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Education Policy Brief

School Choice Issues in Indiana: Sifting through the Rhetoric

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INTRODUCTION

The notion of school choice is over 200 years old. In 1776, Adam Smith first published *The Wealth of Nations* and suggested that "schools could reach a higher quality of education by allowing students to choose their own teachers and schools …[asserting] that if a school's enrollment began to diminish drastically, the school would be forced to emulate the popular schools and offer high quality education" (Smith, 1999). In recent history, Nobel laureate Milton Friedman helped to renew popular interest in school choice through the publication of the article, "The Role of Government in Education," and subsequent founding of the Friedman Foundation for Educational Choice (Smith, 1999). Friedman suggested that by granting families choices in education, both schools and education would improve.

This year Indiana joined over a dozen other states in adopting Friedman's principles by passing what many believe to be the most comprehensive school choice program in the country. With the enactment of three key bills (HEA 1001, HEA 1003, and HEA 1004), Indiana parents may now take advantage of a school expenditure tax deduction, school scholarships granted from private Scholarship Granting Organizations (SGOs) which are incentivized with a tax credit, and Choice Scholarships (generally referred to as vouchers) granted to low-income parents and funded by the state of Indiana. This Education Policy Brief will examine the legal, fiscal, and policy ramifications of Indiana's school choice offerings, particularly the new Choice Scholarship program.

SCHOOL EXPENDITURE DEDUCTION

Although Choice Scholarships are only granted to low-income families, all taxpayers with dependent children can benefit from the new School Expenditure Deduction. The School Expenditure Deduction allows a taxpayer who has an eligible dependent child to take a tax deduction against her adjusted gross income for unreimbursed education expenditures made in connection with enrollment, attendance, or participation of the child in a private school education program or for expenses accrued in home schooling the child (IND CODE § 6-3-2-22). A child is "eligible" if he or she is eligible for a free elementary or high school education in an Indiana school corporation (IND CODE § 6-3-2-22(a)). The term "education expenditures" includes items such as tuition at a private school, computer software, textbooks, workbooks, curricula, and school supplies (IND CODE § 6-3-2-22(2)). The deduction is limited to $1,000 multiplied by the number of dependent children for whom the taxpayer made education expenditures (IND CODE § 6-3-2-22(3)(d)). The Indiana Legislative Service Agency estimates that the revenue loss to the state from this deduction could potentially range from $3.3 M to $3.7 M annually (Legislative Service Agency, 2011).

SCHOOL SCHOLARSHIP TAX CREDIT

Indiana School Scholarship Tax Credits, first passed in 2009, provide a mechanism for students to acquire privately funded scholarships to attend private schools through the assistance of Scholarship Granting Organizations (SGOs). SGOs are

non-profit organizations authorized by the state of Indiana to receive donations from any individual or entity (IND CODE § 6-3.1-30.5-12). Individuals and entities who donate to SGOs can claim a credit against state tax liability equal to 50 percent of their contribution to the SGO. The donations received by SGOs are used to grant scholarships to legal residents of Indiana who are between the ages of 5 and 22 during the year in which the scholarship is utilized (IND CODE § 20-51-1-4.5(1)-(2)). SGOs are allowed to set their own requirements and application processes, but they may not limit the availability of scholarships to students of only one participating school (IND CODE § 20-51-1-7(2)). The application process must be fair and neutral, and children who are members of families which have incomes of more than 150 percent of the free or reduced lunch levels as established by the federal government are not eligible (IND CODE § 20-51-1-4.5(4)).

Students seeking scholarships must have been or plan to be enrolled in an accredited school (IND CODE § 20-51-1-4.5(3)). The scholarships may only be used at schools that are located in Indiana; require an eligible individual to pay tuition or transfer tuition to attend; voluntarily agree to enroll an eligible individual; are accredited by a state, regional, or federal agency recognized by the Indiana State Board of Education; administer the ISTEP+; and are not a charter school or the school corporation in which an eligible individual is a legal resident (IND CODE § 20-51-1-4.7). In addition to better defining the eligibility requirements for schools and students seeking school choice funds, the 2011 legislative session also increased the annual limit on the amount of tax credits allowed each year from $2.5 million to $5 million during (IND CODE § 6-3.1-30.5-13). Although the annual limit on the amount of tax credits allowed has been increased, it is notable that the Department of Revenue only granted approximately $340,000 of the available $2.5 million in credits for fiscal year 2011 (Legislative Service Agency, 2011).

No public money ever directly flows to families or schools when a scholarship is granted by a SGO. The donor's funds are given to the SGO before the funds ever become part of the state treasury (see Kotterman v. Killian). Tax credits given by the state of Indiana for donation to SGOs are similar to tax credits granted by the state of Indiana for a number of other programs (see Table 1 for a sampling of current Indiana tax credit programs). In fact, in 2007, the state of Indiana allowed $2,232,136 in Neighborhood Assistance Credits (a program which funds both secular and sectarian organizations in a neutral manner) and allowed over $26,000,000 in personal income tax credits for College Choice 529 Savings Plans (also a program where funds are diverted to both secular and sectarian postsecondary education organizations in a neutral manner). The use of tax credits to incentivize behavior is a relatively common and much debated practice utilized in both state and federal tax structures. For a detailed discussion on the policies behind the use of tax credits generally see *The Dual Subsidy Theory of Charitable Deductions*, 84 Ind. L.J. 1047, Fall 2009 (Benshalom, 2009).

CHOICE SCHOLARSHIPS

Although School Scholarship Tax Credits existed prior to the 2011 legislative session, school vouchers, or Choice Scholarships, were a significant addition to Indiana school choice statutes. The Friedman Foundation for Educational Choice cites Indiana's new voucher program as the largest in the nation due to its broad eligibility (Enlow, 2011).

The student eligibility for Choice Scholarships parallels the eligibility described above for Scholarship Tax Credits (IND CODE § 20-51-1-4.5(4)). After choosing a school for her child, a parent must endorse the Choice Scholarship distribution from the Indiana Department of Education (IDOE) before the funds may be used by the chosen school. Schools receiving Choice Scholarship funds must meet specific requirements and adhere to certain guidelines in order to be eligible to receive funds.

Indiana Code § 20-51-4-1(a) dictates curricular standards for schools receiving Choice Scholarship funds while also explicitly prohibiting expanded regulation of private schools. The provision expressly seeks to protect the autonomy of the private schools, but provides a list of 15 documents such as the Constitution of the United States, the Pledge of Allegiance, and the Constitution of the State of Indiana (IND CODE § 20-51-4-1(b)) that eligible schools are barred from censoring and required to make available in school libraries (IND CODE § 20-51-4-1(d-e)). Eligible schools must allow students to freely

TABLE 1. Indiana Tax Credits.

	Dynamic State Tax Reduction in 2007	Amount of Tax Credit	Cap	Misc.
Neighborhood Assistance Credit; IND CODE §6-3.1-9	$2,232,136	50% of Donation	$2,500,000	Funds can be used by religious organizations
Unified Tax Credit for the Elderly; IND Code § 6-3-3-9	$6,907,760	$40 to $100 per taxpayer depending on income	None	
Lake County Residential Income Tax Credit; IND CODE §6-3.1-20-4	$6,888,233	The lesser of $300 or total amount of property tax liability	None	
IN College Choice 529 Savings Plan Credit IND CODE § 6-3-3-12	$26,001,627	20% of contribution to savings plan	None	Funds can be used on religious organizations

Source: Indiana State Budget Agency Tax & Revenue Division, 2010.

reference these documents, allow an opportunity to recite the Pledge of Allegiance, and display the United States flag in each classroom (IND CODE § 20-51-4-1(f)).

For students in middle and high schools, eligible schools must, within two weeks before a general election, provide five class periods of discussion on the systems of government of Indiana and the United States, methods of voting, election laws, party structures, and the responsibilities of citizen participation in elections (IND CODE § 20-51-4-1(f)(6)). Eligible schools are also required to provide instruction on honesty, morality, courtesy, obedience to law, respect for the flags and constitutions of Indiana and the United States, respect for parents, the dignity of honest labor, and other lessons that develop an "upright and desirable citizenry," respecting other's property, and respecting the rights of others to hold their own views and religious beliefs (IND CODE § 20-51-4-1(f)(7-8)). More broadly, eligible schools are held to a basic curricular standard which includes instruction in English, world languages, mathematics, social studies, sciences, fine arts, and health education (IND CODE § 20-51-4-1(f)(9). Lastly, eligible schools are prohibited from teaching about the violent overthrow of the United States government (IND CODE § 20-51-4-1(g)). The IDOE will be required to visit at least five percent of eligible schools through random selection to check for compliance (Legislative Services Agency, 2011).

Indiana will phase in the distribution of Choice Scholarships among eligible students. In the 2011-12 school year, the IDOE may award only 7,500 Choice Scholarships among eligible students, and in the 2012-13 school year, only 15,000 Choice Scholarships may be awarded. Choice Scholarships are not limited in subsequent school years (IND CODE § 20-51-4-2(b)).

The IDOE must establish procedures for awarding funds to eligible students, but the amount of the Choice Scholarship for each student must be less than the state tuition support amount per student received by each school corporation. Choice Scholarships are capped at the lesser of three amounts 1) the sum of tuition, transfer tuition, and fees an eligible student would be required to pay to attend an eligible school (IND CODE § 20-51-4-4(1)); 2) $4,500 for students in grades 1-8; or 3) 90 percent of the state tuition support amount if the eligible student is in a household with an annual income equal to the requirement for the federal free and reduced lunch program, or 50 percent of the state tuition support amount for a student in a household with an income no more than 150 percent of the qualification for the free and reduced lunch program (IND CODE § 20-51-4-4(2)). If an eligible student enrolls in an eligible school for only part of the school year, the Choice Scholarship will be reduced on a prorated basis. An eligible student is entitled to only one Choice Scholarship per school year (IND CODE § 20-51-4-6). The amount of the Choice Scholarship is not considered income for the purposes of other federal or state grants or programs (IND CODE § 20-51-4-11).

All schools participating in the Choice Scholarship program must submit data for category placement under Indiana's accountability system.

Eligible schools are broadly prohibited from discriminating based on race, color, or national origin, and eligible schools must especially abide by their individual admission policies without discrimination when considering students who apply for and are awarded Choice Scholarships (IND CODE § 20-51-4-3(a-b)). If an eligible school receives more applications than Choice Scholarships available to the school, then the school must draw eligible students at random from the pool of applicants at a public meeting (IND CODE § 20-51-4-3(c)).

In order to be eligible for a Choice Scholarship, a student must also have either been enrolled in a school corporation that did not charge the individual transfer tuition for at least two semesters immediately preceding the first semester for which the individual receives a choice scholarship, or must have received a scholarship from a scholarship granting organization under IC 20-51-3 or a Choice Scholarship under IC 20-51-4 in a preceding school year (IND CODE § 20-51-1-4.5(5)(A)-(B)).

All schools participating in the Choice Scholarship program must submit data for category placement under Indiana's accountability system. If an eligible school is placed in one of the two lowest categories for two consecutive years, the IDOE will suspend Choice Scholarships to new students for the struggling school for a period of one year. If an eligible school is placed in either of the two lowest categories for three consecutive years, the IDOE will suspend Choice Scholarships to new students until the school is placed in the middle or higher categories for two consecutive years, and if the eligible school is placed in the lowest category for three consecutive years, the IDOE will suspend Choice Scholarships until the school is placed in the middle or higher categories for three consecutive years. Eligible students already attending the school may continue to receive Choice Scholarships (IND CODE § 20-51-4-9(a)).

VOUCHER FUNDING

The fiscal impact statement for the Choice Scholarship legislation (HEA 1003-2011) states that the impact on state tuition support expenses from the Choice Scholarship program are indeterminable (Legislative Services Agency, 2011); however, due to the language of HEA 1003, it is possible to estimate the funding levels of the Choice Scholarships compared to public schools funding.

The Legislative Services Agency (LSA) estimated the tuition support amount that would be used to pay for Choice Scholarships based on a student cohort sample of 1,000. Table 2 summarizes LSA's calculations. Since a maximum of 7,500 students may be awarded a Choice Scholarship during the 2011-12 school year by taking LSA's cohort sample of 1,000 and multiplying it by 7.5, a maximum of $21,936,240 could be spent on Choice Scholarships in the 2011-12 school year (approximately 0.35 percent of the total estimated appropriation for tuition support in the 2012 calendar year). Likewise, since a maximum of 15,000 Choice Scholarships can be awarded in the 2012-13 school year by tak-

ing LSA's cohort sample of 1,000 and multiplying by 15, a maximum of $43,872,480 could be spent (approximately 0.69 percent of the total estimated appropriation for tuition support in the 2013 calendar year).

As mentioned above, after the 2012-13 school year, there will be no cap on the number of Choice Scholarships that can be distributed, but based on the student population during the 2009-10 school year and the Legislative Services Agency's projections for the number of students who will be in the necessary income ranges, an estimated 505,083 students will be eligible for Choice Scholarships during the 2012-13 school year (Indiana Department of Education, 2011a). It is important to bear in mind that it is highly unlikely the number of students receiving Choice Scholarships will approach this amount in the near future due to a lack of seats available at eligible private schools, among other factors. Further, even if enrollment in the Choice Scholarship program approached 500,000 or beyond, the state's cost per student in providing a Choice Scholarship will always be less than the state's cost to educate the student in the public school because of the structure of Indiana's Choice Scholarship legislation. In short, despite arguments to the contrary, the structure of Indiana's Choice Scholarship program is projected to save the state of Indiana money.

Theoretically, when school choice programs are structured in a way in which dollars follow students whether the student is attending a public or private school, and the state is granting scholarships to students in an amount less than it costs the state to educate the student in a public school, the state should save money. However, to date, the school choice programs have not strictly followed the funds-to-follow-student model and, as such, information on true cost savings for the state are inconclusive. Here, two prominent school voucher programs will be examined for their funding mechanisms and their fiscal impacts.

A 2006 study by Susan Aud and Leon Michos examined the fiscal impact of Washington, D.C.,'s program. The D.C. voucher program is unique from other state and local programs because although the majority of revenue for D.C. Public Schools (DCPS) comes from local sources, the voucher program is funded by the federal government. Due to how the city of Washington, D.C., utilizes general funding formulas for DCPS, DCPS loses city funds each time a student chooses to participate in the voucher program, while the city saves money. A $13 million grant from the federal government mitigates DCPS's budget shortfall from the exiting students and also gives DCPS a savings in the years when the revenue loss from students departing with vouchers is less than $13 million. Aud and Michos's study shows the voucher program saved the city approximately $8 million due to the reduced number of students in the schools and saved DCPS $5 million due to the federal grant. Although, Aud and Michos note, due to the grant, per-pupil funding actually increased in DCPS, negating any potential competitive effects of having a voucher program. Because DCPS did not face any budgetary consequences of parent choice, it had no incentive to better manage finances or improve education (Aud & Michos, 2006).

A second voucher model, the Milwaukee Public Schools (MPS) voucher program, was established in 1991. Although it has been amended since it was originally passed, the funding formula associated with MPS currently ensures that state funds allocated to MPS directly correlate to the number of students enrolled in MPS. Therefore, as students accept vouchers and choose to use them in private schools, MPS loses money.

The Wisconsin legislature tried to mitigate this loss of funds by allowing the city of Milwaukee the option of increasing property taxes to supplement funds streaming to MPS. As a result, Milwaukee property taxpayers pay twice for the expense of voucher students while taxpayers outside

TABLE 2. Costs of Choice Scholarships as Estimated by the Legislative Services Agency

Household Income	Scholarship Level	Scholarship Amount (assuming a $5,515 tuition support amount)	Students in Income Range out of 1,000 Student Sample[a]	Tuition Support Used for Scholarships
Grades 1-8				
Max. 100% free/reduced lunch income level	90% of tuition support	$4,500	341	$1,534,500
Max. 150% free/reduced lunch income level	50% of tuition support	$2,758	141	$388,808
Grades 9-12s				
Max. 100% free/reduced lunch income level	90% of tuition support	$4,964	164	$814,014
Max. 150% free/reduced lunch income level	50% of tuition support	$2,758	68	$187,510
TOTAL				$2,924,832

[a] The remaining 286 of the 1,000 in the cohort sample are not eligible for Choice Scholarships.

Source: Legislative Services Agency, 2011.

of Milwaukee benefit as their per-pupil spending increases. Per-pupil spending increases outside of Milwaukee because the state spends less on a voucher for a Milwaukee student than it would have spent on educating that child in MPS and those savings are distributed throughout the state rather than kept in MPS (Costrell, 2009).

As is the case in Washington, D.C., because Milwaukee is allowed to increase property taxes to mitigate the loss in revenue from exiting students, the effects of competition and incentives to make MPS more efficient and effective are hindered.

Indiana's school choice statutes' funding structure is similar to Wisconsin's in that it allows state dollars to "follow students." In other words, when a student chooses to use one of Indiana's school choice options, the school from which the student came loses per-pupil funding for that student. Because the amount of money the state spends on Choice Scholarships is less than the amount of money the state would spend to educate that child in the public school, the result is a net savings for the state. However, unlike Milwaukee, some local Indiana school corporations will see a loss of revenue as students choose private schools.

Indiana's private schools are not evenly distributed throughout the state; therefore, funding shifts will not be distributed evenly throughout the state. A review of the IDOE's listing of private schools in Indiana reveals approximately 242 private schools, concentrated mostly around urban areas such as Indianapolis, northwest Indiana, Ft. Wayne, and Evansville (Indiana Department of Education, 2011b). School corporations in these areas will more likely see decreased total revenues as students leave the public schools for private schools, as opposed to rural school corporations where access to private schools is more limited. These schools should, however, also see decreased expenses as they are responsible for the education of fewer students. It is important to note that under Indiana's program, although a school corporation's total revenue may decrease due to vouchers, the per-pupil state tuition support would not decrease.

Indiana presents a particularly unique fiscal situation because its school choice statutes aspire to execute both school vouchers (Choice Scholarships) and school tax credits. The Cato Institute has expressed concern that vouchers combined with the tuition tax credit would erase any budgetary savings of one program or the other executed in solitude: "As written, the [Indiana] program could have a significant negative impact on state finances if families claim both the vouchers and funds from the state's existing education tax credits… Critics of expanding educational freedom always claim, incorrectly, that school choice programs are a drain on public resources. But the double-dipping that is allowed under this program could inadvertently prove them right" (Schaeffer, 2011). As the IDOE moves forward with implementation of the Indiana's comprehensive plan, it is necessary to keep a watchful eye on the prevalence of "double-dipping."

LEGAL ISSUES

> *"In the absence of a constitutional violation, the desirability and efficacy of school choice are matters to be resolved through the political process. This program may be wise or unwise, provident or improvident from an educational or public policy viewpoint. Our individual preferences, however, are not the constitutional standard."*
>
> The Wisconsin Supreme Court
> *Jackson v. Benson*
> 578 N.E.2d 602, 610 (Wisc. 1998)

Historically, constitutional challenges to school choice focused on application of the United States Constitution's First Amendment Establishment Clause (otherwise known as the Federal Establishment Clause) and state establishment clauses. Although some state establishment clauses remain a viable option for constitutional challenge, federal jurisprudence to date has dismissed the Federal Establishment Clause as a viable basis for invalidating carefully written school choice statutes. (Green & Moran, 2010). The Indiana Constitution's Religious Clauses are more detailed and stringent than the Federal Establishment Clause and therefore require a slightly different legal analysis. We will address both federal and state establishment clauses; explore less-publicized federal Constitutional provisions relevant to school choice in Indiana; and, where applicable, address the recent lawsuit filed by the Indiana State Teacher's Association (ISTA) which challenges the constitutionality of the Choice Scholarship program.

Establishment Clause of the First Amendment to the United States Constitution

The First Amendment to the United States Constitution provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This clause, as applied through the Fourteenth Amendment, prohibits any state government from passing laws which have the purpose or effect of advancing religion.[1] The Federal Establishment Clause is not, however, violated every time money in the possession of the state ends up in the possession of a religious institution.[2] Rather, challenged programs are evaluated under a three-part test expounded by the U.S. Supreme Court over the last 60 years. Under the U.S. Supreme Court's test, a statute complies with the Federal Establishment Clause if (a) it has a secular legislative purpose, (b) its primary effect neither advances nor inhibits religion, and (c) it does not create excessive entanglement between government and religion.[3] If written and administered carefully, state voucher and education tax credit programs generally satisfy all three prongs of the U.S. Supreme Court's test.

State voucher and education tax credit programs are generally found to have the secular legislative purpose of advancing education. The court in *Mueller v. Allen*, for example, held that "An educated populace is essential to the political and economic health of any community, and a State's effort to assist parents in meeting the rising cost of educational expenses plainly serves this secular purpose of ensuring that the State's citizenry is well-educated."[4] Programs that are designed to

1. *Agostini v. Felton*, 522 U.S. 803 (1997).
2. *Jackson v. Benson*, 578 N.W.2d 602 (Wisc.1998) (citing *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993)).
3. *Agostini v. Felton*, 521 U.S. at 819 (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971)).
4. *Mueller v. Allen*, 463 U.S. 388, 395 (1983).

benefit a broad spectrum of groups by allocating aid on the basis of neutral, secular criteria that neither favor nor disfavor religion are especially likely to meet the "secular legislative purpose" prong of the U.S. Supreme Court's Establishment Clause test.[5] Indiana's school choice statutes meet these criteria.

Indiana Code § 6-3-2-22 clearly designates a secular legislative purpose and casts a wide net by granting a tax deduction specifically for educational expenditures (up to $1,000) to any individuals who homeschool their dependent children or send their dependent children to any private school. Indiana Code § 20-51-1-7 requires SGOs to make scholarships available for more than one participating school and creates various safeguards to encourage neutral disbursement of the scholarship funds. Likewise, Indiana Code § 20-51-4-1 illustrates the secular purpose of advancing education by listing an unprecedented number of documents that all participating schools must make available in order to maintain eligibility in the Choice Scholarship program. Indiana Code § 20-51-4-3(b),(c) promotes a neutral process of scholarship administration by prohibiting discrimination on the basis of race, color, or nation origin; requiring the admissions policy of each school to be fairly applied; and requiring a random drawing from eligible names when there are not enough open seats in a particular school to accommodate the number of applicants.

State voucher and education tax credit programs do not have the primary effect of advancing religion when they are designed in a way which (a) neither favors nor disfavors religion in defining the program's beneficiaries, and (b) the state funds reach the religious institution through the clear private choices of citizens.[6] The Supreme Court held in *Locke v. Davey* that "under our Establishment Clause precedent, the link between government funds and religious training is broken by the independent and private choice of recipients [of the scholarship]."[7] *The Court in Committee for Public Education and Religious Liberty v. Nyquist* found that a New York statute violated the Establishment Clause because financial assistance went exclusively to parents of children enrolled in private schools that promoted religion.[8] Wisconsin seemingly observed the error of New York's program and created a program which directed educational vouchers to low-income parents who were then free to choose the best school for their child. After choosing a school, the parent endorsed the voucher to the school.[9]

State voucher and education tax credit programs do not have the primary effect of advancing religion when they are designed in a way which (a) neither favors nor disfavors religion in defining the program's beneficiaries, and (b) the state funds reach the religious institution through the clear private choices of citizens.

Thus, the Wisconsin process could not be deemed to "advance religion" because it removed direct government involvement from (a) the choosing of a religious school, and (b) the funding of a religious school. Likewise, the U.S. Supreme Court approved government funding for a deaf child's interpreter in a religious school even though the government employee would essentially be a "mouthpiece" for religious instruction because the choice to be in attendance at a private school was a decision wholly made by the parents, and, as such, the Court held there was no primary effect of the state advancing religion.[10]

Likewise, in *Rosenberger v. Rector & Visitors of the Univ. of Va.*, the court held that a university was required to fund a Christian campus newspaper in the same way in which it funded other student groups The Court held that "as long as the benefit was neutral with respect to religion, what the student did with that benefit, even if it was to spend all of it on religion-related expenditures, was irrelevant for purposes of analyzing whether the law or policy violated the Establishment Clause."[11] It could be argued that Indiana's school expenditure deduction and school tax credit do not violate this prong of the Federal Establishment Clause test because money is never given directly from the state treasury to religious institutions. The tax deduction and tax credit are purely a result of the private choices of parents and the private choices of other unrelated individuals and corporations who choose to donate money to SGOs.[12]

Indiana's Choice Scholarships are at higher risk for violating the "advancing religion" prong because the source of the funds is, in fact, the state treasury. However, Indiana's process for the delivery of state funds to Choice Scholarship recipients mirrors Cleveland's process for vouchers, which has already survived a Constitutional challenge.[13] Before any funds are disbursed to a Choice Scholarship recipient, parents make a private choice as to which school the student should attend. After making the private choice, parents must co-endorse the voucher with the chosen school. Thus, it can be argued the state is merely advancing private parental choice and education rather than religion (IND CODE § 20-51-4-10).

State voucher and education tax credit programs do not lead to excessive entanglement between the state and participating sectarian schools when the program allows private schools to operate without excessive interference from the state government. The court has held that when the public school superintendent is called upon to monitor performance, reporting, auditing, nondiscrimination policies, and health and safety requirements in the sectarian schools receiving state funds, no excessive

5. *Widmar v. Vincent,* 454 U.S. 263, 274 (1981).
6. *Agostini*, 521 U.S. at 231; *Lemon*, 403 U.S. at 612; *Mueller,* 463 U.S. at 396.
7. *Locke v. Davey,* 540 U.S. 712, 719 (2004); see *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002); *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 13-14 (1993); *Witters v. Washington Dept. of Servs. for Blind*, 474 U.S. 481, 487 (1986); *Mueller v. Allen*, 463 U.S. 388, 399-400 (1983).
8. *Committee for Public Education and Religious Liberty v. Nyquist,* 413 U.S. 756, 783 (1973).
9. *Jackson v. Benson,* 578 N.E.2d 602 (Wisc. 1998).
10. *Zobrest v. Catalina Foothills Sch. Dist.*
11. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 842-43 (1995).
12. See *Kotterman v. Killian,* 972 P.2d 606 (AZ 1999).
13. See *Zelman v. Simmons-Harris.*

entanglement occurs.[14] Routine regulatory interaction which does not involve inquiries into religious doctrine or delegation of state power to a religious body does not create excessive entanglement.[15]

The provisions of Indiana's school choice statutes which grant tax credits and tax deductions plainly avoid excessive government entanglement. Indiana Code § 20-51-4-1 (governing Choice Scholarships) intends the state to avoid entanglement with private schools: "… the department or any other state agency may not in any way regulate the educational program of a nonpublic eligible school..." However, the unprecedented list of requirements added to Indiana Code § 20-51-4-1 puts the Choice Scholarship at risk for excessive entanglement. The IDOE will need to carefully create a mechanism for ensuring compliance with the statute without entangling and interfering with the private schools. If the IDOE simply creates an annual survey and inspection of a private school, it is unlikely entanglement will be found. But if the Department institutes checks which require state employees to regularly enter and monitor private schools, the Choice Scholarship program could run afoul of the Federal Establishment Clause.

In short, School Choice programs will withstand scrutiny under the Establishment Clause of the U.S. Constitution if they (a) demonstrate a secular purpose such as promotion of the education opportunities of students, (b) are facially neutral, (c) do not create a preference for or against religion, (d) grant the benefit to a large class of beneficiaries without regard to religion, (e) grant the aid directly to the parents who must then independently choose where to direct the money, and (f) avoid government entanglement.

Federal Free Exercise Clause

The Federal Establishment Clause prohibits the government from promoting or excessively involving itself in religion, while the Free Exercise Clause prohibits the government from hindering an individual's practice of religion, asserting that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (U.S. Const. Amend. I). Sometimes a state action is permitted by the Establishment Clause, but not required by the Free Exercise Clause.[16] In applying the Free Exercise Clause in 1972, the U.S. Supreme Court found a compulsory education law which required Amish parents to send their children to school past eighth grade to be in conflict with the Free Exercise Clause because attending school after eighth grade was against Amish religious beliefs.[17] The Court reasoned that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. However strong the state's interest in compulsory education, it is by no means absolute to the exclusion or subordination of all other interests."[18]

It has been argued that parents who, due to lack of funds, are forced to send their children to public schools, are being hindered in their ability to practice religion as they see fit.[19] In response, courts have moved away from the holding in *Wisconsin v. Yoder* and have granted latitude to states by holding that "valid and neutral laws of general applicability" do not need to be justified by a compelling governmental interest even if the law has the "incidental effect of burdening a particular religious practice."[20] Indiana's school choice statutes are not in danger of violating the Federal Free Exercise Clause because the funding provided by the school choice statutes encourage the free choice of parents to enroll students in any private school, sectarian or secular.

Other Federal Constitutional Law Provisions

In addition to the enumerated rights granted by the United States Constitution, the U.S. Supreme Court has interpreted the Constitution to also protect certain unwritten (or "extra-textual") rights as fundamental rights. *Meyer v. Nebraska* synthesized some of the ways the courts have expounded on the meaning of the Fourteenth Amendment.

> Without doubt, [the Fourteenth Amendment] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect.
>
> 262 U.S. 390, 399-400 (1923)

One aspect of the liberty protected by the Due Process Clause of the Fourteenth Amendment is "a right of personal privacy, or a guarantee of certain areas or zones of privacy."[21] The right of personal privacy includes "the interest in independence in making certain kinds of important decisions."[22] Among the decisions an individual may make without unjustified government interference are personal decisions "relating to marriage,"[23] "procreation,"[24] "contraception,"[25] and "child rearing and education."[26]

14. See *Jackson v. Benson.*
15. *Id.*
16. *Walz v. Tax Comm'n of City of New York,* 397 U.S. 664, 669 (1969).
17. *Wisconsin v. Yoder,* 406 U.S. 205 (1972).
18. Id.
19. *Locke v. Davey,* 540 U.S. 712 (2004); *Norwood v.Harrison,* 413 U.S. 455 (1973); *Eulitt v. Me. Dep't of Educ.,* 386 F.3d 344 (1st Cir. 2004).
20. *Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520, 531(1993) (holding unconstitutional a neutral law which, in reality, only negatively impacted the practice of Santeria religion).
21. *Roe v. Wade,* 410 U.S. 113, 152 (1973).
22. *Whalen v. Roe,* 429 U.S. 589, 599-600 (1977).
23. *Loving v. Virginia,* 388 U.S. 1, 12 (1967).
24. *Skinner v. Oklahoma,* 316 U.S. 535 (1942).
25. *Eisenstadt v. Baird,* 405 U.S. 438, 453-454 (1972).

Through the imposition of compulsory education laws, some argue parents are prevented from exercising their fundamental right to rear and educate their children by being forced to expose their children to the many influences of the local public school (Nasstrom, 1996; Smith, 1999). This argument struggles against precedent which seemingly limits parental rights. "Acting to guard the general interests in youth's well-being, the state as *parens patriae* may restrict the parent's control by requiring school attendance…and the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."[27] Indeed, many state constitutions[28] revere education of the populace to such a degree that parental rights are eclipsed by compulsory education laws. At the time of the creation of compulsory education laws, requiring children to attend schools in the face of remaining illiterate was likely the greater societal good when balanced against the power of parental rights. But as has been the case with many evolutions in our country and subsequent jurisprudence, as society changes, so too does the balance of the scales.

In contemporary society, however, the balance between the state's interest in an educated populace and a parent's fundamental right to choose the best upbringing for her child is a much different analysis than that completed by the scriveners of the compulsory education statutes. In modern society, few schools serve a small, uniform community. Despite the best efforts of school administrators and teachers, today's schools can expose children to aspects of society which, in some cases, directly contradict their parent's values. In some schools, it is not uncommon for a child to witness violence, gain unauthorized Internet access, observe drug use, and hear graphic details of peers' sexual encounters in the process of a mandatory school day. Public school teachers themselves are no longer required to adhere to the strict moral codes required of teachers when compulsory education laws were imposed. Although the codes of teacher conduct in place in 1915 were extreme,[29] they nonetheless evidenced the desire of those who wrote them to shelter children from negative influences during the course of the school day. In many respects, some schools are no longer able to accomplish this moral neutrality. Compulsory education laws often force parents to broach sensitive topics earlier than they might choose.

Of course most public schools are not "injurious" to a child, but compulsory education laws do not need to be "injurious" to a child to place a burden on parents' fundamental right to parent their child as they desire. Since the creation of compulsory education laws, parenting styles and lifestyles have dramatically changed and some parenting choices simply cannot be accommodated by the public school system. Single-parent homes are especially more common in today's society, and compulsory education laws all but prohibit the child of a single parent from seeing her parent during the week if that single parent is employed in a capacity which requires shift work. A single parent who works in the evenings may seek out a private school with afternoon or evening hours so that she may have the ability to exercise her fundamental right to parent her child in the mornings and meaningfully interact with her child each day. Other parents in today's culture prefer all organic surroundings for their children. The local public school may not be willing or able to ensure all cleaning supplies, snacks, and meals are organic, but a small private school may choose to embrace such a parenting desire. Today's parents may prefer specialized education for their children — a classical education, an artistic focus, or multi-age classrooms. Likewise, some modern parents are more global than parents from 100 years ago and may prefer that world language and multi-cultural instruction play a large role in their children's rearing. The scriveners of compulsory school laws simply could not have begun to realize the magnitude of diverse parenting styles embraced in today's society.

Opponents of school choice respond to such arguments by suggesting that a parent's fundamental right to raise her child is, in fact, protected; after all, a parent may "choose" to send her child to any school of her desire and may even choose to home-school her children. This "choice" is a fiction for single parents and lower- to middle-class families who do not have the funds to pay for private tuition or the ability to stay home and teach their children (Smith, 1999). This "choice" is reminiscent of the fictional voting rights given to the poor and minorities in many states prior to the enforcement of the Voting Rights Act of 1965.[30] Although a parent's right to choose the manner of upbringing of her child is a federally protected right, compulsory education laws, although seemingly benign, currently have the effect of inhibiting those of lesser means from exercising that right in much the same way that many states inhibited the rights of those of lesser means from exercising their fundamental right to

26. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Roe v. Wade, supra*, at 152-153. See also *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974).

27. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (holding constitutional a state statute which prohibited children from selling literature on the streets despite parental permission).

28. "Knowledge and learning … being essential to the preservation of a free government …" Ind. Const. Art. 8. § I

29. Rules of Conduct for Teachers in 1915: 1) You will not marry during the term of your contract; 2) You are not to keep company with men; 3) You must be home between the hours of 8 p.m. and 6 a.m. unless attending a school function; 4) You may not loiter downtown in ice cream stores; 5) You may not travel beyond the city limits unless you have the permission of the chairman of the board; 6) You may not ride in a carriage or automobile with any man unless he is your father or brother; 7) You may not smoke cigarettes; 8) You many not dress in bright colors; 9) You may under no circumstances dye your hair; 10) You must wear at least two petticoats; 11) You dresses must not be any shorter than two inches above the ankle. http://lang-witches.org/blog/2009/04/05/teacher-code-of-conduct-1915/

30. In 1870, the 15th Amendment gave all United States citizens the right to vote. It was not until almost 100 years later, with the passage of the Voting Rights Act of 1965, that attention was finally paid to the burdens being placed on some citizens to exercise their fundamental right to vote. Even as late as 1959, the U.S. Supreme Court allowed the use of literacy tests, which had the effect of disproportionately hindering the ability of the poor and minorities to exercise their fundamental right to vote. Finding that "the ability to read and write has some relation to standards designed to promote intelligent use of the ballot." *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. at 53. Seven years later, the U.S. Supreme Court finally recognized the effect of the literacy tests on individuals' fundamental right to vote in its application of the Voting Rights Act. "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." *S.C. v. Katzenbach*, 383 U.S. 301, 325 (1966).

vote. Many, such as U.S. Supreme Court Justice Clarence Thomas in *Zelman v. Simmons-Harris*, suggest that in the post-Brown v. Board of Education era, school choice is the only means of emancipation for low-income students trapped in failing schools (Holme & Richards, 2009; Holme & Wells, 2008; Ryan & Heise, 2002).

...[many states] have constitutional provisions which are more rigid and specific in their aversion to state funding for private education than Indiana, and therefore caution should be used when directly comparing the school choice provisions and case law from [other] states.

Opponents of school choice correctly point out, however, that although states are prohibited from infringing on a fundamental right, they are not required to fund fundamental rights.[31] Although it is true that the state is not required to fund a parent's fundamental right to choose how best to raise her child, by imposing a significant, direct, and disproportionate burden on lower income individuals, compulsory education laws transcend the holding in *Maher v. Roe*. Maher affirms a state's right to incentivize one behavior (i.e., attendance at public school through payment, healthcare for birthing a fetus rather than aborting it), but it fails to address the fact that compulsory attendance laws directly burden a parent's fundamental right to raise a child. Parents must educate their children — there is no choice. Parents are required to allow the state to impact the development of their children and required to accept a burden on their fundamental right to raise their children. Citizens who do not have means to pay for a school that matches their parenting decisions are forced to send their children into a school setting paid for by the state, in which the curriculum contradicts the parent's beliefs and parenting style. In fact, Maher cites the reasoning in *Pierce v. Society of Sisters* that the Fourteenth Amendment's concept of liberty "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only … which unreasonably interfered with the liberty of parents and guardians to direct the upbringing and education of children under their control" (268 U.S., at 534-535). Proponents of Indiana's school choice statutes would do well to defend the new provisions under this aspect of the Federal Constitution.

We have outlined how Indiana's school choice statutes may be treated under the Federal Constitution. We now move to provisions of the Indiana Constitution which may apply to Indiana's school choice statutes.

Indiana's Religious Clauses

Indiana Constitution Article I provides:

> Section 2: All people shall be secured in the natural right to worship ALMIGHTY GOD, according to the dictates of their own consciences.
>
> Section 4: No preference shall be given, by law to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.
>
> Section 6: No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

Although much media attention has focused on the possibility that Indiana's school choice statutes violate Article I of Indiana's Constitution, it appears unlikely that the statutes will be struck down based on Article I of the Indiana Constitution. A comparison of 25 state constitutions (see Table 3) with a specific focus on Wisconsin's and Indiana's Constitutions, legislative history, analysis of the word "seminary," and the fact that public dollars are already spent on sectarian organizations, all lend support to the constitutional validity of Indiana's school choice statutes.

Of the 26 states represented in Table 3 below, 13[32] have constitutional provisions that are much more rigid and specific in their aversion to state funding for private education than Indiana, and therefore caution should be used when directly comparing the school choice provisions and case law from these 13 states with Indiana's school choice statutes and pending litigation. For example, two states repeatedly referred to by the ISTA suit were Virginia (*Almond v. Day*) and New Hampshire (Opinion of the Justices), but Virginia's Constitution can be readily distinguished from Indiana's: "No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State …" Likewise, New Hampshire's Constitution provides, "… no person shall ever be compelled to pay towards the support of the schools of any sect or denomination." It is also notable that, despite the more rigid and specific constitutional prohibitions on private school funding in these 13 states, 6 have some form of tax credit, deduction, or narrow voucher available for private schools.

Of the 12 states represented in Table 3 that have constitutional provisions that are, like Indiana's, somewhat nebulous with respect to private school funding, 8 have some form of tax credit or tax deduction available, and 8 have some form of voucher program available. Wisconsin, although not mentioned by the ISTA suit, has constitutional provisions similar to Indiana's. Specifically, Article I, Section 18 of Wisconsin's Constitution closely mirrors Indiana's Article I, Section 6: "… nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries." At first glance, some might suggest the difference between Indiana's use of the word "institution" as compared to Wisconsin's use of the word "seminary" muddles comparison of these two constitutional clauses. However, the comparison is quite compelling when consideration is given to how the word "seminary" was used in the 1800s. The Oxford Dictionary defines a seminary as:

31. *Maher v. Roe*, 432 U.S. 464, 475-77 (1977) (explaining that the fundamental right to abortion does not entail a companion right to a state-financed abortion).

32. Arizona, Alaska, Colorado, Idaho, Illinois, Massachusetts, Minnesota, Mississippi, New Hampshire, New York, Pennsylvania, Utah, and Virginia.

"a place of education, a school, college, university, or the like; often explicitly (cf. 3a)[33] seminary of learning, seminary of science, etc. Also in more specific sense (cf. 3b)[34] an institution for the training of those destined for some particular profession." Interpreted into modern language, Indiana's constitution simply states that funds cannot be granted for the benefit of religious institutions, while Wisconsin's constitution goes a step further and states that funds cannot be granted for the benefit of religious schools. Despite this hurdle, Wisconsin's school choice program was found to be in compliance with its constitution. In *Jackson v. Benson*, the Wisconsin Supreme Court determined that money was drawn from the Wisconsin treasury for the "benefit" of education — not for the "benefit" of religion. As such, the Milwaukee Parental Choice Program did not violate the Wisconsin Constitution.[35] Because Indiana Constitution Article I, Section 6 is so similar to Wisconsin Constitution Article I, Section 18 and arguably sets a lower standard than Wisconsin's Article 18, it appears unlikely the Indiana school choice statutes will be found unconstitutional based on Indiana Constitution Article I, Section 6.

Wisconsin also has a "compelled support clause" similar to Indiana's Article I, Section 4. The Wisconsin Supreme Court also interpreted Wisconsin's "compelled support clause" in Jackson and indicated that as long as people were not being forced to participate in religious activities at secular schools or forced to attend the secular schools, the "compelled support clause" was not violated. Including Wisconsin and Indiana, there are at least eight states with "compelled support clauses" coupled with a history of school choice litigation or legislation. Table 3 below summarizes the legislation, case law, and applicable constitutional provisions of school choice states. Of the eight states listed below with "compelled support clauses," only two have language which is comparable to Indiana and also agree with ISTA's[36] assertion that individuals are "compelled" to support religion simply by paying taxes which eventually end up in the possession of a secular school. The logic behind the ISTA position battles against the logic of *Everson v. Board of Education:* "… a policeman protects a Catholic … not because he is a Catholic, but because he…is a member of our society. The fireman protects the Church school — but not because it is a Church school; it is because it is property, part of the assets of our society."[37] An individual, through the simple act of paying taxes (which are then filtered through the private choices of other individuals) is not being "compelled" to support a religious institution for the purposes of Indiana's Article I, Section 4 — the individual is merely being "compelled" to support education as chosen by the child's parent. It is significant that the state of Indiana has been directly funding sectarian organizations for many years in the form of private secular universities, group homes for troubled youth, and family services providers (see Department of Child Services Provider directory located at http://www.in.gov/dcs/2608.htm). The support given to sectarian schools through the school choice statutes is actually less offensive to Article I, Section 4 than, for example, foster care per diems, which arrive at sectarian foster agencies[38] purely through state-actors' decisions. Unless opponents of school choice in Indiana also wish to dismantle private secular foster care funding, private secular health providers funding, and state subsidies for private secular universities, Article I, Section 4 of the Indiana Constitution does not provide a strong basis for opposition.

Equal Education Clause of Indiana's Constitution

In addition to Indiana, the constitutions of at least 13 other states[39] require a uniform system of public schools (Green & Moran, 2010). Opponents of school choice tend to cite a recent Florida Supreme Court decision, *Bush v. Holmes*, where a statewide voucher system was found unconstitutional due to the Florida Constitution's Equal Education Clause. Aside from being a much-debated decision in its own right, the Bush decision is not applicable to Indiana's constitutional analysis of the school choice statutes. Florida's Constitution, although similar, utilizes much stronger language upon which the Bush court chose to base its decision: "…a paramount duty of the state [is] to make adequate provision for the education of all children residing within its borders…[the state is required to provide] a uniform, efficient, safe, secure and high quality system of free public schools." (FLA. CONST. art. IX §I(a)). The Bush court asserted that the word "paramount" indicated that the duty to create a uniform school system was not something that could be delegated in any way to any entity.[40] Critics of the Bush decision (including the dissenting justice) argue that the Florida Supreme Court majority overextended the language of the Florida Constitution in its decision, believing instead that the Florida voucher program was constitutional because it did not prevent the legislature from creating the voucher system as a supplement to an already adequately functioning public school system.[41]

33. "...a place of origin and early development; a place or thing in which something (e.g., an art or science, a virtue or vice) is developed or cultivated, or from which it is propagated abundantly."

34. "a place, country, society, condition of things, or the like, in which some particular class of persons are produced or trained."

35. *Jackson*, 578 N.E.2d at 621.

36. The ISTA lawsuit references Indiana's *Embry v. O'Bannon*, as well as cases from Vermont, Virginia, New Hampshire, and Iowa in support of its "compelled support" argument. See Table 3 below for a comparison between Indiana's Constitution and the constitutions of the states referred to by ISTA.

37. *Everson v. Board of Education*, 330 U.S.1, 25 (1947).

38. For example, White's Residential & Family Services is a residential treatment facility and foster care provider for the state of Indiana that directly receives state funds and openly professes on its website to be a "Christ-centered organization committed to enriching the lives of children and families…[and has a]…primary core value…to model God's grace and love…" Children sent to White's Residential & Family Services against their will by the state of Indiana are required to attend religious services during their stay regardless of personal beliefs. See www.whiteskids.org.

39. Colorado, Florida, Idaho, Minnesota, Nevada, New Mexico, North Carolina, North Dakota, Oregon, South Dakota, Washington, Wisconsin, and Wyoming.

40. *Bush v. Holmes*, 919 So. 2d 392 (Fla 2006).

41. 120 Harv. L. Rev. 1097, 1100 (February, 2007).

Indiana Constitution Article 8 provides:

> Section 1: Knowledge and learning generally diffused throughout the community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

The Indiana General Assembly's mandate is to: (a) encourage by all suitable means moral, intellectual, scientific, and agricultural improvement, and (b) to provide, by law, for a general and uniform system of Common Schools. The ISTA lawsuit suggests that Common Schools are the only way the General Assembly may achieve the education of Indiana's youth. This interpretation disregards the first part of the clause which gives the General Assembly the ability to achieve the education of Indiana students through "all suitable means." (In fact, the authors of the ISTA Complaint delete the phrase "by all suitable means" when they quote Article 8, Section I of the Indiana Constitution in their Complaint and in their Brief.) Nothing in Article 8, Section 1 prevents the Indiana legislature from providing a general and uniform system of schools and providing other methods (such as school choice) for the education of Indiana's children. Indiana's school choice statutes will not likely violate this provision of Indiana's constitution unless the Indiana Supreme Court determines school choice to be an "unsuitable means" to encourage the moral, intellectual, scientific, and agricultural improvement of Indiana's citizens.

LOOKING FORWARD…WHAT CAN INDIANA LEARN FROM OTHERS?

Indiana now joins the District of Columbia, Colorado (Douglas County), Maine, Louisiana, Wisconsin (Milwaukee), and Ohio (Cleveland) as having school choice programs which grant state-funded vouchers to individuals based on income or the failing status of their neighborhood schools. Vermont and Maine, largely rural states, only grant state-funded vouchers to individuals if there is not a public school in the immediate area. But, in Maine, the funds may only be used at secular schools. Arizona, Florida, Georgia, Louisiana, Ohio, Oklahoma, and Utah provide state-funded vouchers to students with disabilities. Florida's original voucher program, which was overturned in *Bush v. Holmes*, *supra*, served a broader base of students. Colorado also initially passed a more comprehensive school voucher program which was overturned in *Owens v. Colorado Congress of Parents* in 2004. The Colorado litigation centered on a clause in the Colorado constitution which vests all "control of instruction in the public schools districts" in the individually elected board members of the districts. The Supreme Court of Colorado held that a statewide mandatory voucher program infringed on the "control" of the local districts. In response to this decision, the local Douglas County school district recently voted to create a voucher program within its own district.

Milwaukee, Wisconsin, was one of the first cities to implement a voucher program — the Milwaukee Parental Choice Program (MPCP) — which provides eligible students the chance to attend any school of their choice. State funds in the form of a voucher are given to an eligible student's parents. The voucher is then endorsed at the school of the parents' choosing. After being heavily litigated and upheld in Wisconsin courts, the U.S. Supreme Court declined to grant certiorari on the case. Like Milwaukee, Cleveland implemented a School Voucher Program (SVP) to grant financial assistance to children from low-income families. Unlike MPCP, when a parent chooses to send a student to a public school outside the district, the state sends those choice funds directly to the school without issuing a voucher per se, but when a parent chooses to send a student to a sectarian school, the state sends the funds to the parents in the form of a voucher to be endorsed over to the school of the parents' choosing. The Ohio program was also heavily litigated in state courts, but, in the end, the program was held constitutional by the Ohio Supreme Court.

Arizona, the District of Columbia, Florida, Georgia, Indiana, Iowa, North Carolina, Oklahoma, Pennsylvania, and Rhode Island have all implemented tax credit programs. The Arizona tax credit statute was also heavily litigated at the state level. The United States Supreme Court did grant certiorari on the case, but the issue argued at the United States Supreme Court turned on whether or not taxpayers had "standing" to bring a challenge against the statute rather than focusing on the question of whether the statute itself was constitutional. See Table 3 below for a further breakdown of school choice programs throughout the country, their statutes, case law, and relevant constitutional provisions.

TABLE 3. Compilation of School Choice Nationwide

Location; Type; Eligibility	Applicable Constitutional Provision	Cases
Alaska - No school choice program, but cited by ISTA suit	Art. VII, § 1:*...No money shall be paid from public funds for the direct benefits of a religious or other private educational institution.*	*Sheldon Jackson College v. State,* 1979 - (Alaska Supreme Court held that tuition program for private college students was invalid due to Art. VII, §1)
Arizona (2006) - Public Voucher (now unconstitutional); Foster kids and kids with disabilities	Art. II, § 12: *…No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment….*	Ariz. Rev. Stat. Ann. § 15-891 *Cain v. Horne,* 2009 - (Arizona Supreme Court holding that the program was unconstitutional under the Aid Clause w/o discussing Religion Clause)
Arizona (1997) - Private Tax Credit - 100% of donation, $500 max. for individuals, $1,000 max. for couples, no max. for corporations, $17.28 million cap; Low-income students, foster kids, kids with disabilities (2006) - Corporate Private Tax Credit	Art. II, § 12, *supra*. and Art. IX, § 10: *No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.*	A.R.S. 43-1184 (individuals); A.R.S. 43-1183 (corporations); ***Kotterman v. Killian,*** 1999 (Arizona Supreme Court upheld tax credit under Federal Establishment Clause & Arizona Aid Clause & Arizona Gift Clause); ***Hibbs v. Winn,*** 2004 (U.S. Supreme Court holding Arizona tax credit program does not violate Federal Establishment Clause); ***Arizona Christian School Tuition Org. v. Winn,*** 2011 (U.S. Supreme Court holding that taxpayers lack standing to challenge tax credit program)
Colorado (2011) - Public Voucher; Douglas County only	Art. IX, § 7:*…no school district….shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation to any church, or for any sectarian purpose.*	
Colorado (2003) - Public Voucher (now unconstitutional); Low-Income students in underperforming schools	Art. IX, § 15: *The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts.*	*Owens v. Colorado Congress of Parents* - 2004 (Colorado Supreme Court held program unconstitutional because it took control away from the local school districts)
Florida (1999) - Public Voucher (now unconstitutional); students in underperforming schools	Art. IX, § 1: *The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education...*	*Bush v. Holmes* - 2006 (Florida Supreme Court held unconstitutional because of Paramount Duty of Equal Education Clause)
Florida (2001) - Corporate Private Tax Credit - 100% of donation, $140 million cap; Low-income students with priority given to students who received voucher prior to *Bush v. Holmes* decision		F.S. 220.187

TABLE 3. Compilation of School Choice Nationwide *(continued)*

Florida (2001) - Public Voucher; Kids with disabilities; Amount based on individual child's needs, but average amount per child is $7,144.00	Art. I, § 3: *…No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.*	Fla. Stat. § 1002.39
Georgia (2007) - Public Voucher; Kids with disabilities; Amount based on individual child's needs, but average amount is $6,000.00.	Art. I, § II, Par. VII: *No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.*	O.C.G.A. § 20-2-2118
Georgia (2008) - Private Tax Credit - 100% of donation, 75% of total tax liability limit for corporations, $1,000 limit for individuals, $2,500 limit for couples, $50 million cap; Open to all students	Art.I, Sec.II, Par. VII: *No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.*	O.C.G.A. § 48-7-29.16
Idaho - No school choice program, but cited by ISTA suit	Art. IX, § 5:*…neither legislature nor any county, city, town, township, or school district….shall ever make any appropriation…anything in aid of any…school, academy, seminary, college, or university…controlled by any church, sectarian or religious denomination whatsoever…*	*Doolittle v. Meridian Joint Sch. Dist. No. 2,* 1996 (Idaho Supreme Court held payment for handicapped child's tuition at sectarian school against Art. IX, § 5).
Illinois - no school choice program, but cited by ISTA suit	Art. X, § 3: *Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatsoever…to help support or sustain any school, academy….controlled by any church or sectarian denomination whatever…*	*Trust v. Ketteler Manual Training School,* 1918 (Illinois Supreme Court held state could use public funds to pay for child care services at religious institutions b/c children not required to attend religious services and schools received no reimbursement for expenses associated with religious instruction). *People ex. rel. Klinger v. Hewlett,* 1973 (Illinois Supreme Court held tuition grants for private elementary schools with no restrictions on the use of public funds to be unconstitutional) *Board of Education v. Bakalis, 1*973 (Illinois Supreme Court held use of public school buses for private school students constitutional) *Van Zandt v. Thompson,* 1988 (7th Cir. held creation of a non-denominational chapel in state house constitutional) *Toney v. Bower,* 2001 (Illinois Appellate Court held statute granting tax credit for private school expenses constitutional)
Indiana (2011) - Education Expenditure Tax Deduction - $1,000 per child per year deduction allowed for unreimbursed education expenses at public, private, or home school		Ind. Code § 6-3-2-22
Indiana (2011) - Public Voucher; families below the federal poverty level receive scholarship for 90% of their portion of the funding formula; families between 100% and 150% of federal poverty level receive scholarship for 50% of their portion of the funding formula; $4,500 annual max. for each student	Art. I, § VI: *No money shall be drawn from the treasury, for the benefit of any religious or theological institution.* Art. VIII, § I:*…Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual…and to provide by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.* Art. I § IV: *…no person shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.*	Ind. Code § 20-51-1-4 *Embry v. O'Bannon,* 2002 (Indiana Supreme Court interpreted Art. I, § VI and held program which gave state funds to pay for teacher salaries and computers in parochial schools constitutional) *Nagy v. Evansville,* 2006 (Indiana Supreme Court interpreted Art. VII, § I and held program of assessing a fee to students in public school unconstitutional.)
Indiana (2009) - Private Tax Credit for Corporations and Individuals; 50% of donation with $5 million cap		Ind. Code § 6-3.1-30.5-3; Ind. Code § 20-51-1-7; Ind. Code 20-51-3-5

TABLE 3. Compilation of School Choice Nationwide *(continued)*

Iowa (2006) - Private Tax Credit; 65% of donation; $7.5 million cap; family below 300% of federal poverty	Art. I, §3: *…nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry*	I.C. 422.11S *Knowlton v. Baumhover,* 1918 - (Iowa Supreme Court held unconstitutional any taxation for ecclesiastical support)
Louisiana (2008) Personal Tax Deduction for 50% of unreimbursed educational expenses with $5,000 cap per child		LA. R.S. 47.297.10
Louisiana (2008) - Public Voucher; family below 250% of federal poverty in underperforming school	Art. I, § 8: *No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof*	LA. R.S. 17:43
Louisiana (2010) - Public Voucher - kids with disabilities; voucher with a value of up to 50% of what state would spend on child in the public school	Art. VIII, § 1: *The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.*	LA. R.S. 17:4011
Maine (2005) - Public Voucher; if no public school exists in a rural area, the state will pay for a private secular school tuition	Art. I, § 3: *…all religious societies in this State, whether incorporate or unincorporated, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.*	20 A M.R.S. §§2951-2955 *Eulitt v. State of Maine,* 2004 - (U.S. Supreme Court case where parents failed in asserting Federal Equal Protection claim when they were not allowed to use voucher for Catholic school)
Massachusetts - no school choice but cited by ISTA suit	Art. XVII, § 2: *…no grant, appropriation or use of public money…shall be made or authorized by the commonwealth…for the purpose of…maintaining or aiding any...school…wherein any denominational doctrine is inculcated, or any other…school…which is not publicly owned and under the exclusive control, order, and superintendence of public officer or public agents…*	*Commonwealth v. School Committee of Springfield,* 1981 (Massachusetts Supreme Court held use of state funds to educate special needs students in private schools to be constitutional) Opinion of the Justices to the Senate, 1987 (Massachusetts Supreme Court opined that bill providing for a tax deduction for public and non-public elementary and secondary school tuition, textbooks, and transportation expenses amounted to "use" of public money and violated XVII, § 2).
Minnesota (1997) - Education Tax Credits and Deduction; 75% of unreimbursed education expenses, $1,000 per child max per year; sliding scale based on income eligibility of family	Art. XII, §2: *In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.*	Minn. Stat. §290.0674; Minn. Stat. §290.01 *Minnesota Civil Liberties Union v. Roemer* 1978 - (Federal district court in Minnesota upheld refundable tax deduction); *Mueller v. Allen,* 1983 (U.S. Supreme Court held Federal Establishment clause not violated by granting tax credit for tuition, textbooks and transportation at private and public schools equally)
Mississippi - no school choice program, but cited by ISTA suit	Art. VIII, § 208: *…nor shall any funds be appropriated toward the support of any sectarian school…*	*Otken v. Lamkin,* 1879 (Mississippi Supreme Court struck down statute which paid students attending private schools their pro rata share of state education funds). *Chance v. Mississippi State Textbook Rating* 1941 - (Mississippi Supreme Court upheld statute which allowed public school books to be used by secular schools).
New Hampshire - no voucher program, but cited by ISTA lawsuit	Pt.I, Art. VI: *…no person shall ever be compelled to pay towards the support of the schools of any sect or denomination.*	*Opinion of the Justices,* 1992 (New Hampshire Supreme Court held statute allowing "sending" public school to pay funds to religious school as against New Hampshire Constitution which is noticeably more narrow than Indiana Constitution).
New York - New York City - Mandatory Open Choice; all high school students must choose their top 12 high school choices out of 600 high school programs		

TABLE 3. Compilation of School Choice Nationwide *(continued)*

New York - Private Tax Credit	Art. XI, § 3: *Neither the state nor any subdivision thereof shall use its property or credit or any public money or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.*	Committee for Public Education & Religious *Liberty v. Nyquist*, 1973 (U.S. Supreme Court held unconstitutional New York law which provided tuition reimbursement for parents sending children to nonpublic schools under the Federal Establishment Clause; conversely held tax credits for nonpublic school expenses constitutional)
North Carolina (2011) - Private Tax Credit - $6,000 refundable credit given directly to families with kids with disabilities enrolled in private schools; $2,500 refundable credit to family under $100,000 annual income	Art. I, § 13: *All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.*	House Bill 344
Ohio Public Voucher - kids on the autism spectrum (2003); underperforming school (2005)		Ohio Rev. Stat. § 3310.41 and Ohio Rev. Code Ann. § 3310.02
Ohio (1995) - Public Voucher; Cleveland families below 200% of federal poverty	§ 1.07: *All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship…*	Ohio Rev. Stat. § 3313.97.4 thru § 3313.99; *Zelman v. Simmons-Harris,* 2002 (U.S. Supreme Court upheld Cleveland voucher program in the face of Federal Establishment Clause challenge)
Oklahoma (2010) - Public Voucher; kids with disabilities	Art. II, § II, Par. 5: No *public money shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.*	70 O.S.S. §13-101.1
Oklahoma (2011) - Private Tax Credit; 50% of donation w/$1,000 max for individuals, $2,000 max for couples, $100,000 for corporations; $3.4 million cap; families below 300% of federal poverty		69 O.S.S. §2357.206
Pennsylvania (2001) - Corporate Private Tax Credit - 75% of donation for one-year contribution, 90% for two-year contribution, $300,000 max per corporation, $44.7 million cap; Families of four w/income less than $60,000 with $12,000 added for each additional household member	Art. I, Sec.III: *…no preference shall ever be given by law to any religious establishments or modes of worship.* Art. III, Sec.15: *No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.*	24 P.S. §§20-2001-B-20-2008-B
Rhode Island (2006) - Corporate Private Tax Credit - 75% of donation for one-year contribution, 90% for two-year contribution, $100,000 max per corporation, $1.0 million cap; Families below 250% of federal poverty	Art.I, Sec.III: *…we therefore, declare that no person shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of such person's voluntary contract….*	RIGL 44-62.1-44-62.7
Tennessee (pending) -- Public Voucher; low-income students	Art. I, § 3: *That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent….*	SB 485 - passed Senate
Utah (2005) - Public Voucher; kids with disabilities	Art. I, § 4: *…No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.*	Utah Code Ann. § 53A-1a-701-710

TABLE 3. Compilation of School Choice Nationwide *(continued)*

Vermont (1869) - Public Voucher; if no public school exists in rural area, state will pay for private secular school tuition	Ch. I, Art. III: *...no person ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience...*	16 V.S.A. §166 *Chittenden Town School Dist. v. Dept. of Ed.* 1999 (Vermont Supreme Court held tuition reimbursement to sectarian schools unconstitutional if given without restriction of religious instruction)
Virginia - no voucher program, but cited by ISTA lawsuit	Art. VIII, §10 (formerly § 141): *No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof...*	*Almond v. Day,* 1955 (Virginia Supreme Court overturned voucher program not on the "compelled support clause" of Art. I, §16 of Virginia Constitution as indicated by the ISTA lawsuit, but on Art. VII, §10 of the Virginia Constitution which is noticeably more specific than Indiana's "compelled support" clause). *Glassman v. Arlington County, Virginia,* 2010 (U.S. Ct. App. 4th Dist. held that it was constitutional for the state to give funds to a church so that the church could build affordable housing).
Washington, D.C. (2004) - Public Voucher - up to $8,000 for elementary and middle school, up to $12,000 for high school; 185% below federal poverty with priority given to students in low-performing schools		D.C. Code §§38-1851.01-1851.11
Wisconsin (1990) - Milwaukee Public Voucher; families below 175% of federal poverty	Art. I, § 18: *...nor shall any person be compelled to...support any place of worship, or to maintain any ministry...nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.*	Wis. Stat. §119.23 *Jackson v. Benson,* 1998 (Wisconsin Supreme Court held Milwaukee voucher program constitutional).

LOOKING FORWARD…HOW SHOULD INDIANA MEASURE SUCCESS?

Much research has been conducted on the effectiveness of school choice, but several factors have made conclusive research difficult to accomplish. A 2007 survey by the U.S. Department of Education of the 56,285 participants in school voucher programs determined that 30 percent of all voucher users were students with disabilities, as compared to mainstream public schools which average 14 percent in attendance with disabilities (Wolf, 2008). Students utilizing the voucher system also tend to have a history of underperforming in their neighborhood public school (Wolf, 2008). The "period of adjustment" for a new school choice student after switching to a new school also causes consternation for researchers. Any major change, such as changing schools, can cause a student's test scores to drop before any gains can be measured (Hanushek, Kain, & Rivkin, 2004; Temple & Reynolds, 1999; Wolf, 2008). Further, parents who are motivated to utilize school choice programs may not be representative of the "average" parent in a mainstream public school. Wolf notes that "In methodological terms, simple comparison of private school students with public school students, voucher applicants with non-applicants, or voucher users with non-users, all will be subject to varying degrees of selection bias" (Wolf, 2008, p.423). Because of the unique attributes of the students utilizing school choice programming, it is not a helpful measure to simply compare students who use school choice programs against students who do not use school choice programs, and conducting useful research on the efficacy of school choice programs is difficult.

Researchers have attempted three different methods to minimize the impact of these factors in the evaluation of school choice programs: cross-sectional studies that statistically model selection, longitudinal studies which utilize matching techniques, and randomized experiments (Wolf, 2008). Of the three, longitudinal random assignment studies are the only ones to receive the gold standard of reliability because they eliminate the variable of parental bias and involvement, as well as take before and after snapshots of participants (Wolf, 2008). In fact, random assignment studies have been found to be so powerful for evaluating choice programs that the U.S. Department of Education's What Works Clearinghouse has labeled them the only research design that meets its evidence standards for rigor "without reservations" (Betts & Hill, 2006; Wolf, 2008). "With random assignment, you can know something with much greater certainty and, as a result, can more confidently separate fact from advocacy" (Gueron, 2000, p.429).

In addition to determining *if* school choice programs have a positive effect on student achievement, Indiana may wish to determine *why* school choice programs may or may not have a positive effect on student achievement (Wolf & Hoople, 2006). In general, both proponents and opponents of school choice assert that the characteristics of a student's peer group have independent and significant effects on the student's academic achievement. Id. If one of the goals of the implementation of school choice programs is to improve education, simply measuring outcomes is not enough — further study into how peer groups and other more-difficult-to-measure internal school factors improve or harm student achievement is critical.

Some also suggest that research on the effects of school choice should transcend analysis of student achievement and look to levels of civic responsibility instilled in students and the effects school choice may have on the health of a community. By choosing to be a part of a smaller school community, some argue "choice parents" accept more ownership and commitment to the schools thereby increasing student achievement but improving the neighborhood immediately surrounding the school as well (Brinig & Garnet, 2010). One study found that attending a private school for one year led to a considerable increase in students' political tolerance and political knowledge (Campbell, 2008). Others argue that school choice tends to geographically distance students' homes from their schools, which decreases the feeling of ownership and commitment to the community immediately surrounding schools. Research which tracks the impact of school choice programs should also include measures to track parent involvement, students' civic knowledge and involvement, and improvements or deterioration in the community immediately surrounding a school.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

It is important to consider how both parents and children will be assisted in making the decision to change schools. In the creation of school choice programming, it is natural to consider parents as the primary decision-maker. However, what results if a child and a parent disagree over school choice? Will Indiana allow a child's preference to trump a parent's? Will there be a review process for students who disapprove of a parent's decision? And what results when a parent is disengaged or unable to engage in the school choice process? Will information be available for students to disseminate so that they may advocate for themselves? Will educational surrogates be appointed for students who wish to exercise their right to school choice in the face of parents who are disinterested? In order for school choice programs to have the greatest potential for granting equal access to school choice programs, students as well as parents need systematic help in making school choice decisions. Special attention must be given to transfer students, immigrant students, children of immigrant parents, and children of less-educated parents as the students are more likely to be the sole choice decision-makers about school choice (Saporit & Lareua, 1999).

Recommendations

To help school choice have the most positive impact on education, the IDOE should provide tools and supports to parents and children for navigating the often complicated nuances of school choice and give special attention to (a) a student's role in the school choice decision-making process, and (b) how best to educate families about their school choice options.

Conclusion

Even after navigating the tricky maze of understanding school choice options and submitting a request for a school, the concerns facing families do not subside. Being forced to enter a school which a student did not choose can feel like failure (Devine, 1996). Students left without much parental direction in New York's school choice system reported making mistakes and feeling "stuck" in a "bad" school (Rosenbloom 2010).

Recommendations

The process currently outlined in Indiana's school choice statutes partially helps to prevent such a feeling of rejection by requiring a public lottery drawing when a school is faced with more applicants than seats available. Enforcement of the lottery system will be important as school choice programming moves forward in Indiana. Students must also be informed that they can re-enroll in their public school of legal settlement if the Choice School they have selected does not meet their educational needs.

Conclusion

In addition to basic information about school choice options, accurate information about the unique attributes of various schools is difficult to acquire and synthesize. Families navigating New York's school choice offerings expressed frustration with school administrators' publication of inflated or false program offerings and statistics (Rosenbloom, 2010). "Classical economics tell us that a free market guarantees the highest quality goods and services for the lowest price only when the consumer has 'perfect information' about the available goods and services. In the free educational market that 'choice' is designed to create, how are students and parents supposed to get this information? And just what information should they get?" (Rosenbloom, 2010, quoting Astin, A., 1992, pp. 255-260). The Rosenbloom analysis suggested a neutral outside entity be used to publish information about all participating schools using standardized language to describe course offerings, academic focus, and statistics.

Recommendations

The IDOE should, from the outset, create, maintain, and monitor information and statistics for all Indiana schools — both public and private — so parents may make informed decisions for their children's education. Uniform regulations or guidelines should also be created which provide firm parameters for schools' reporting of curriculum offerings, testing results, discipline procedures and statistics, and other aspects of schools' cultures which may be relevant to discerning parents.

Conclusion

In order to be relevant, any school choice research platform should (a) be longitudinal and randomized, (b) study factors within individual schools causing positive and negative achievement results, (c) monitor changes in students' civic knowledge and involvement, and (d) monitor any positive or negative impacts in the communities immediately surrounding schools impacted by school choice.

Recommendations

The issues and controversies surrounding school choice are endless, and passionate advocacy often blurs the line between fact and fiction, further complicating IDOE's efforts to implement Indiana's school choice statutes. The landscape will be further complicated by legal challenges as well as legislative debates over funding. By enacting the most comprehensive school

choice program in the country, Indiana has been thrust into the spotlight and will be intensely scrutinized by education policy advocates and scholars nationwide. As Indiana is observed by the nation, it is critical for those at the helm to forge ahead and make decisions based on objective data, hopefully procured by the IDOE's engagement of an independent research entity to conduct longitudinal random assignment studies and other assessments on the effects of school choice on Indiana's students, families, schools, and communities.

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For additional information on school choice see the IDOE's website (www.MyChoiceINed.com) for a list of participating schools, the ISTA website (www.ista-in.org), or www.schoochoiceindiana.com.

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WEB RESOURCES

The Heritage Foundation, School Choice in America
http://www.heritage.org/applications/schoolchoice

Complete Information for All 2011 Indiana General Assembly Regular Session Bills
http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2011&session=1&request=all#house

House Enrolled Act 1003 (School Scholarships)
http://www.in.gov/legislative/bills/2011/PDF/HE/HE1003.1.pdf

School Choice Indiana, a non-partisan state advocacy group
http://www.schoolchoiceindiana.com/

Indiana Department of Education (IDOE) School Choice Website
http://www.doe.in.gov/schoolchoice/

The Friedman Foundation for Educational Choice
http://www.edchoice.org/

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