

Erasing the Myths on How School Choice Would Impact Texas Private Schools

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INTRODUCTION

For more than 20 years school choice programs have provided parents opportunities to send their children to public or private schools more suited to their needs. Choice and competition in education benefits students. Today, 21 states and Washington, D.C., have school choice programs serving more than one million students.¹

Impressively, nine out of 10 random-assignment studies, considered the gold standard of scientific research, show statistically significant academic benefits for students using scholarships to attend private school.² Additionally, another 20 studies show public schools improve when faced with competition from private schools.³

As Texas lawmakers consider various school choice proposals including, tax-credit scholarships, some fear that school choice will lead to increased regulation of private schools. This brief examines the available evidence on tax-credit scholarships and government regulations on private schools.

Vouchers

Under such a program, funds typically expended by a school district would be allocated to a participating family in the form of a voucher to pay partial or full tuition for their child's private school, including both religious and non-religious options.

Tax-Credit Scholarships

Tax-credit scholarships allow businesses to receive full or partial tax credits when they donate to nonprofits that provide private school scholarships.

Q. What regulations do private schools in Texas currently face?

A. All Texas private schools are required to meet certain health, safety, and fire-code regulations. Non-accredited private schools in Texas have few other requirements. However, accredited private school "operations, curriculum, staffing, and instruction must be sufficiently comparable to those of the public schools." Accreditation requires these private schools to meet requirements on governance best practices, financial transparency, curriculum (including sequencing of instruction), and staffing, and to administer a national norm-referenced test approved by the school's accrediting agency.⁴ Accredited private schools in Texas may already voluntarily adhere to more rigorous operational standards than the average private school participating in tax-credit scholarship programs nationally.

Q. How does accreditation work in Texas?

A. The Texas Private School Accreditation Commission (TEPSAC) was created to "ensure quality in private schools by monitoring and approving organizations that accredit the various non-public elementary and secondary educational institutions in the state of Texas. The State Commissioner of Education recognizes the Texas Private School Accreditation Commission and its affiliated non-public schools. Since 1986, the Texas Education Agency, through the Commissioner of Education, has recognized the accreditation responsibilities of TEPSAC and its affiliated associations."⁵

There are 14 TEPSAC member accrediting agencies, which include: Accreditation Commission of Baptist Schools, Association of Classical and Christian Schools, Association of Christian Schools International, South-Central Region, Association of Christian Teachers and Schools, Independent Schools Association of the Southwest, International Christian Accrediting Association, Lutheran Schools Accreditation Commission, National Christian Schools Association, Southern Association of Colleges and Schools, Southwestern Association of Episcopal Schools, Texas Alliance of Accredited Private Schools, Texas Catholic

Conference Education Department, Texas Seventh Day Adventists School System, and Wisconsin Evangelical Lutheran Synod School Accreditation. Each year, the accrediting agencies report on their accrediting activities and independently evaluate any changes that are made to accreditation standards. The TEA Commissioner issues an endorsement of TEPSAC’s accreditation criteria each year, simultaneously preserving the independence of private schools from government interference and providing students and teachers in private schools with equivalent standing with their public school counterparts.

Q. Does school choice increase regulations of private schools?

A. A 2011 study published in the *Journal of School Choice* by Andrew Coulson examined 20 school choice programs, excluding programs exclusively for students with special needs. The programs were examined against a private school regulations index, which ranks private school regulations from 0 (none) to 6 (severe) across nine categories.⁶

TABLE 1 School Choice Regulatory Burden Index⁷
(Index Range = 0 to 54)

Program Type	Expected Score
Voucher	26.2
Individual Tax Credits / Tax-Credit Scholarships	8.1
Not Participating	4.6

Coulson found that individual tax credits or tax-credit scholarship programs had five times fewer regulations than voucher programs.⁸ That said, a private school participating in any type of school choice program would be expected to see a burden that registers below the midpoint of Coulson’s Regulatory Burden Index. There is no statistical difference in the regulatory burden between

a private school participating in a tax-credit scholarship program and a private school not participating in any choice program.⁹

A recent report by the Thomas B. Fordham Institute constructed a different methodology to study the regulatory burdens of voucher and tax-credit scholarship programs, and the report corroborates Coulson’s findings.¹⁰

Q. Do private schools choose to participate in school choice programs?

A. Yes, but more so in tax-credit scholarship programs. Whereas 39 percent of private schools participate in voucher programs, 59 percent choose to participate in tax-credit scholarship programs.¹¹ However, according to the researchers, schools most often cited “a lack of voucher-eligible families in the region” as the main reason many schools failed to participate in a school choice program, rather than a specific state regulation.¹²

Q. What new regulations have been placed on private schools in states with tax-credit scholarship programs?

A. Today there are 14 tax-credit scholarship programs in 11 states, serving more than 150,000 students.¹² At the outset, we reiterate that every state has a set of rules and regulations for private schools, independent of any school choice program. Regardless of a school’s participation in a tax-credit scholarship or voucher program, the most common state regulation requires private schools to follow state health, safety, and fire codes. Some rules are more targeted to operations, like in Indiana, which requires all private schools to employ state certified teachers.¹⁴ Additionally, state testing and accountability requirements are required of some or all private schools in Iowa, Indiana, and Ohio.¹⁵

TABLE 2 Regulations Within Tax-Credit Scholarship Programs¹⁶

Program Type	Approval Req.	Testing Req.	Curriculum Mandate	Religious Barrier	Price Control	Admission Req.
AZ – Personal Tax Credits for STOs	No	No	No	No	No	No
AZ – Corporate Tax Credits for STOs	No	Yes	No	No	No	No
AZ – Lexie’s Law Corporate Tax Credits	No	No	Yes*	No	No	No
FL – Florida Tax Credit Scholarship Program	Yes	Yes	No	No	No	No
GA – Private School Tax Credit for Donations to SSOs	Yes	No	No	No	No	No
IN – School Scholarship Tax Credit	Yes	Yes*	Yes*	No	No	No
IA – STO Tax Credit	Yes	Yes*	Yes*	No	No	No
LA – Tax Credit for Donations to STOs	No	Yes	No	No	No	Yes
NH – School Choice Scholarship Program	Yes*	No	Yes*	No	No	No
OK – Oklahoma Equal Opportunity Education Scholarship	Yes*	No	No	No	No	No
PA – Educational Improvement Tax Credit	No	No	No	No	No	No
PA – Educational Opportunity Tax Credit	No	No	No	No	No	No
RI – Tax Credits for Contributions to SOs	Yes*	No	No	No	No	No
VA – Educational Opportunity Tax Credits	No	Yes	No	No	No	No

* Some or all private schools are subject to the regulation regardless of participation in school choice program.

Approval Requirements: This regulation requires private schools to be accredited, licensed, or state registered/approved. Four of the 14 programs have an additional approval requirement. An additional three programs already required private schools to be approved in some manner.

Testing Requirements: Only four programs impose a new testing burden on private schools. Indiana and Iowa require schools to be accredited to accept scholarship students, and testing is mandatory for accreditation in both states. Oklahoma’s equal opportunity education scholarship does not have a testing requirement, but it does require participating private schools to issue regular progress reports to parents. Programs in Arizona, Florida, and Virginia require scholarship students take a national norm-referenced test, but the specific test used is left to the school’s discretion.¹⁷ **Only Louisiana requires schools to administer the state-approved test to tax-credit scholarship recipients.**

Curriculum Mandate: Only Arizona (“Lexie’s Law”), Indiana, Iowa, and New Hampshire have programs with curriculum regulations. The mandates in Arizona and New Hampshire are required of all private schools regardless of participation. The Indiana and Iowa mandates are required of all accredited schools and accreditation is a requirement to participate in a scholarship program. Iowa sets the minimum number of credits and credits per subject area, mandates an athletics program, and requires that “the educational program shall be taught from a multicultural, gender fair approach. Global perspectives shall be incorporated into all levels of the educational program.”¹⁸

Religious Barriers: Such a barrier would limit participation to secular schools. Because school choice programs do not give subsidies directly to religious schools, they are not considered a violation of many state constitutions. Currently, no tax-credit scholarship program has a religious barrier.

Price Controls: Price controls would allow the government to set or limit the tuition that can be charged. While some voucher programs have price controls, none of the tax-credit scholarship programs have price controls at this time.

Admission Requirements: Nondiscrimination policies in admissions are universal, but typically private schools are not required to accept all applying students.¹⁹

Other Regulations: In addition to the regulations listed in the tax-credit scholarship programs above, some states have restrictions on staffing – such as requiring fingerprinting or background checks on teachers and staff. Others may require regular fire/emergency drills and that schools meet certain health and safety codes.

Overall, curriculum mandates, admission policies, price controls (mandating a maximum tuition for entering scholarship students), or barriers to using scholarships to attend religious schools are rare for tax-credit scholarship programs.

Q. Do private schools have to follow federal IDEA special-education regulations if they enroll a tax-credit scholarship student with special needs?

A. Private schools offering special-needs programs to scholarship students are not required to follow federal IDEA regulations, because the tax-credit scholarship program is funded with state dollars, not federal dollars. Some states, like Arizona, may separately require schools to adhere to the same regulations as required by IDEA.²⁰

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CONCLUSION

Opposing school choice, especially tax-credit scholarships, because of potential regulations at some point in the future makes “the perfect the enemy of the good.” School choice programs of all stripes produce statistically significant academic benefits for students – especially low-income children, minority students, and kids with special needs.

The track records and experiences of more than two dozen programs in 21 states provide the evidence to greatly diminish any fears of regulatory creep and overreach. The data show private schools in school choice programs have much more independence and freedom compared to public schools to operate and innovate however they see fit.

Notes

1. See, "The ABCs of School Choice," 2013 edition, The Friedman Foundation for Educational Choice, January 2013, p. 5. www.edchoice.org/CMSModules/EdChoice/FileLibrary/965/The-ABCs-of-School-Choice---2013-edition.pdf
2. See, "Does school choice have a positive academic impact on participating students," The Friedman Foundation for Educational Choice. www.edchoice.org/School-Choice/School-Choice-FAQs/Does-school-choice-have-a-positive-academic-impact-on-participating-students.aspx
3. See, "How does school choice affect public schools," The Friedman Foundation for Educational Choice. www.edchoice.org/School-Choice/School-Choice-FAQs/How-does-school-choice-affect-public-schools.aspx
4. See, www.edchoice.org/Documents/SchoolChoice/Private-Schools-Laws-and-Regulations/texas.pdf and Texas Private School Accreditation Commission www.tepsac.org/index.cfm. Private accrediting agencies set the rules and regulations for accredited private schools in Texas. The accrediting agencies, in turn, must be approved by the Texas Private School Accreditation Commission with the Texas Education Commissioner having the final say on approval of requirements. Currently, private schools may seek accreditation status from one of 14 different accrediting agencies in Texas. Accredited schools in Texas appear to face more requirements than private schools in most other tax-credit scholarship programs.
5. See the TEPSAC website: www.tepsac.org/about%20tepsac.cfm
6. Christopher Hammons, "Fifty Educational Markets: a Playbook of State Laws and Regulations Governing Private Schools," The Friedman Foundation for Educational Choice, School Choice Issues in Depth, April 2008. www.edchoice.org/CMSModules/EdChoice/FileLibrary/295/private_schools_laws®s.pdf
7. A score of 0 would be a virtually unregulated private school; a score of 54 would represent a private school that was so heavily regulated it would be nearly indistinguishable from a public school.
8. Coulson, 2011. p. 238.
9. Coulson, 2011. p. 238.
10. Stuit, David and Sy Doan, 2013. "School Choice Regulations: Red Tape or Red Herring?" Thomas B. Fordham Institute. p. 15-19. www.edexcellencemedia.net/publications/2013/20130129-School-Choice-Regulations-Red-Tape-or-Red-Herring/20130129-School-Choice-Regulations-Red-Tape-or-Red-Herring-FINAL.pdf
11. Ibid. p. 12.
12. Ibid. p. 5. Just 3 percent of non-participating schools thought regulations were the most important concern, however 27% of schools did find regulations a major reason for not participating.
13. See, "The ABCs of School Choice," 2013 edition, p. 5.
14. See, 511 IAC 10. 511 IAC 6.1-9-3 www.in.gov/legislative/ic/code/title32/
15. See, Iowa: §256.12.2, Indiana: §20-32-5-17, Minnesota: Minn. Stat. Ann. §120A.22, Subd. 11, North Carolina: N.C. Gen. Stat. §§115C-549, 55 and §§115C-550, 553, Ohio: Ohio Admin. Code §3301-13-01.
16. This table is based on the research of Christopher Hammons, Andrew Coulson, Stuart Buck, and various other Friedman Foundation for Educational Choice scholars reviewing the enabling legislation of school choice bills.
17. See, "The ABCs of School Choice," 2013 edition.
18. See, Iowa: §256.11 coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=256.11
19. Federal rules already prohibit discrimination based on race, ethnicity, and national origin in private schools. See *Runyon v McCrary*, 1976. supreme.justia.com/cases/federal/us/427/160/ *Bob Jones University v United States*, 1983. supreme.justia.com/cases/federal/us/461/574/case.html and IRS Rules on nonprofit status of private schools: www.irs.gov/publications/p557/ch03.html#en_US_2011_publink1000200076
20. See, Arizona Administrative Code: Title 7, Chapter 2, Article 4. www.azed.gov/wp-content/uploads/WORD/AZ_ADC_R7-2-402.doc