faced with the question of whether or not a state program of furnishing secular textbooks for use in non-public (including religious) schools was a benefit to those institutions qua institutions. The Court, unanimously, held that the program did not "advance" institutional interests as well as public ones:

> The schools. . . are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation because of them. The school children and the state alone are the beneficiaries.[25]

Cochran, like Everson and Allen, makes it clear that public aid to the secular education of children in non-public schools does not constitute aid to the institution itself. If it does not benefit the institution, it certainly cannot be said to "advance" the institution in the constitutionally significant sense.[26]

Thus, payment of the cost of secular services does not confer a benefit on the institution as a whole. Its effect is to enhance secular educational services. If the program has any tangential effect on the religious activities of religious institutions, they are like those noted by the Court in Everson and Allen and, therefore, would not sustain successful constitutional challenge.

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[22] 289 Ill. 432, 124 N.E. 629 (1919).

[23] 281 U.S. 370 (1930).

[24] 392 U.S. at 247

[25] 281 U.S. at 375.

[26] See Schade v. Allegheny County Institution District, 386 Pa. 507 (1956).

The only remaining question is how costs are to be determined. There are two possible models: (1) average cost vouchers in which the state determines the fair market value of secular services and limits all vouchers to that level; and (2) actual cost vouchers in which religious institutions must establish the actual per pupil cost of their secular activities,and the vouchers cannot exceed that amount.

Average Cost Vouchers

The essence of this approach to determining costs of secular education is uniformity throughout both the public and non-public sectors of education. A state agency, possibly the legislature, would determine the per pupil operating cost of a public school and, with appropriate adjustments for hidden cost savings in the public system,[27] would establish the fair market value of secular education for the state or for areas within the state.

The primary advantage of this method of cost calculation is its administrative simplicity. Once the adjusted per pupil operating costs were determined, vouchers could be set at that amount. Both public and non-public schools would receive these vouchers from the students they attracted and cash them in with the state.

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[27] It would be unreasonable to assume that the standard per pupil operating cost figures for the public schools would fairly represent the total cost of secular services per pupil. The public sector figures often include hidden cost savings that would have to be pro-rated for purposes of the average cost vouchers. For example, school construction costs in public schools are not necessarily included in computations of operating costs. There may also be cost savings in the public schools due to a variety of central services budgeted from other than education funds. This sort of cost would have to be used in calculating the average cost vouchers.

A second advantage to average cost vouchers is that they provide a legally determinative method of fixing costs. Given the vagaries of specific cost accounting per school, for example, there would be a strong reason for the courts to rely on this determination. Additionally a governmental calculation of the fair market value of secular services could raise a strong presumption that this was the actual cost of the secular education. The body that makes the determination would be considering competing economic and political factors, and the courts are traditionally reluctant to overrule reasonable legislative or executive determinations in these areas.[28] Certain types of decisions, notably decisions involving complicated economic calculations, are difficult for courts to undertake, and consequently the courts are hesitant to do so. Given that a state education agency would determine the fair market value of secular education, that determination would carry great if not conclusive weight.

It may be argued, however, that some religious school would actually be able to provide secular services for less than the average cost voucher amount. In such a case, the argument would continue, the excess money might be spent on religious activities, and hence the aid is unconstitutional. Three solutions to this problem might be adopted.

First, the school providing services for less than the amount they receive could be required to return the excess. It is obvious that this plan would provide an incentive for inefficiency as well as being difficult to police. Costs would clearly tend to rise to the maximum permissible level.

Second, the school could be required to keep books separate from those of the associated religious body and spend any

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[28] See Williamson v. Lee Optical Co., 348 U.S. 483 (1955).

excess only on secular services, e.g., expansion of secular facilities. The policing problem exists here as well. An agency overseeing the cost accounting of the religious schools would have to be established. The institution would be required to maintain separate accounts for its secular and sectarian financing. Except for the administrative complications, this solution appears to be the most promising both practically and legally.

Third, religious schools could be limited to an across the board percentage reduction of the average cost voucher. For example, if the state agency determined the adjusted per pupil operating cost of secular education were $1000 a year, religious schools would be paid only some fraction of that amount, say $800.

If this reduction were considered by the state agency to represent the average cost of secular education in religious schools (reflecting lower teacher salaries, for example), it would have the same legal strengths and weaknesses as the full average cost vouchers. It should therefore carry a strong presumption in the courts, though it might be challenged in specific cases.

If the reduction represented merely an arbitrary attempt to minimize the possibility of any religious school's earning a profit and thereby receiving a benefit, it might, however, succumb to constitutional challenge from another direction. If, for example, the state determined that the adjusted average per pupil operating cost of secular education was actually $1000 and made an across the board reduction of 20% for religious schools without determining that the reduction reflected an accurate appraisal of the costs of providing a secular education in religious schools the reduction might be violative of the Free Exercise clause of the First Amendment.

The Free Exercise clause prohibits the state from burdening the free choice of religious conviction.[29] Thus in Sherbert v. Verner[30] the Supreme Court upheld a challenge by a Seventh Day Adventist of an unemployment compensation law that conditioned benefits on a willingness to work on Saturdays. The Court felt that to impose this condition inhibited the petitioner's free exercise of religion. To lessen arbitrarily the value of vouchers merely because they are to go to religious institutions might be seen as an analogous burden. A religious school student in such a case would be denied the right to a full value voucher because he chooses to attend a religious institution. He is being penalized because of his religion from receiving the full benefits of an otherwise general welfare program. Sherbert indicates this may be forbidden by the Free Exercise clause.

Achieving a balance between the constraints of the Establishment and Free Exercise clauses of the First Amendment has long troubled the courts. In order to sustain the average cost voucher program it need not be argued that the Free Exercise Clause requires such aid, only that it permits it. A voucher program in which the legislators choose to aid all non-public schools could be taken as a standard for a proper balancing of these two potentially contradictory clauses. A legislative decision to aid only parochial schools would surely violate the Establishment clauses; to aid all but them, thereby burdening the choice of a religious school, may violate the Free Exercise clause. The state's determination of the cost of secular education should however raise a strong presumption that no constitutionally proscribed benefit was being conferred on religious institutions. The constitutional

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[29] See Schwartz, No Imposition of Religion, 77 Yale L.J. at 720 (1968).

[30] 374 U.S. 398 (1963).

safety of the average cost voucher would be further enhanced by a legal requirement that any excess funds be accrued only for secular programs. These monies could be retained by the state for the school until it was to be spent on secular services.

Actual Cost Vouchers

The second general model for providing constitutionally permissible vouchers to parochial schools would rely on a case by case determination of the actual costs of secular education. Its comparative administrative difficulties vis-a-vis average cost vouchers may be outweighed by its greater prima facie constitutionality safety. So long as parochial schools were in fact receiving money only for secular functions, Allen seems to hold out promise of protection from constitutional attack. The major question is how these actual costs are to be determined. Two suggestions have been offered: one is embodied in the purchase of services programs now operative in at least four states; the second involves reimbursement of actual secular expenses of the religious schools through actual cost vouchers. The two are similar in practical effect but differ in form, approach, and perhaps in legal consequence.

The purchase of services plans can be described through an analysis of a case upholding one's constitutionality, Lemon v. Kurtzman[31]. A three judge court there upheld a 1969 Pennsylvania statute which provides aid for certain secular expenses of the state's parochial schools, which some 20% of the elementary and secondary school children attend.

The statute provides that the State Superintendent contract with non-public schools to purchase "secular educational services," which are limited to the provision of instruction in "any course which is presented by the public schools of the

[31]Civ. Action no. 69-1206 (E.D. Penn. 1969).

Commonwealth (and which) does not include any subject-matter expressing religious teaching, or the morals or forms of worship in any sect." The Act further limits the purchases to courses in mathematics, modern foreign languages, physical science, and physical education. All textbooks and instructional material employed must be approved by the Superintendent of Public Instruction. In addition, a satisfactory level of student performance on standardized tests must be attained, and within five years teachers must meet public certification requirements to receive reimbursement. The statute also requires schools to establish that they actually expend the amount requested for reimbursement.

Citing the purpose and primary effect test of Allen, the court found that the purpose of the Pennsylvania statute was clearly to aid the general welfare and to aid the secular education of all children in non-public schools, not to advance religion. The court followed the Allen suggestion that the state could support the secular activities of parochial schools in fulfilling the state's goal of providing education for children.

Actual purchase of services programs in the form upheld in Lemon are not an adjunct of a voucher scheme; for they involve a direct contract between the state and the school. Though purchase of services programs are a way to ensure that religious institutions as a whole do not receive state benefits, we believe they are educationally less desirable than the voucher approach. See Chapter 4 for a detailed discussion of the two.

Purchase of services arrangements may also be more vulnerable to successful constitutional attack than are the voucher programs. Under the voucher program any attack may be met by establishing the effective choice of private parties between the government and the school. For purchase of services plans this strong argument is unavailable. The government and the school enter into direct contracts and thus establish a direct and challengeable relationship. Educationally and legally the voucher plan is preferable.

The actual cost voucher program would shift the burden of establishing the costs of its secular services while leaving the school freer to pursue educational innovations. The amount of the voucher available to parochial schools would be set at some percentage of the per pupil operating costs in public schools, low enough to cover no more than secular costs. To receive a greater amount the school would have to establish that it spent more than the minimum fixed amount on secular educational services. The amount, of course, should not exceed the regular voucher amount provided to secular schools.

Placing the burden of proof on the school has two immediate advantages. First it leaves the school more freedom to organize its program than does the purchase of services approach. The receipt of money would not be limited, for example, to courses specified in the statute.

At the same time this is a weakness of the actual cost voucher proposal. It has been argued that there is no intelligible standard of "secularity" for books, much less courses.[32] The difficulty of such a proof of secularity may, however, be more apparent than real. A school desiring a greater percentage of the voucher money might itself separate secular teaching from "religious" teaching. The safest mode of program operation would be to have academic classes taught in a different place, at a different time, and by a different staff than religious classes. Such a program would help assure full reimbursement for the secular courses.[33]

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[32] Note, Sectarian Books, the Supreme Court and the Establishment Clause, 79 Yale L.J. 111 (1969).

[33] Cf. Zorach v. Clauson, 343 U.S. 306 (1952) (allowing out of school split time); Reed v. Van Hoven, 237 F. Supp. 48 (W.D. Mich. 1965) (suggesting pre-and post-school religious activities in school buildings would be constitutional).

It would also be incumbent on the religious school to establish the fair price of its secular activities. The school probably would be required to keep separate books for them. The allowed costs would include materials for secular courses, salaries of teachers, a portion of the administrative costs, etc.

This approach is advantageous to the school and the state. By placing the burden of proof on the school, the state is relieved of cumbersome information-gathering problems. By leaving the amount of the actual cost voucher open, the school may freely determine its own program and determine for itself how best to reconcile its religious attitudes with its financial needs.

A final caveat to the operation of the voucher program must be noted. If the state is paying for the cost of secular education in parochial schools, the Free Exercise Clause may require that access to that secular education not be conditioned on religious conviction.[34] If, for example, a pupil were denied admission on religious grounds to a parochial school that he and his parents felt offered the best secular education, a Free Exercise claim might be made. If a voucher school has a systematic religious restriction on admissions, there is an increased chance that the courts would find the educational benefits conditioned on religious beliefs and therefore unconstitutional.

Conclusion

The express purpose of this appendix has been to reconcile the voucher program with First Amendment constraints. The program as outlined in the body of this report is designed to maximize both constitutional immunity and educational return. There are two basic rationales through which the program would be protected from attack:

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[34] Cf. Sherbert v. Verner, note 30, supra.

1) Any benefit that accrues to a religion is not the result of government action, but rather of the free choice of private individuals. Such a benefit is not constitutionally proscribed.
2) The program is designed to cover only the cost of secular education. As such, no proscribed benefit is conferred on religious institutions.

Either agreement may be sufficient to uphold the voucher program in a First Amendment challenge. In addition, an understanding of the contemporary legal climate supports the view that the voucher program would be sustained by the courts. Three features seem particularly pertinent.

First the other branches of the federal government (no less entrusted than the courts with the duty of interpreting and upholding the First Amendment) have legislated and executed programs which have meant that some money ultimately reached religious institutions. The G.I. Bill, repeatedly funded by Congress and administered by the Executive, offers aid to veterans at "any educational institution or training establishment selected by him."[35] "Any school" includes elementary schools,and payment of part of the cost of a veteran's tuition at religious schools has never been precluded.[36]

More recently Congress passed the first major federal aid to elementary and secondary education: The Elementary and Secondary Education Act. Congress included provisions which require that educationally disadvantaged children enrolled in non-public schools have access to programs run by the public schools. This provision is particularly noteworthy in Title I of ESEA, which provides more than one billion dollars of aid to programs for

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[35] 38 U.S.C. of 1620.

[36] See also programs noted in footnote 10, supra.

educationally disadvantaged children. Congressional determination that children attending parochial schools should participate in a program of this magnitude was taken only after serious consideration of church/state issues.

Second, an impartial reading of the Court's recent decisions shows that the Court rejects formalistic approaches to church/state issues and will reconcile the conflict between the Establishment and Free Exercise Clauses with flexibility. The difference in approach of the Everson Court (1947) and Allen Court (1968) are subtle but nonetheless highlight this outlook. In Everson the reasoning of the majority began from the relatively strict view that no aid could flow from the state to a religious institution. The opinion then proceeds to develop a plethora of theories that would protect particular government programs from the force of that view, e.g., the child benefit theory or the direct/indirect aid dichotomy. The decision in Allen rejects what one commentator has called the "Strict Neutrality" approach[37] and creates a pragmatic standard -- purpose and primary effect.

Finally, there is a growing recognition by all the parties involved that the requirements of a workable education policy do not allow narrow appraisal of aid to pupils attending church schools.[38] The scope of legitimate government concern must be responsive to the practical realities of the current educational crisis.

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[37] W.D. Valente, Aid to Church Related Education, 55 Va. L. Rev. 579 (1969).

[38] See, e.g., the recent statement of the Solicitor General cited in note 1, supra.

Appendix B

Preventing Racial Segregation

Voucher programs promise to increase parents' freedom to choose schools, and schools' freedom to choose their own programs. But if parents are less constrained in their choice of schools and schools less constrained in their choice of children, will racial segregation increase? The answer to this question is so critical to so many that acceptance or rejection of a voucher proposal may well depend on this one point alone.

This memorandum therefore undertakes a review of the present federal law on racial segregation in schools to see what restrictions it would place on any voucher scheme.

To date, the only voucher programs that have been reviewed by the federal courts have arisen in Southern states. It was clear in these cases that the states sought to use vouchers as a way of avoiding their constitutional obligation to desegregate those public schools which had formerly been segregated by law. Not surprisingly the courts have consistently ruled such schemes unconstitutional. A similar ruling should result if a Northern state adopted a voucher program merely as a device to further racial segregation through the use of private schools.

When there is no evidence of state complicity in discrimination, however, the outcome is not so certain. The second part of this memorandum concludes, however, that schools which participate in voucher programs will be treated like public schools as far as discrimination is concerned. In other words, vocher schools may no more discriminate on the basis of race than public schools.

The most difficult question remains--what of voucher programs in which neither the state nor the private schools discriminate as a matter of policy (de jure segregation), but which, by chance, produce segregation in schools (de facto segregation). The weight of present judicial authority considers de facto segregation constitutional; therefore a voucher program which involved no discrimination by either the state or the schools would probably be constitutional even if it produced some segregation by chance.

In practice it might be difficult to determine whether segregation in a voucher program is entirely unintentional, perhaps more difficult than in the case of neighborhood school zoning. Independent schools generally decide on a student-by-student basis whom to admit, whereas public schools generally admit all of an assigned block of students. Voucher programs, which utilize independent schools, would involve student-by-student admission--in short, many decisions in which race may or may not have played a part. Furthermore, de facto cases to date have dealt only with decisions by public officials (generally school boards); a voucher program by contrast would involve reviewing decisions made by individuals whose status is less clear.

We conclude that courts are likely to reject voucher plans which do not adequately protect against racial discrimination in admissions to voucher schools. We also find that a voucher plan with clear administrative safeguards against discrimination is legally preferable. Admission of at least a substantial portion of the students on a random basis is one likely approach.

I. Memorandum of Law

The purpose of this section is to review the constraints presently placed on segregation by the Constitution of the United

States or other federal laws[1] and to determine their bearing on voucher programs.

We consider three forms of segregation in voucher programs: (1) voucher programs whose purpose is to aid schools organized deliberately to exclude children on the basis of race;[2] (2) voucher programs which inadvertently aid such schools; and (3) voucher programs in which neither the state nor the schools

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[1]State and local laws will be reviewed as part of the process of site selection for possible demonstration projects. It is important to note that at least five states have enacted Fair Education Practices Acts which prohibit racial discrimination in some or all private schools: Massachusetts, New Jersey, New York, Pennsylvania, and Washington. Citations to the specific statutes may be found in Emerson, Haber and Dorsen, 1 Political and Civil Rights in the United States 1793 (3rd ed. 1967.)

Such regulations would, theoretically at least, make it unnecessary to obtain a legal ruling on the unconstitutionality of racial segregation in those states.

[2]It is not entirely clear what actions will be considered "deliberate exclusion." The federal cases have so far dealt primarily with public schools. Voucher programs on the other hand would utilize private, or at least semi-private, schools as well. This raises a host of new questions. Public schools generally have been able to discriminate only in the actual admissions process--i.e., by denying admission on the basis of race. They generally have had little or no contact with potential applicants who are usually "defined" by school boundary lines.

Private schools, however, have a less defined pool of potential applicants. Exclusion achieved by advertising that "We give failing grades to all Black students" would seem as potent as exclusion in the actual admissions process. It remains to be seen where the courts will draw lines as to what constitutes deliberate discrimination.

When this memorandum describes schools as "deliberately organized to exclude children on the basis of race," it assumes there is deliberate racial exclusion in accepting or rejecting applications, therefore, although it does not intend to foreclose the possibility the courts will expand the definition of what constitutes "deliberate exclusion."

intentionally exclude students on the basis of race, but which nonetheless result in racially segregated schools.

The mandate of Brown v. Board of Education[3] is clear: States may not adopt a policy of maintaining racially segregated schools. Courts have chosen since the Brown decision to classify racial segregation in schools as either de jure, segregation resulting from state law or administrative action, or de facto, segregation resulting by chance. The distinction is important because while courts hold de jure segregation unconstitutional, they have generally declined to rule de facto segregation unconstitutional.[4] In addition, once there is a finding of de jure segregation, the state or local authorities are constitutionally required to disestablish the de jure segregation.[5]

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[3] 347 U.S. 483 (1954).

[4] See, e.g., Downs v. Board of Education of Kansas City, 336 F.2d 988 (10th Cir. 1964), cert. denied, 380 U.S. 914 (1965); Springfield School Committee v. Barksdale, 348 F.2d 261 (1st Cir. 1965); Bell v. School City of Gary, Indiana, 324 F.2d 209 (7th Cir. 1963), cert. denied, 377 U.S. 924 (1964). Contra Blocker v. Board of Education, 226 F. Supp. 208, 229 F. Supp. 709 (E.D.N.Y. 1964); Branche v. Board of Education, 204 F. Supp. 150 (E.D.N.Y. 1962)

[5] See, e.g., Brown v. Board of Education, 349 U.S. 294 (1955) (Brown II) "the courts will require that the defendants make a prompt and reasonable start toward full compliance with Brown I... the courts are to...enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases;" Green v. County School Board, 391 U.S. 430 (1968): "School boards...operating state compelled dual systems were...clearly charged with the affirmative duty to take whatever steps might be necessary to convert to unitary systems in which racial discrimination would be eliminated root and branch."

This requirement means that voucher programs may be subject to more stringent judicial review in such jurisdictions.

Therefore, each of the three sections is further divided into sections discussing the law (1) in jurisdictions under court order to disestablish de jure segregation, and (2) in all other jurisdictions.

1. Voucher Programs Whose Purpose is to Aid Schools Which Are Organized to Exclude Children on the Basis of Race Are Unconstitutional.

Federal Courts have repeatedly held that voucher programs established with the purpose of aiding racially segregated schools are unconstitutional.[6] The problem is to establish the

[6] See, e.g., Coffey v. State Educational Finance Comm'n, 296 F. Supp. 1389 (S.D. Miss. 1969); Brown v. South Carolina State Board of Educ., 296 F. Supp. 199 (D.S. Car. 1968); aff'd per curiam 393 U.S. 222; Poindexter v. Louisiana Financial Assistance Comm'n, 275 F. Supp. 833 (E.D. La. 1967) aff'd per curiam, 389 U.S. 571 (1968); Lee v. Macon County Board, 267 F. Supp. 458 (M.D. Ala. 1967).

For other federal decision holding voucher programs unconstitutional, see Griffin v. State Board of Education, 296 F. Supp. 1178 (E.D. Va. 1969); Poindexter v. Louisiana Financial Assistance Comm'n, 296 F. Supp. 686 (E.D. La. 1968); Hawkins v. North Carolina State Board of Educ., 11 Race Rel. L. Rep. 745 (W.D.N.C. 1966); Lee v. Macon County Board, 231 F. Supp. 743 (M.D. Ala. 1964) Hall v. St. Helena Parish School Board, 197 F. Supp. 649 (E.D. La. 1961), aff'd per curiam, 368 U.S. 515 (1962). Cf. Plaquemines Parish School Board v. U.S., 415 F. 2d 817 (5th Cir. 1969)(forbidding sale or transfer of public school property to discriminatory private schools).

The extent to which courts will go to prevent any aid going to discriminatory private schools is indicated by the recent ruling in Green V. Kennedy, 38 U.S.L.W. 2419 (1970). There a three judge district court granted a preliminary injunction against tax benefits (which are traditionally sacrosanct) because they went to private segregated Mississippi schools.

purpose of the voucher statute. The courts have followed the traditional judicial rule enunciated by the first Justice Harlan that:

> The purpose of legislation is to be determined by its natural and reasonable effect, and not by what may be supposed to have been the motives upon which the legislators acted.[7]

But recognition of the distinction between purpose and motive does not prohibit courts from looking beyond the face of the statute.

Two tests of purpose have generally been used by courts in evaluating voucher programs: (1) legislative history and setting and (2) effect.

The precedent for looking at the legislative history and setting of a statute was established by the Supreme Court in Grosjean v. American Press[8], in which the Court held unconstitutional a tax on newspaper and theatre advertising that was on its face unobjectionable. A unanimous Court explained:

> [The tax] is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled by virtue of the constitutional guaranties.[9]

A brief review of two of the federal voucher decisions affirmed by the Supreme Court illustrates how far courts will go in judging the purpose of a voucher statute by its history or setting, "irrespective of the terms" of the statute.

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[7] People v. Roberts, 171 U.S. 658 (1898).

[8] 297 U.S. 233 (1936).

[9] Id. 2t 250.

In Hall v. St. Helena Parish School Board,[10] a three judge federal district court ruled unconstitutional a Louisiana statute which would have allowed counties to close their public schools, sell or lease them to others, and then provide aid to the new "private schools" in the form of tuition checks made out to the parents and the school.

The statute did not include any specific reference to race. Nonetheless, the court refused to allow what it saw as an "evasive scheme." It found that, "irrespective of the terms of the statute", the purpose of the statute was to aid segregated schools.[11] In its determination of the purpose of the Act, the court examined public statements by sponsors of the legislation. It concluded that the Act was "a transparent artifice designed to deny the plaintiffs their declared constitutional rights to attend desegregated public schools."[12]

In Poindexter v. Louisiana Financial Assistance Comm'n,[13] a later version of the tuition voucher program first held unconstitutional in Hall was also declared unconstitutional by a three judge federal district court. The revised statute transferred administration of the tuition grants from the Board of Education to a Louisiana Financial Assistance Commission, provided direct grants to the parents (rather than to the parents and schools jointly as in Hall), and waived the requirement that eligible schools had to be non-profit.

The court, however, was not persuaded that any of these

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[10] 197 F. Supp. 649 (E.D. La. 1961), aff'd per curiam, 368 U.S 515 (1962).

[11] 197 F. Supp. at 652.

[12] Id. at 651.

[13] 275 F. Supp. 833 (E.D.La.1967), aff'd per curiam, 389 U.S.571 (1968).

changes made the new law constitutional. Rather, it took note of legislators' statements that the change in administrative procedure was made for the purpose of avoiding earlier court rulings. The changes themselves supported the court's finding that the new statute was also intended to aid segregated schools.

As in Hall, the court relied on public statements made by the sponsors of the legislation rather than the terms of the statute itself in reaching its determination that the purpose of the new statute was to aid segregated private schools.

Hall and Poindexter demonstrate, therefore, that in determining the purpose of voucher statutes courts will not be content to examine merely the terms of such statutes. They will instead thoroughly consider both the history and setting of any such legislation.

In addition, courts judge the purpose of any statute by considering its probable or actual effect.[14]

The rationale for this was explicated by the Supreme Court in Gomillion v. Lightfoot:

> When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review, but such insulation is not carried over when state power is used, as an instrument for circumventing a federally protected right.[15]

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[14] It is clear that it is sufficient to show that the probable effect of a statute is to provide aid to schools which exclude students on the basis of race, actual effect need not be shown. For cases showing a statute on the basis of a showing of probable effect only see, e.g., Brown v. South Carolina State Board of Educ. 296 F. Supp. 199(D.S.C.1968),aff'd per curiam 393 U.S 222; Poindexter v. Louisiana Financial Assistance Comm'n,296 F. Supp.686 (E.D.La.1968).Cf. Gomillion v.Lightfoot,364 U.S 339 (1960).

[15] 364 U.S. 339, 347 (1960).

Gomillion involved the power of a state legislature to determine municipal boundaries. On its face, the law was unobjectionable. Nonetheless, the court ruled that if the effect of the law was to deprive black citizens of the benefits of municipal residence, including the right to vote in municipal elections, then it was unconstitutional.

There are several reasons for examining effect, particularly with reference to voucher statutes. First, the law traditionally holds a man responsible for the foreseeable effects of his actions. Legislators should be held to no less a standard when their actions affect two such critical government functions; the protection of the rights of racial minorities and the provision of education. As the Supreme Court pointed out in Brown v. Board of Education:

> Education is perhaps the most important function of state and local government.... In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education.[16]

It is also argued persuasively that educational opportunity is even more crucial to the poor or disadvantaged because it is a traditional, if not always accessible, route to break free of poverty.[17]

In addition, it might be particularly difficult for a private individual who had suffered discrimination because of a legislative action to prove discriminatory purpose by reference to statements of legislators or similar means. As courts have increased their scrutiny, legislation has become more sophisti-

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[16] 347 U.S. 483, 493 (1954).

[17] For a more complete discussion, see Kirp, The Poor, the Schools and Equal Protection, 38 Harv. L. Rev. 635 (1968).

cated. Allowing evidence as to effect, therefore, seems a fairer burden of proof and is a reasonable index of purpose in any event.

In short, it seems clear that a statute has the probable or actual effect of aiding school systems which discriminate on the basis of race can lead to a finding that the purpose of the program was to aid such schools, and hence, that the program is unconstitutional.

All of the cases to date have arisen in jurisdictions in which there had been a previous finding of de jure segregation; yet there is no reason to think that courts in other jurisdictions would decide differently if the purpose of the voucher program were to aid schools which discriminated on the basis of race. Courts in jurisdictions which had not previously found discrimination might, however, be less willing to rely on evidence of potential effect alone. Recent cases finding de jure segregation in Colorado,[18] Illinois,[19] California,[20] and Michigan[21] indicate a new judicial willingness both to scrutinize carefully the causes of segregation in such jurisdictions and, upon a showing of effect, to shift the burden to the state or school board to prove that its purpose was not to further segregation.[22] The practical effect of this shift is to weight the outcome in favor

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[18] Keyes v. School Dist. No. One, 303 F. Supp. 280 (D. Colo. 1969)

[19] United States v. School Dist. 151 of Cook County, Ill, 301 F. Supp. 210 (N.D. Ill. 1969).

[20] Crawford v. Board of Educ. of Los Angeles County, Civ. Action No. 822854 (Cal. Sup. Ct. 1970).

[21] Davis v. School Dist. of Pontiac, Michigan, Civ. Action No. 32392 (E.D. Mich. 1970).

[22] See text at notes 74-75, infra.

of finding purpose on the basis of effect alone -- at least until the presumption of purpose is adequately rebutted by the state or school board.

2. A Voucher Program Whose Probable or Actual Effect is to Aid Schools Which Are Organized to Exclude Children on the Basis of Race is Probably Unconstitutional.

Even if the purpose of a voucher statute is not to aid racially discriminatory schools, a court can prevent aid to such schools for at least two reasons: (1) receipt of vouchers makes private schools subject to the state action doctrine; hence, they cannot be organized to exclude children on the basis of race; in effect, aiding such schools is as impermissible as running them directly, or, (2) even if there is not enough state involvement to make recipient schools legal agents of the state, the aid is nonetheless impermissible because any state support of intentionally segregated schools is forbidden.

a. State Action Doctrine

Two standards are used to judge whether allegedly private action is constitutionally state action: (1) the public nature of the function performed by the private body, and (2) the amount of state support (financial or other) of the activity. The following discussion argues that voucher schools would qualify under either standard alone, and certainly under the combination.

The public function theory was supported by the Supreme Court in Evans v. Newton [23] where the Court held that a private park which was left in trust to a city was subject to the equal

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[23] 382 U.S. 296 (1966).

protection clause. The Court explained:

> This conclusion is buttressed by the nature of the service rendered the community by a park. The service rendered even by a private park of this character is municipal in nature.
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> A park...is more like a fire department or police department that traditionally serves the community. Mass recreation through the use of parks is plainly in the public domain...and state courts that aid private parties to perform that public function on a segregated basis implicate the state in conduct proscribed by the Fourteenth Amendment. Like the streets of the company town in Marsh v. Alabama,[24]...the elective process of Terry v. Adams,[25]...and the transit system of Public Utilities Comm'n v. Pollak[26]...the predominant character and purpose of this park is municipal.[27]

Significantly, Justice Harlan dissented from the majority opinion precisely because he felt that holding meant private schools were also subject to state action. In his words:

> Like parks, the purpose schools serve is important to the public. Like parks, private control exists, but there is also a very strong tradition of public control in this field. Like parks, schools may be available to almost anyone of one race or religion but to no other. Like parks, there are normally alternatives for those shut out but there may also be inconveniences and disadvantages caused by restriction. Like parks, the extent of school intimacy

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[23] 382 U.S. 296 (1966).

[24] 326 U.S. 501 (1946).

[25] 345 U.S. 461 (1953).

[26] 343 U.S. 451 (1952).

[27] 382 U.S. 296, 301-302 (1966).

varies greatly depending on the size and character of the institution.[28]

In addition to the decisions mentioned by the Supreme Court in Evans v. Newton, supra, numerous other private activities have been held subject to the state action doctrine because of the public function involved.[29] If a showing of public function is not in itself sufficient to support state action, the addition of state financial and administrative involvement would seem to compel such a finding.

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[28] 382 U.S. at 321 (Harlan, J. dissenting). In a similar vein Judge J. Skelly Wright has held: "At the outset one may question whether any school or college can ever be so 'private' as to escape the reach of the Fourteenth Amendment. [I]nstitutions of learning are not things of purely private concern.... No one any longer doubts that education is a matter affected with the greatest public interest. And this is true whether it is offered by a public or private institution. Clearly the administrators of a private college are performing a public function. They do the work of the state, often in the place of the state. Does it not follow that they stand in the state's shoes? And, if so, are they not agents of the state, subject to the constraints of government action, to the same extent as a private person who governs a company town...or controls a political party....?Reason and authority strongly suggest that the Constitution never sanctions racial discrimination in our schools and colleges, no matter how 'private' they may claim to be." Guillory v. Administrators of Tulane Univ., 203 F. Supp. 855, 858-59 (E.D.La. 1962), opinion vacated on other grounds, 207 F. Supp. 554, aff'd 306 F.2d 489 (5th Cir. 1962).

[29] E.g., Smith v. Allwright, 321 U.S. 649 (1944)(primaries are integral part of election process, fixing primary voter qualifications is therefore a delegation of a state function); Farmer v. Moses, 232 F. Supp. 154 (S.D.N.Y. 1964)(purpose of World's Fair Corporation included education, which court considered a "proper function of the state," making the World's Fair Corporation an "instrumentality" of the state to carry on its work); Smith v. City of Birmingham, 226 F. Supp. 838 (N.D.Ala. 1963)(lease of restaurant located in Municipal Airport held to show public function).

In Burton v. Wilmington Parking Authority,[30] the Supreme Court held that a privately-owned restaurant, leased from the state and located in the state-managed public garage, was covered by the Fourteenth Amendment's prohibition on racial discrimination. While the Court disclaimed any simple rule, insisting that the circumstances must be weighed in each case, it examined the following factors: the amount of state financial aid; the degree of state regulation (lease with state, rest of building devoted to public uses); the extent to which the restaurant performed a public function due to its location in a public building and as part of the state's plan for providing public services; and the interdependence of the state and restaurant owner in receiving and conferring mutual benefits. Because the state had a responsibility to ensure equal treatment, state inaction (in not requiring a covenant of equal treatment) in this case was held to be state action (supporting discrimination).

More recently in Simkins v. Moses H. Cone Memorial Hospital,[31] the Fourth Circuit Court of Appeals held that participation in the Hill Burton program made a private hospital subject to the Fourteenth Amendment.

In reaching its decision in the Simkins case, the court laid stress not only on the public funds paid by the United States through North Carolina to the hospital, but also "the elaborate and intricate pattern of governmental regulations" to which the hospital became subject under Hill-Burton. The court relied in particular on the fact that the state was required to submit for approval to the Surgeon General a

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[30] 365 U.S. 715 (1961).

[31] 323 F.2d 959 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964). Accord Cypress v. Newport News General and Non-Sectarian Hospital Assoc., 392 F.2d 89 (1967).

"hospital construction plan" which, among other things, met requirements forbidding racial discrimination. Certainly there is a comparable duty on the part of the state to show lack of racial discrimination in public schools.

Eaton v. Grubbs,[32] a later Fourth Circuit decision, extended Simkins to a North Carolina hospital which had not received a grant under Hill-Burton. "State action" was found in the fact that the hospital had been forced to obtain a license from the state, and in such factors as local tax exemptions and the power of eminent domain. Again, the same reasoning would seem to extend to voucher schools.

First, voucher programs would undoubtedly impose financial restrictions on participating schools sufficient to ensure that the public monies were being used in an appropriate fashion. Requirements establishing accounting procedures and reporting obligations would probably be necessary, for example.

In addition, most states have certain curriculum requirements, applicable to all schools, such as requirements that all pupils take a course in American history. The combination of regulations that would result could be sufficient basis for a court to find participating schools subject to state action.

Finally, the financial support supplied to participating schools adds a further justification for a finding of state action. The state need not provide the predominant part of the financial support of a school for the school to be held subject to state action. Significantly, the one decision that tried to argue the contrary has been soundly repudiated.

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[32] 329 F.2d 710 (4th Cir. 1964).

Thus in Griffin v. State Board of Education[33] (hereinafter Griffin II), a three judge federal district court had held a tuition voucher statute constitutional on its face by reasoning that:

> payment of a tuition grant for use in a private school is legal if it does not tend in a determinative degree to perpetuate segregation. The test is not the policy of the school, but the

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[33] 239 F. Supp. 560 (E.D.Va. 1965). The history of the Griffin litigation covers over 19 years. In 1951 a group of Negro school children living in Prince Edward County, Virginia, first filed a complaint in the federal district court charging that they had been denied admission to the public schools in violation of the equal protection clause of the Fourteenth Amendment. Their case was one of those ruled on in the landmark Brown decision. In 1956 Virginia first passed legislation to close integrated public schools and to provide instead tuition vouchers to enable children to attend private (and segregated) schools. The public schools remained closed from 1959 until 1964. Another suit challenging this action also went up to the Supreme Court who ruled that the closing of the schools was unconstitutional. Griffin v. County School Board of Prince Edward County. 377 U.S. 218 (1964). The Court was moved to order that the district court require the local authorities to levy taxes if such an extraordinary move were necessary in order to reopen and maintain the public schools.

Fearful that the tuition program would nonetheless continue, the court was requested to enjoin further payments. Although the state was notified that no payments were to be made, the Prince Edward Board of Supervisors met and distributed some $180,000 in voucher checks all on the night of August 5, 1964.

When the public schools finally opened that September, all the white children were in private schools supported by tuition vouchers.

A three judge district court nonetheless refused to hold the entire voucher statute unconstitutional on the grounds that aid to schools which discriminated was unconstitutional only if it predominantly maintained such schools. Griffin v. State Board of Educ., 239 F. Supp. 560 (Griffin II).

After the Supreme Court had affirmed a ruling that any aid to segregated schools was forbidden (Poindexter), the 1965 decision was reversed and the entire statute was held unconstitutional. Griffin v. State Board of Education, 296 F. Supp. 1178 (E.D.Va. 1969) (Griffin III).

> measure in which the grant or grants contribute to effect the exclusion on account of race. Every exclusive school is not a forbidden school. The part played by the grants in effectuating the exclusion is the pivotal point.... Grants for use in an exclusively "white school" within or without Virginia would not be disallowed if the money only insubstantially contributed to the running of the school.... On the other hand, if the private school is the creature of, or is preponderantly maintained by, the grants, then the operation of the school is state action, and payment of the grants therefore is a circumvention of the equal protection clause of the Constitution.[34]

Griffin II was first repudiated in Poindexter v. Louisiana Financial Assistance Comm'n[35] by a three judge federal district court in the course of ruling unconstitutional a modified version of the Louisiana tuition voucher statute first held unconstitutional in Hall.[36] The Poindexter court held:

> Decisions on the constitutionality of state involvement in private discrimination do not turn on whether the state aid adds up to 51 per cent or adds up only to 49 per cent of the support of the segregated institution. The criterion is whether the state is so significantly involved in the private discrimination as to render the state action and the private action violative of the equal protection clause.[37]

This Poindexter decision, which was later affirmed by the Supreme Court, led to the eventual overruling of Griffin II.[38]

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[34] 239 F. Supp. at 564.

[35] 275 F. Supp. 833 (E.D.La. 1967), aff'd per curiam 389 U.S. 571 (1968).

[36] See text at note 9, supra.

[37] 275 F.Supp. at 854.

[38] See text at note 51, infra.

Certainly the Supreme Court has never suggested that there must be a showing of predominant state support in order to find state action.[39] On the contrary, in Simkins, for example, the government funds provided only 17% of the cost of two additions to the hospital, a sum which represented an even smaller percentage of total operating costs.[40]

In summary, voucher schools appear to be subject to state action because: (1) they perform a public function; (2) they are subject to state regulation;and (3) they receive state financial support.

The state action doctrine, although it has to date been applied primarily to schools in jurisdictions in which there had been a previous finding of de jure segregation, would appear to apply with equal vigor in all jurisdictions, both because educa-

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[39] See, e.g., text at notes 22-29, supra.

[40] It may be that it is unnecessary to worry about proving state action for participating voucher schools. See, for example, Black State Action Equal Protection and California's Proposition 14, Introduction to the Supreme Court 1966 Term, Harv. L. Rev. (1967). Professor Black dismisses state action arguments as fictitious barriers that have received no support since the Civil Rights Cases of 1883. State action is, in his opinion,"a hope in the minds of racists (whether for love or profit) that somewhere, somehow to some extent, community organization of racial discrimination can be so neatly managed as to force the court admiringly to confess that this time it cannot tell where the pea is hidden." He dismisses Justice Harlan's worry that there is no reasonable limit to the extensions opened by Evans v. Newton by suggesting that a reasonable approach is that the limits of equal protection begin where other constitutional guarantees begin, or with matters with which the law does not commonly deal; i.e., schools may be regulated, but not private dinner invitations.

tion is involved,[41] and in light of several recent decisions.

In Mulkey v. Reitman,[42] the Supreme Court implied that state indifference in racial matters may itself be proscribed, when it encourages private discrimination. In the words of Mr. Justice Douglas:

> Proposition 14 is a form of sophisticated discrimination whereby the people of California harness the energies of private groups to do indirectly what they cannot under our decision allow their government to do.[43]

Commonwealth of Pennsylvania v. Brown[44] is even more on point. This case was part of a long line of cases involving Girard College which had been left in trust to the City of Philadelphia on the condition that it be limited to poor, male, white orphans.

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[41] In the words of the Poindexter court: "what constitutes significant forbidden involvement may depend on the case. In the exercise of the right to vote, the prohibited involvement may be very slight. [See, e.g.], Anderson v. Martin, 375 U.S. 399 (1964) (voiding requirement that candidates for office be identified by race on the ballot). The same principle should apply in the field of education. [See, e.g.,] Commonwealth of Pennsylvania v. Brown." 275 F. Supp. at 792.

[42] 387 U.S. 369 (1967).

[43] Id. at 377 (concurring opinion). The Court there upheld the California Supreme Court's finding that Article I, Section 26 of the California Constitution, popularly known as Proposition 14, was unconstitutional. The Section provided: "Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses."

[44] 270 F. Supp. 782 (E.D.Pa. 1967) aff'd 392 F. 2d 120 (3rd Cir. 1958), cert. denied, 391 U.S. 921.

In 1957 the Supreme Court had held that for the City to serve as trustee of the College was governmental discrimination barred by the Fourteenth Amendment.[45]

The City consequently was removed as trustee and private trustees were appointed. The plaintiffs, however, citing Evans v. Newton, claimed their fourteenth amendment rights were being violated nonetheless. The court agreed, noting in particular: (1) reports made to the State by the school; (2) the general supervision of the State Department of Public Instruction and other agencies "concerned with the education and welfare of the young"; (3) a state approved tax exemption; (4) performance of a service"which would otherwise have to be performed by the public school system, since students at Girard were by definition unable to pay for education; and (5) "substantial collaboration between the College and principals at various city schools."[46]

In the words of the court:

> Pennsylvania has overseen and approved both the education and upbringing of students at Girard College and the operation of the institution as a school and as an orphanage, serving an obvious public function.... We find it logically and legally impossible to escape the conclusion that racial exclusion at Girard College is so affiliated with state action, in its

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[45] 353 U.S. 230 (1957).

[46] The "substantial collaboration" significantly was described by the court as follows: "Representatives of the College have maintained contacts with public school officials for the purpose of soliciting applications from students attending public schools who would be qualified to attend Girard College. Thus it is a reasonable inference that public school authorities have referred potential applicants to an institution which they must have known engaged in racial discrimination." 270 F. Supp. at 791.

> widened concept, that it cannot constitutionally endure.[47]

The ruling on the Girard situation, as well as the Mulkey case, thus strongly supports a finding that schools participating in a voucher program are subject to state action, even in jurisdictions where there has not previously been a finding of de jure segregation.

b. No Aid Doctrine

If a racially discriminatory school received insufficient state support to be found subject to state action, the courts might, nonetheless, bar the state from granting aid. The Supreme Court has held that:

> The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously."[48]

To emphasize the point, the Court added:

> State support of segregated schools through any arrangement, management, funds or property cannot be squared with the Fourteenth Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws.[49]

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[47] 270 F. Supp. at 792.

[48] Cooper v. Aaron, 358 U.S. 1, 17 (1958).

[49] 358 U.S. at 19.

This language suggests that, at least where a duty to desegregate exists, any state aid in support of school segregation is itself unconstitutional.[50] The Supreme Court has specifically held tuition grants to segregated schools impermissible when coupled with the closing of the public schools, on the basis that they thereby denied students an integrated education.[51] Similar reasoning should apply to situations in which grants deny black students an integrated education by assisting whites to flee to private schools. Alternatively, the grants may be viewed as equivalent to state scholarships. Granting such "scholarships" to students who attend segregated private schools would amount to the extension to some of a state benefit which is denied to others solely because of race. This result appears unconstitutional.[52]

As has been discussed, the affirmance by the Supreme Court of the Poindexter rejection of the Griffin II predominance

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[50]It may be that courts will develop a more sophisticated concept of what constitutes invidious discrimination and decide that only discrimination against a minority group is unconstitutional. Thus, although Klu Klux Klan schools would clearly be denied aid, black power schools might not be. There is some support for such a distinction in decisions of the Supreme Court which prohibit minority to majority transfers (if you are in the minority in a school, you may not as a matter of right transfer to schools in which you are in the majority) but allow majority to minority transfers. (The end result of this position is that black students can transfer into predominantly white schools, whereas whites may not transfer in order to avoid integration.) For the present, however, it seems likely that any school which excludes students on the basis of race could not participate in a voucher program.

[51]Griffin v. County School Board, 377 U.S. 218 (1964).

[52]See Note, 79 Harv. L. Rev. 841 (1966) for a further elaboration of this theory which is cited with approval in Poindexter v. Louisiana Financial Assistance Comm'n, 275 F. Supp. at 856.

test was the basis of a later Griffin[53] decision (hereinafter Griffin III) which overruled the earlier predominance test. In the words of the Griffin III court:

> The Supreme Court holds in our reading that the validity of a tuition plan is to be tried on a severer issue [than the predominance test]; whether the arrangement in any measure, no matter how slight, contributes to or permits continuance of segregated public school education. This pronouncement is uncompromisingly dictated in the Court's approval of the decrees [striking down the tuition grant laws of Louisiana and South Carolina]. Testifying to the immediacy, thoroughness and completeness of the concurrence, both decisions were confirmed on motion without oral argument.
>
> In our judgment, it follows that neither motive nor purpose is an indispensable element of the breach. The effect of the State's contribution is a sufficient determinant with effect ascertained entirely objectively.[54]

The Griffin III decision thus further supports the argument that any state aid to a private school which excludes children on the basis of race is unconstitutional, whether or not the aid is extensive enough to make the school itself subject to state action.

The extent to which the no aid doctrine will be applied in jurisdictions in which there has been no previous finding of de jure segregation is not clear. The doctrine is perhaps so

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[53] Griffin III. See note 31, supra.

[54] Id. at 1181. See also Lee v. Macon County Board, 231 F.Supp.743, 754 (M.D.Ala.1964): "As to that aspect of this case relating to grant-in-aid payments by the State of Alabama for the education of students in racially segregated schools, this court is of the firm conclusion that such payments would be unconstitutional where they are designed to further or have the effect of furthering said segregation in the public schools." (emphasis added).

stringent that it will only be invoked in jurisdictions where public officials in the past clearly aided racial segregation in schools. Cooper v. Aaron and Griffin III both did arise in the South.

Yet, state support of invidious discrimination seems difficult to justify, whether or not de jure segregation has been found previously. Why, for example, is continued state support of past segregation less harmful than new state action which leads to segregation? The principled position would seem to be to apply the same standard to all jurisdictions.

The decisions in Mulkey v. Reitman and the Girard College case previously discussed[55] do suggest that support of segregation, by any state, is suspect even without a direct showing of purpose.[56]

3. Voucher Programs Whose Effect is to Aid Schools Which Are Segregated In Fact Although Not as a Matter of Policy

a. Such Programs May be Unconstitutional If Adopted by Jurisdictions Obligated to End a Dual School System

The Supreme Court has held that:

> School boards...operating state-compelled dual systems were...clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated

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[55] See text at notes 41-46, supra.

[56] Cf. Hobson v. Hansen, 269 F.Supp. 401 (D.D.C. 1967), aff'd sub nom. Smuck v. Hobson, 408 F.2d 175 (D.C.Cir. 1969) holding dual zones unconstitutional where the effect was to further residential segregation despite no finding of purpose.

root and branch.[57]

Although some decisions have suggested that this affirmative duty is not satisfied until no segregated schools exist,[58] a recent decision of the Fifth Circuit Court of Appeals suggests

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[57] Green v. County School Board, 391 U.S. 431 (1968) (emphasis added).

[58] See, e.g., Adams v. Mathews, 403 F.2d 181, 188 (5th Cir. 1968): "If in a school district there are still all-Negro schools or only a small fraction of Negroes enrolled in white schools or no substantial integration of faculties and school activities, then, as a matter of law, the existing plan fails to meet constitutional standards as established in Green."

For other post-Green courts of appeals decisions ruling freedom of choice plans unacceptable, see Board of Public Instruction of Duval County, Fla. v. Braxton, 402 F.2d 900 (5th Cir. 1958) (no white children in black schools); Anthony v. Marshal County Board of Educ., 409 F.2d 1287 (5th Cir. 1969)(less than 3.2% blacks in white schools, no whites in black schools);Felder v. Harnett County Board of Educ., 409 F.2d 1070 (4th Cir.1969)(only 4.3% of black students in previously all white schools, no white students in black schools); Walker v. County School Board of Brunswick County, Va., 413 F.2d 53 (4th Cir.1969)("relatively little" integration had occurred); Davis v. Board of School Comm'rs of Mobile County, 414 F.2d 609 (5th Cir.1969)(only 6% of the black students in previously all white schools, no whites in black schools); Jackson v. Marvell School Dist. no. 22, 416 F.2d 380 (8th Cir. 1969)(12% blacks in white schools, only 36 whites in black schools); United States v. Lovett, 416 F.2d 386 (8th Cir. 1969) (only 110 blacks in formerly all white schools and no whites in black schools); United States v. Choctaw County Board of Educ., 417 F.2d 838 (5th Cir. 1969)(only token desegregation); United States v. Hinds, 417 F.2d 852 (5th Cir. 1969), cert. denied, 38 U.S.L.W. 3265 (1/20/70)(no whites in black schools); Hall v. St. Helena Parish School Board, 417 F.2d 801 (5th Cir. 1969),cert. denied, 90 Sup. Ct. 218 (no whites or only small percentage in formerly all black schools).

But see Goss v. Board of Educ. of Knoxville, Tenn.,406 F.2d 1183 (6th Cir.1969) upholding a freedom of choice plan on the grounds that "the fact that there are in Knoxville some schools which are attended exclusively or predominantly by Negroes does not by itself establish that the defendant Board of Education is violating the constitutional rights of the school children."In Goss, the number of all black schools had dropped to 5 from 10 in 1960.

that this standard may have been abandoned,[59] so that if segregated schools reflect only neighborhood segregation (i.e., what would be considered de facto segregation in other jurisdictions), the duty may, nonetheless, have been fulfilled.

Voucher programs, which are based on parents' freedom to choose which school in the district he wishes his child to attend, clearly resemble the freedom of choice plans which have already been the subject of much litigation. In Green v. County

[59] Ellis v. Orange County, Fla., Civ. Action No. 29124 (5th Cir. 1970). There is no doubt that geographic zoning will in fact not end the dual school system in the South. Although it might end physical segregation in some less urbanized areas and in small cities, in the larger cities such racially neutral criteria as geographic zoning would leave most schools segregated. See Cohen, Defining Racial Equality in Education, 16 U.C.L.A. L. Rev. 255, 265 (1969).

In Ellis, a three judge court ruled that the Orange County public school system could adopt a system of neighborhood schools, even though three elementary schools would remain all black.

The extent to which this holding indicates a change of policy is not clear. First, the court carefully limited the decision to the facts of the case, holding: "Under the facts of this case, it happens that the school board's choice of a neighborhood assignment system is adequate to convert the Orange County School System from a dual to a unitary school system. This does not preclude the employment of differing assignment methods in other school districts. The answer in each case turns, as here, on all the facts including those which are peculiar to the particular school system.

In addition, Ellis involved a system based on geographic zones so its applicability to freedom-of-choice plans is not clear. See cases cited note 57, supra for decisions involving freedom of choice plans. Compare Henry v. Clarksdale Municipal Separate School Dist., 409 F.2d 682 (1969) another Fifth Circuit decision involving geographic zones which had produced only token integration. The board was there ordered to redraw the lines so as to "maximize desegregation or eliminate segregation."

School Board,[60] the Supreme Court announced that the following standard would be applied to such plans:

> Freedom of choice plans are not unconstitutional unless "there are reasonably available other ways...promising speedier and more effective conversion to a unitary, nonracial school system."

This stringent standard will, therefore, no doubt be followed in evaluating any voucher plans adopted in jurisdictions in which de jure segregation has been found. Unless they are more successful in fulfilling the duty to disestablish such segregation than most freedom of choice plans have been,[61] voucher plans are likely to be found unconstitutional as well.

b. Summary of the Constitutionality of Voucher Plans in Jurisdictions Which Are Obligated to End a Dual School System.

The law clearly forbids such a jurisdiction from adopting a voucher program whose purpose is to aid racially segregated private schools. It will also likely forbid any program whose effect is to aid such schools. Alternatively, at least that part of the aid which goes to such schools will be held unconstitutional because either (1) the recipient schools are subject to state action; hence, they cannot discriminate, or (2) any state support of such schools is not permissible. Finally, a program which has the effect of aiding schools which are segregated even though not intentionally, will be held unconstitutional if there are reasonably available methods promising speedier and more effective conversion to a unitary nonracial school system.

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[60] 391 U.S. 430(1958). See also Raney v. Board of Educ.,391 U.S. 443(1968);Monroe v. Board of Commissioners,396 U.S. 450 (1968).

[61] See cases cited note 57, supra.

The question arises, therefore, as to what responsibility the state has to ensure that the schools it aids do not discriminate on the basis of race as a matter of policy. If it takes no responsibility in this critical matter, courts could possible rule the entire voucher program unconstitutional.

One court has already taken this position. In Griffin III, the court held that leaving to the courts the task of policing individual contributions to schools was too great a task, and, therefore, the entire statute, which provided for no administrative control, was held unconstitutional. In the words of the court:

> An absolute and unequivocal prohibition[of the entire voucher statute] is the logical effectuation of the intendment flowing from the recent rulings of the Supreme Court [upholding the Poindexter standard that any significant involvement in private discrimination in schools is unconstitutional]. The fact that the process is too complex to be practicable...defeats the assertion, for the validity of the statute, that grants can in individual instances be employed without fostering segregation. This supposition accepted, still the canvassing and policing of the tuition law to confine its enjoyment to such instances would be a Herculean task. It could hardly give full assurance against the abuse of the law. A law may, of course, survive despite its unacceptable consequences, if the valid portions may be independently enforced. Here, as we see, there can be no such separation and the entire law must go.[62]

It is arguable, then, that a voucher statute must provide a way to grant aid only to schools which do not discriminate on the basis of race or risk being held unconstitutional. This, of course, means that the state must be able to identify those

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[62] See note 31, supra.

schools which discriminate. Obviously, a statement that aid must not go to such schools should be included in a voucher statute, but it is probably not sufficient. A clear statement of what is prohibited would also seem a necessary (though not sufficient) fulfillment of the state's duty.

The Commissioners on Uniform State Laws have promulgated a Model Anti-Discrimination Act which provides, for example, that it is a discriminatory practice for any educational institution:

> 1. to exclude, expell, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student, in the terms, conditions, and privileges of the institution because of race, color, religion, or national origin; or
>
> 2. to make or use a written or oral inquiry of form of application for admission that elicits or attempts to elicit information or to make or keep a record, concerning the race, color, religion or national origin of an applicant for admission, except as permitted...; or
>
> 3. to print or publish or cause to be printed or published a catalogue or other notice or advertisement indicating a preference, limitation, specification, or discrimination based on the race, color, religion, or national origin of an applicant for admission.[63]

This could serve as a model for a voucher statute, but again, defining violations is probably not sufficient in light of Griffin III. Adequate enforcement mechanisms must also be provided. At a minimum, such machinery would have to include the authority to investigate complaints of deliberate segregation, to initiate investigations in the absence of such complaints, to make findings of fact, conduct hearings, make judgments, and prohibit the use of vouchers in schools found to be discriminatory.

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[63] See note 1, supra.

Investigative procedures, though, may not be sufficient either. Certainly the difficulty HEW has experienced in establishing adequate administrative procedures to prevent racial discrimination in public schools[64] indicates the task will be practically insurmountable when private schools are involved. Clearly the admissions procedures of private schools are not only more complex, but are also less open to public inspection.

This suggests that a procedure which virtually guaranteed that there was no possibility of discrimination by race by private schools would be most desirable. One such mechanism would be to allocate the majority of places randomly among applicants to any one school whenever there were more applicants than places. Such a lottery requirement has the double advantage of ensuring no discrimination in the admissions procedure and reducing the burden on an investigative and enforcement agency -- a single card sorter instead of an enforcement division.

Public authorities have a second reason to provide adequate mechanisms for policing racial discrimination in participating voucher schools. There is good authority that once a prima facie case of de jure segregation is made by plaintiffs, the burden shifts to the state to disprove the challenge.[65]

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[64] See Note, The Courts, HEW and Southern School Desegregation, 77 Yale L.J. 321 (1967) for a description of the difficulties HEW has encountered in attempting to police discrimination in public schools. Certainly the task would be even more difficult if private schools were involved.

[65] See, e.g., Hall v. St. Helena Parish School Board, 303 F. Supp. 1224, 1228 (E.D.La. 1969), aff'd (5th Cir.1969), cert. denied, 38 U.S.L.W.3173(11/11/69): "If a school is in fact attended solely by Negro children or solely by white children as a result of a bona fide, unfettered freedom of choice, the segregation that results is not state imposed but is instead de facto segregation.... But the burden is upon the school board where such segregation exists to prove that the segregation is in fact de facto rather than state imposed." See also cases cited in the text at note 71, infra.

Courts would be unlikely to allow states to shirk this burden by claiming that they have no responsibility for the admissions procedures in voucher schools. There is, to begin with, a strong tradition that "the United States Constitution does not permit the State to perform acts indirectly through private persons which it is forbidden to do directly."[66] In addition, because schools participating in a voucher program are probably subject to state action, the state will, no doubt, be forced, once the burden of proof shifts, to disprove challenges that voucher schools are discriminating.

The implication is that the prudent course for a state is to include strong administrative safeguards against discrimination in anticipation of such challenges. The better course would seem to be admission on a random basis for a substantial portion of the students at any voucher school.

c. Voucher Programs Which Aid Schools Which Are Segregated in Fact Although Not as a Matter of Policy Will Probably be Considered Constitutional in All Other Jurisdictions

The memorandum thus far has demonstrated that voucher programs may not intentionally aid private schools which discriminate as a matter of policy. Inadvertent aid to such schools is also probably prohibited. This section deals with the question of aid to schools which are segregated in fact, although not as a matter of policy. A special problem arises when such aid is provided in jurisdictions under a duty to disestablish previous de jure segregation, and it has, therefore, been discussed separately.[67]

In all other jurisdictions, the constitutionality of

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[66] 275 F. Supp. at 835.

[67] See text at notes 56-60, supra.

voucher programs is related to the constitutional status of what courts have chosen to label as de facto segregation -- segregation which does not result from purposeful exclusion of students on the basis of race by either the state or the schools.

At the moment, this status is unclear. Most courts in Northern school segregation cases have ruled that segregation is unconstitutional only if there has been affirmative official action.[68] School segregation which arises from the combination of private housing decisions and neighborhood attendance is in these cases held beyond the reach of the law.[69] A few courts, however, have held that since school attendance is compelled by the states, any school policy which leads to segregation -- including neighborhood zoning -- amounts to state-compelled segregation. These courts argue that there is no significant difference between the Brown cases and de facto segregation.[70] There is little likelihood of a rapid judicial resolution of these issues.

Five Circuit Courts have dealt with this issue to date, and all have held that de facto segregation is constitutional.[71] Most of these cases arose in the context of a challenge to a neighborhood school system. The courts consistently held that when a local school board establishes school districts on the basis of nonracial factors (geographic barriers, proximity,

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[68] See, e.g., Offerman v. Nitkowski, 378 F.2d 22 (2nd Cir. 1967); Deal v. Cincinnati Board of Educ., 367 F.2d 55 (6th Cir. 1966), cert. denied, 389 U.S. 847 (1967); Springfield School Committee v. Barksdale, 348 F.2d 261 (1st Cir. 1965); Downs v. Board of Educ., 336 F.2d 988 (10th Cir. 1964), cert. denied, 380 U.S 914 (1965); Bell v. School City of Gary, Indiana, 324 F.2d 209 (7th Cir. 1963), cert. denied, 377 U.S. 924 (1964).

[69] Id.

[70] See, e.g., Blocker v. Board of Educ., 226 F.Supp. 208, 229 F.Supp. 709 (E.D.N.Y. 1964); Branche v. Board of Educ., 204 F.Supp. 150 (E.D.N.Y. 1962).

[71] See cases cited note 68, supra.

schools' space, etc.) the racial composition of the schools is not constitutionally challengeable.

A rationale for this position was explained in Norwalk CORE v. Norwalk Board of Education:

> If a neighborhood school system has been equitably administered without regard to race, theoretical mobility is believed to exist by which movement can be made between neighborhoods, and thus between schools.[72]

In short, because a racially neutral neighborhood school policy need not necessarily lead to segregation, it should be permitted.

Even if most courts continue to find de facto segregation constitutional, however, voucher programs may, nonetheless, be ruled unconstitutional on the grounds that they result in de jure segregation.

Recent decisions in Colorado, Illinois, California, and Michigan have found that certain actions of Northern and Western school boards constituted de jure segregation. These decisions demonstrate a judicial willingness outside of the South to scrutinize carefully the causes of racial segregation.[73]

Significantly, Northern courts are ruling that plaintiffs need not bear the entire burden of proving that any challenged segregation results from the purposeful action of public officials. Rather, they are following the approach that once a prima facie case is made that segregation exists, the burden is on the officials to disprove that it was caused by their actions.

Thus, in United States v. School District 151,[74] the court ruled:

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[72] 298 F. Supp. 213 (D.C. Conn. 1969)

[73] See notes 18-21, supra.

[74] 301 F. Supp. 210 (N.D. Il1. 1969).

> Racial distinctions by public officials are uniquely repugnant to the Constitution. McLaughlin v. Florida, 379 U.S. 184 (1964). Therefore, standards and procedures pursuant to which pupils are assigned to schools, which are alleged to be racially discriminatory and which have resulted in exclusively white student bodies in regular classes in certain of a district's schools alongside almost exclusively Negro student bodies in the district's remaining schools, are subject to the most intensive judicial scrutiny and require the officials responsible to show that the standards and procedures challenged are based upon constitutionally permissible factors. Gomillion v. Lightfoot, 364 U.S. 339, 341-42 (1960); Green v. County Board of Educ., 391 U.S. 431 (1968); Northcross v. Board of Educ. of Memphis, 333 F.2d 661, 664 (6th Cir. 1964); Brewer v. School Board of Norfolk, 397 F.2d 37, 41 (1968); Evans v. Buchanan, 207 F. Supp. 820 (D.Del. 1962); Gatreux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D.Ill. 1969); Chambers v. Hendersonville City Board of Educ., 364 F.2d 189, 192 (4th Cir. 1966) (emphasis added).

Similarly, in Davis v. School Dist. of Pontiac,[75] a federal district court ruled:

> In view of the racial imbalance which obviously exists in the faculties of the Pontiac School system, it is incumbent on the defendants herein to prove that such did not result from discriminatory practices on their part. See Chambers v. Hendersonville City Board of Educ., Rolfe v. County Board of Educ. of Lincoln County, Tenn., 391 F.2d 77 (1968).

Shifting the burden does not mean that innocent segregation will be held unconstitutional. In practice, however, it increases the likelihood that a court will find de jure segregation.

If a voucher plan produced more segregation than the

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[75] Civ. Action No. 32392 (E.D. Mich. 1970).

present system, public officials might find it difficult to justify the plan, at least in the absence of reasonable administrative controls on discrimination by participating independent schools. They might well have a more difficult burden justifying such a plan than a neighborhood school system with a long history of acceptance. Neighborhood schools also have to their apparent credit the virtues of convenience, safety, etc. Again, the prudent course would be to include adequate control over the admissions process of voucher schools such as that provided by the lottery procedure which has previously been described, in anticipation of justifying a voucher plan to the courts.

d. Summary of the Constitutionality of Voucher Plans in Jurisdictions Which Have Not Been Found Guilty of Past De Jure Segregation

A state may not adopt a voucher program whose purpose is to aid schools which exclude children on the basis of race. The state is probably prohibited from aiding such schools even when it does not intend to aid such discrimination because (1) participating schools are subject to the state action doctrine, or (2) any aid to segregated schools may be impermissible.

Voucher programs which aid schools segregated only by chance are probably constitutional.

Again, the question arises as to what responsibility state or local officials have to ensure that schools participating in the voucher program do not exclude students on the basis of race.

Griffin III can be read to indicate that courts will demand that public authorities assume the responsibility of policing discrimination in voucher schools or risk having the entire program held unconstitutional.

4. Other Federal Constraints on Segregation.

Section 601 of Title VI of the 1964 Civil Rights Act provides:

> No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under,any program or activity receiving Federal financial assistance.

Section 602 authorizes each Federal department and agency administering a program of federal financial assistance to effectuate the non-discrimination ban by regulation and provides as remedies for noncompliance (1) refusal or termination of the assistance;or (2) "any other means authorized by law."

Title VI standards must be met in any demonstration project which includes federal funds. In addition, any other voucher program which receives any federal funds would also have to comply or face possible termination of federal support.

II. Voluntary Constraints on Racial Segregation Which Might Be Adopted As Part of a Voucher Program

Constitutional prohibition of aid to schools which deliberately exclude students on the basis of race does not guarantee any lessening of segregation. Even a voucher program which required all schools to admit applicants randomly would not deal with covert and subtle discrimination during recruitment or by later expulsion. Additional regulations or incentives to avoid such discrimination, therefore, might be desirable, even though they are not legally required.

An integration requirement might be appropriate although difficult to design and probably more difficult to pass in a state legislature. Several states have tried to encourage

racial balance. Massachusetts, in 1965, enacted a statute setting 50% black students in a school as the upper limit of racial balance. New York, California, New Jersey, Connecticut, and Pennsylvania have all taken various administrative actions to encourage racial balance. In all cases, however, the results have been limited. The Massachusetts statute remains largely unenforced in Springfield and Boston, the state's only two cities with substantial concentrations of minority groups. Efforts in New York came to an almost complete halt as a result of legislative resistance after some successes in a few small suburban cities. Action in the other three states has been even more limited.

This suggests there is little reason to think that legislative requirements or executive action to compel racially balanced schools would be likely to succeed in a voucher plan. That is, if such action has produced such trifling gains in a situation where attendance is almost absolutely controlled by the state, there is no reason to think that it would produce any more motion under a plan in which attendance is controlled by parents. The political resistance to racial balance is sufficiently intense that a compulsory approach is unlikely to be enforced.

Is there, then, at least a way to reduce the chances for discrimination in recruitment and applications? One approach might be to offer schools an incentive for fair advertising and admissions practices -- in effect, a bonus for producing more applicants than vacancies each year. Alternatively, one could offer an incentive for desirable results, i.e., integrated student bodies. It obviously makes more sense to offer incentives for results. Such incentives might take several administrative forms, but they all involve giving schools more money for approaching some predetermined racial mix in the student body. Therefore, they raise several troubling questions. First, what is the criterion of a good racial mix? Second, how would the incen-

tives work--what would they be, how much would they cost, etc.? Third, would any worthwhile system of integration incentives be politically possible?

There is very little evidence of what an appropriate standard might be and very little experience with the way in which it might work. The two standards which have been most commonly suggested are the racial proportions of a school's community and a 50-50 distribution of black and white students. The difficulty with the first is that it would hardly be helpful in liberal white suburbs where some schools might want to attract black students even though there were few or none living in the community. The same would hold in reverse for predominantly black communities. It lacks any rationale, save perhaps neutrality on the matter of racial dominance, but it is at least a target toward which almost all schools could be encouraged to move, even though few would achieve it.

Establishing a standard is not the major problem with incentives for racial integration, however. The main difficulty is implementation. How large would the incentive have to be in order to attract schools otherwise disinclined to integrate? No precise answer is possible, but it is clear that the incentives would have to be large relative to current expenditures in order to be effective. It is hard to imagine such incentives would ever be instituted.

We, therefore, believe the best approach is to adopt the admissions program described in more detail in Chapter 3. It combines incentives for enrolling disadvantaged pupils and controls on the recruitment and application procedure with a partial lottery requirement for overapplied schools.

Although controls on the recruitment and application procedures can never be completely effective, the proposed mechanisms for dealing with instances of alleged discrimination, coupled with an open and active discussion of the schools by private interest groups, should at least restrict racial discrimination.

Appendix C

Summaries of Existing & Proposed State Aid To Non-Public Schools

To supplement the discussion of state aid to non-public schools contained in Chapter 4, summaries of the legislation there discussed have been prepared.

Summaries are presented first for the five states which have enacted such legislation, and then for seven which have aid proposals pending.

Connecticut

Public Act #791
Effective July 1, 1969

Payment

The Act appropriates $6 million for the purchase of secular educational services by contract between the Secretary of the State Board of Education and non-public schools. Salaries and textbooks are covered. The basic figure is 20% of a lay teacher's salary reduced by the proportion of time the teacher spends on administrative duties. Textbook aid is limited to $10/year for students in grades 1-8 and $15/year for students in grades 9-12. For the purposes of applying the percentage figures, "salary" means actual base amount without benefits; and it cannot exceed the "average minimum salaries in the state" for public school teachers with comparable degrees.

The number of teachers who are reimbursable under the plan is limited to one for each 25 pupils in the non-public school.

If the non-public school has an enrollment of one-third "educationally deprived children" as defined in section 10-266a of the general statutes, the percentage reimbursement rises to 50%. If there is a 2/3 enrollment the figure is 60%.

In case there are insufficient funds appropriated for claims under the act, an order of payment is established (sect.22) as follows: up to 2% for administration, textbook reimbursements, up to $1 million for increased percentages for disadvantaged children, remaining claims in pro rata shares.

Secular Education Restrictions

Secular education is limited to "any course which is presented in the curricula of the public schools of this state . . . . if the textbooks used for such course are the same" as those used in the public school in the last five years or are approved by the State Secretary of Public Education. The manner of teaching may not "indoctrinate, promote, or prefer any religion or denominational tenets or doctrine." (sec. 3f). Reimbursed teachers cannot spend any time teaching religious subjects (sec. 7). The school cannot train clergy (sec. 12e).

Other Restrictions

1. Teachers who are reimbursed must be certified by the State Board of Education, except that for the first three years of the Act teachers who were employed full time on July 1, 1969, are considered certified.
2. Textbooks must meet the same standards as the public school's texts in addition to meeting secular requirements.
3. The non-public school must be approved by the State Secretary of Public Education as complying with the Act and as complying with "good educational standards" and "meeting adequate safety, sanitary, and construction requirements." (sec. 12). The regulations make these educational standards the same as those applying to the public schools under sec. 10-220 of the general statutes.
4. The school must be non-profit (sec. 12b).

5. The school must file a certificate of compliance with Title VI of the Civil Rights Act of 1964 (P. L. 88-352).

6. The school receiving aid must have a policy of open enrollment, which is defined as "the offer by a school of the opportunity of admission to any qualified student meeting its academic and other reasonable admissions requirements, . . . Without regard for race, religion, creed or national origin, " (see sec. 3h and 12d). Academic requirements may not be such as to result in discrimination by race, etc. (regs. s.10-281n-7 (d)). However, the non-public school may give preference to the children of regular contributors as long as it maintains open enrollment in the same proportion as the aid bears to total operating cost of the school (sec. 12d).

7. The school receiving aid must be in operation prior to July 1, 1969, or it must file a statement of intent to operate a school three years before applying for aid.

8. The Secretary of the State Board of Education can require that records and information (including test scores) be supplied by the school.

Other Provisions

The act provides a detailed notice and hearing system for schools which feel they have been unfairly denied aid or whose aid is suspended. These extensive provisions appear in Section 14 of the act.

Guidelines

For temporary guidelines see: "Proposed Regulations Under Non-Public School Secular Education Act (sec. 10-281a-1)".

Hawaii

Haw. Rev. Laws §235-57 (1969)

Payment

The statute provides a simple tax credit for students attending grades K-12. The credit is against the individual's net income tax liability, and provides that if the credit exceeds the liability the difference shall be refunded to the taxpayer:

Adjusted Gross Income Brackets	Tax Credits Per Exemption Attending: K-12	An Institution of Higher Education
Under $3,000	$20	$50
$3,000 to $3,999	15	30
$4,000 to $4,999	10	20
$5,000 to $5,999	5	10
$6,000 to $6,999	2	5

Ohio

Ohio Rev. Code Ann. § 3317.06 (Baldwin 1969)
Effective Aug. 18, 1969

Payment

The statute sets aside monies for local school districts to use in paying salary supplements to non-public school teachers. The amount of money available to each non-public school is calculated on an average daily attendance basis. A maximum of 85% of this

"allotment" then is available for salary supplementation, with the rest going for purchase of certain materials and services. Contracts are concluded between the lay teacher and the school district, with the head of the non-public school certifying the relevant qualifying data.

The amount of supplementation which the lay teacher can receive is limited by the statute and regulations. No teacher may receive a salary (including supplementation) of more than that paid to public school teachers of comparable training and experience. No non-public school teacher may receive a supplement totalling more than $600/daily course hour; there can be no more than 5 such course hours, so the maximum supplement is $3000.

Payment is made only for the percentage of time lay teachers spend in teaching "secular courses required to be taught in the public schools" by minimum standards adopted by the State Board pursuant to section 3301.07.

Secular Service Restrictions

Not only is supplementation limited to"secular courses," but courses taught by reimbursed teachers must be courses required by the state. Textbooks and other materials in such courses must be "non-sectarian in nature." The Superintendent of Public Instructions is given the power to inspect courses of study to insure this.

Other Restrictions

a) Lay teachers must hold valid state certificates (for public schools) by July 1, 1969.

b) "Each non-public school shall establish a satisfactory program of evaluation which measures pupil achievement in required secular courses taught by teachers who are receiving" supplements.

c) The Superintendent of Public Instruction shall inspect courses of study, programs of student and teacher evaluation and pupil achievement tests to see that the schools are meeting the purposes of the act, i.e., encouraging secular instruction, promoting high quality general education, etc.

d) No services or materials can be provided for pupils in non-public schools unless also available to pupils in public school districts.

e) Service and materials and programs provided for non-public pupils cannot exceed in cost or quality such services as are provided for pupils in the public schools of the district.

f) Services and programs must be provided "without distinction as to race, color or creed of such pupils or of their teachers."

g) Schools must follow established accounting procedures (circular #1580 of 1969 - State Auditor).

h) Although the contract is negotiated directly between the school district and the eligible teacher, the non-public school must first gain the approval, by resolution, of the local public school board to apply for funds.

Guidelines

See "Guidelines for Implementation of Division H of Section 3317.06, State Department of Education (parts B I-VII); Circular #1580, November 3, 1969, Office of State Auditor.

Pennsylvania

Pa. Stat. Ann. tit. 24, §§ 5601-09 (1968)
Effective July 1, 1968

Payment

The statute creates a "Nonpublic Education Fund" out of fixed percentages of horse-racing revenues in the state. The funds are used for "purchasing secular educational services" through payments for teachers' salaries, textbooks,and instructional materials at non-public schools.

The state Superintendent pays out of the Fund by contract directly to the non-public school for these secular services. Teachers are paid on the basis of "actual reasonable cost" of their salaries, but salaries cannot be above the minimum for public school teachers. Payments are made in the school term following the term in which the services are rendered.

If the money in the Fund is not adequate to meet the total amount of validated requests for reimbursement, pro rata shares are paid.

Secular Service Restrictions

Although secular educational services are more broadly defined, the purchase of secular educational services is limited to mathematics, modern foreign languages, physical science, and physical education (s. 5604). In addition, the State Superintendent must approve the textbooks and instructional materials as secular.

Other Restrictions

1. A satisfactory level of pupil performance in standardized tests approved by the Superintendent must be attained (s. 5604).

2. After five years (1973) all teachers teaching courses under contract must be certified by the state according to standards equal to those for teachers in the public schools (s. 5604). Those teachers employed full time in non-public schools on July 1, 1968, are exempt from the certification procedure.

3. Non-public schools must comply with the safety and sanitary standards of the Department of Labor and Industry.

4. Schools must establish accounting procedures to show separate accounts for secular education under contract; account books are subject to state audit.

5. Compulsory attendance laws as listed in section 1326, 27 of the Code and as administered by the State Board of Private Academic Schools must be complied with.

6. Article 7 of Executive Directive Number 21, which prohibits discrimination in state contracts on the basis of race, religion, sex, national origin, is held by the regulations to apply on these contracts. But, the State applies the directive to this statute with the additional statement that a religious or denominationally affiliated school may "recognize the preference of parents" to have students of the same religion at the school (see Q. 24 in "40 Questions and Answers Regarding Act 109").

Guidelines

See "Rules and Regulations for Implementing the PNESEA" from Office of Aid to Non-public Schools; and "Forty Questions and Answers Regarding Act 109" prepared by the same office in January 1969.

Rhode Island

R. I. Gen. Laws Ann. § 16-51 (1969)

Payment

The statute sets aside a fund for salary supplements paid directly to teachers in non-public schools. The appropriation for fiscal 1970 is $375,000.00. The teacher must request the salary supplement directly from the state commissioner.

Fifteen percent (15%) of salary is paid to each eligible applicant. Including the supplement, the teacher's salary must meet "the minimum salary standards for public schools under title 16, chapter 7." Neither is this amount to exceed the "average maximum salary" paid to public school teachers in the state.

Only teachers of grades one through eight are eligible.

Secular Services Restrictions

The eligible teacher must teach "only those subjects required to be taught by state law . . ., or which are provided in public schools throughout the state, or any other subjects that are taught in public schools." He must not "teach a course in religion" and must sign a statement promising that he will not do so as long as the salary supplement is being received.

Other Restrictions

1. The school must be non-profit
2. It must meet compulsory attendance requirements
3. The annual per student expenditure for secu[illegible] education may not equal or exceed the average per student expenditure in state public schools at the same grade level in the second preceeding fiscal year.
4. The teacher must hold a state certificate.
5. The teacher must use only materials used in public schools of the state.
6. The school must comply with Title VI of the Civil Rights Act of 1964.
7. The school's financial records are subject to state audit.

Guidelines

See "Regulations of the Commissioner of Education Governing Payment of Salary Supplements to Non-Public School Teachers."

California

Assembly Bill 2118 - Self-Determination Act
The bill was introduced in 1969 and was defeated by one vote in the Senate Education Committee. There are several versions of 2118; only the one which retains the voucher mechanism is considered here.

Payment

In "economically disadvantaged areas" (as defined by s. 6482 of the California Code), when a public school falls below minimum performance levels established by the "Director of Compensatory Education" it is designated a "demonstration school." Parents of children attending a demonstration school then become entitled to choose between:

1. attendance at other public schools operated by the district.
2. attendance at another public school operated by a community corporation.
3. attendance at an approved school operated by a private contractor.
4. continued attendance at the demonstration school.

In this situation each parent becomes entitled to a tuition voucher in the amount of $1000. The voucher may be presented to any "approved provider of educational services" which agrees to guarantee performance standards established by the Director of Compensatory Education.

Secular Restrictions

The Director may not approve any provider of educational services which is a sectarian or denominational school. In effect, no church school is eligible to receive the vouchers.

Other Restrictions

1. The school receiving vouchers must conform to standards set by the Director of Compensatory Education.
2. Such schools must provide an average monthly improvement of reading and mathematics achievement scores above the average of the demonstration school.
3. The school is liable for the safety of the pupils.
4. The school must accept pupils in the temporal order of application, except that no public school accepting voucher children must accept applications if their presence will raise the pupil-teacher ratio above 35:1.
5. The school must provide lunches.
6. The school must operate at least 4 hours per day, five days per week, nine months per year.
7. The Director of Compensatory Education may waive the requirements of the California Code relating to schools if he deems it necessary.
8. In approving schools, the Director of Compensatory Education must give preference to those who have had successful experiences in educating disadvantaged children and using "community resources."

Illinois

House Bill 2350 - Children's Educational Opportunity Act
(Passed the House but was defeated in the Senate Education Committee, June 14, 1969)

Payment

The proposed plan seeks to appropriate $26,800,000 for payments by the State Superintendent of Public Instruction to non-public schools on the basis of "warrants" given by parents to the non-public schools. Each year the parent may issue a "warrant" to the non-public school his child attends in the amount of $48 for each of his children in grades K-8 and $60 for grades 9-12. The warrant serves as partial payment of tuition. Upon completion of the school year, the non-public school submits the warrants to the County Superintendent of Schools who certifies the total amount to the State Superintendent who then arranges for payment to the non-public school.

Secular Restrictions

"These warrants shall not be used to subsidize courses of religious doctrine or worship (sec. 5)." The grant must be for "educational opportunity consistent with the goals of public education (sec. 3)."

Other Restrictions

1. The non-public school must meet academic standards for non-public schools as set out by the State Office of Public Instruction.

2. Beginning in 1975, no parent is eligible for the grants if he enrolls his child in a school which is not a "state-recognized institution."

3. No parent is eligible for the grants if the school where his child is enrolled is not in compliance with Title VI of the Civil Rights Act of 1964.

4. At the end of the school year each non-public school receiving grants must submit to the county an audit showing the cost of providing "educational opportunity" as defined in section 3.

Other Legislation Pending

In addition to House Bill 2350, there are several other proposals which would aid non-public schools. House Bill 1116 (1969) is a bill for purchase of secular educational services which would pay $60 per pupil for elementary school children and $90 per pupil for secondary school children. House Bill 46 (1969) would provide direct payments to parents whose children attended non-public schools. The amount of the payment would be equal to that which a public school would receive as state aid on behalf of the child if he attended public school in the same district. If the amount paid by the parent for tuition was less than this state aid, the lesser amount is paid.

Iowa

House File 571 (1969)

Payment

The bill provides a "credit" to the parents of a student attending a non-profit private elementary or secondary school

in Iowa. The credit is given in the form of quarterly payments to the parent, and amounts to "25% of the average total expenditure per pupil per year as determined by the state department of public instruction (sec. 1)." If the student is not in attendance for the full year, the payment is pro-rated accordingly.

Secular Education Restrictions

The bill itself contains no restrictions on the use of funds. It appears that a constitutional amendment is required to make the bill effective, and one is proposed which requires the legislature to "set terms and conditions" for the use of public funds by private schools (see Senate Joint Resolution 22, 1969).

Other Restrictions

Besides the "non profit" requirement the only restriction is that schools attended by children whose parents receive aid must meet the minimum standards "as determined by the state department of public instruction (sec. 1)."

Massachusetts

House Bill 3843 (1970)

Payment

This bill provides grants of $100 to each school child in grades 1-12 in the Commonwealth. If the child's parent indicates by November 1 that he will be attending a private school in the following year, the state issues a check to the parent which can be honored for payment only when endorsed by the payee to the school the pupil attends. If the parent does not indicate by November 1 that the child will attend a private school, then

the grant is paid directly to the city or town in which the child is eligible for public school. The State Board of Education is authorized to make rules and regulations for carrying out this plan.

Secular Education Restrictions

The grants can be used in any school. There is no stated restriction on their use in religious schools.

Other Restrictions

1. A school receiving the grant must be accredited by the State Board of Education and include all the subjects required to be taught under the state's education laws.
2. The Board of Education is authorized to promulgate rules "to protect the interest of the child and the Commonwealth" in carrying out the purpose of the Act.

Other Legislation Pending

Senate Bill 370 (1970) is a purchase of secular services plan. It pays the actual cost of teacher's salaries limited to the salaries available to public school teachers of similar qualifications. The definition of secular services is similar to Pennsylvania's but also includes business education, language arts, and vocational education. Salaries are paid by contract with the State Commissioner of Education, and texts must be approved by him. A satisfactory level of achievement in standardized tests is also required. As in the Pennsylvania Law there is a provision for payment of pro rata shares, if funds are not sufficient to meet demands. The open enrollment provision refers to an "offer of equal opportunity," but sets up no special enforcement mechanism.

Michigan

Senate Bill 1082, Ch. 2

Payment

This proposed aid to non-public schools is Chapter 2 of a general revision in the state's method of financing public education. The first chapter of the bill includes some complicated formulae for equalizing aid distribution throughout the state by means of a "need index."

The aid to non-public schools chapter (2) provides approximately 2% of the total state and local public school expenditures (less amounts spent on transportation and auxiliary services for non-public schools)for the purchase of secular services. In 1970-71 and 1971-72, the State Superintendent of Education would pay not more than 50% of the salaries of certified lay teachers in non-public schools. After 1972, the ceiling would rise to 75% of the salaries.

Secular Service Restrictions

Secular subjects are defined to be "courses of instruction commonly taught in the public schools . . including but not limited to language skills, mathematics, science, geography, economics, history . . . ." Textbooks used in these courses must meet the same criteria used to judge texts in the public schools. Teachers may not be members of any religious order, nor may they wear "any distintive habit." Courses dealing with religious tenets are expressly excluded from those for which salary aid is available. Teachers can be reimbursed only for time actually spent teaching secular courses.

Other Restrictions

1. Teachers must hold public school certificates from the state.

2. Non-public schools must comply with "educational standards" required by law, including those relating to the evaluation of pupils.

3. The school must file a certificate indicating that it is in compliance with Title VI of the Civil Rights Act of 1964.

4. The school must maintain an accounting system satisfactory to the Superintendent for the purposes of indicating expenditures for secular education.

Missouri

Senate Bill 375
1969 Educational Aids-Private School Pupil Fund

Payment

The bill would provide direct payments to parents for tuition paid to non-public schools. The parent of a child in grades 1-8 would be eligible for $50 per semester. For children in grades 9-12, the amount would be $100 per semester. These amounts would be doubled if the parent's gross income (less dependent deductions) were less than $3000 per year. If the child leaves the school, his parent is paid a prorated share of the amount entitled to him.

Secular Education Restrictions

Secular education is defined as including only those subjects taught in the public schools of the state. To receive the payments, parents must send their children to a non-public school which maintains a system of accounting showing the cost of secular education. The payments cannot exceed:

1. Actual tuition;
2. Cost of education in secular subjects;
3. 80% of total per pupil costs for all subjects.

Other Restrictions

1. The school must file a certificate indicating its compliance with Title VI of the Civil Rights Act of 1964.
2. Teachers must be certified by the state.
3. The school must file the names of students and the courses in which they are enrolled.
4. The Fund set up for paying the grants includes any private or federal grants made for the benefit of private school pupils.

Wisconsin

Senate Bill 346
(Passed by the Senate in January 1970 to be considered by the House in 1971)

Payment

The proposed legislation would appropriate $9,350,000

to provide grants to parents of elementary and secondary school children for secular education. The grant program would be administered by an "Education Aids Board" which would be an extension of the present Higher Education Board. The basic grant would be $50 for a child in grades 1-8 and $100 for a child in grades 9-12. A provision which would have doubled the amount if the parents' effective income (net taxable) were less than $3,000 and tripled the grant if the effective income were below $2,000, was deleted on the floor of the Senate.

The grants are further limited as follows:

1. The grant may not exceed 80% of actual tuition payments;
2. The grant may not exceed the school's per pupil cost of secular education or 80% of the per pupil cost of education in all subjects.

Secular Restrictions

Secular education is defined as "education in the following secular subjects: reading, spelling, language arts, physical sciences, English, foreign languages, mathematics, government, industrial arts, American History, physical education, domestic arts, or business education."

Other Restrictions

1. The non-public school must accept "supervision" in education as specified in s. 115.28 (1) and (3) of the Wisconsin Code.
2. Elementary schools must meet standards for admission to public high schools (Wisconsin Code s. 118.145).

3. Non-public high schools must be accredited by a national accrediting organization and must meet the standards for transfer to public high schools.

4. Teachers must have qualifications equivalent to those which would be required for similar teaching in the public schools, except if the teacher was already employed at the time the act became effective.

5. The school must maintain an accounting system adequately showing the cost of secular and all other education, and the accounts must be open to state audit.

6. The school must be in compliance with Title VI of the Civil Rights Act of 1964, and must file a statement indicating that it will admit residents of Wisconsin without regard to race, creed, color, or national origin.

7. The school must comply with compulsory attendance laws.

Other Legislation Pending

In addition to several bills altering individual sections of the above plan (1969 Assembly Bills 251, 1054, 801, 779), there is a purchase of secular services bill, 1969 Assembly Bill 563, which bears a strong resemblance to Pennsylvania's statute.

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