

Notre Dame Law School

NDLScholarship

Books

Publications

3-16-2023

Unlocking the Potential of Private-School Choice: Avoiding and Overcoming Obstacles to Successful Implementation

Nicole Stelle Garnett

Follow this and additional works at: https://scholarship.law.nd.edu/law_books



Part of the [Elementary Education Commons](#), [Law Commons](#), and the [Secondary Education Commons](#)

Unlocking the Potential of Private-School Choice: Avoiding and Overcoming Obstacles to Successful Implementation

Nicole Stelle Garnett

SENIOR FELLOW
Manhattan Institute

Executive Summary

The parental-choice movement has secured a number of important victories in recent years. There are now 65 private-school-choice programs in the U.S., serving approximately 700,000 students, including new universal education savings account programs in Arizona, Arkansas, Iowa, Utah, and West Virginia. Despite this progress, however, existing private-school-choice programs have, in some ways, fallen short of their transformational potential. The number of students served remains stagnant and below capacity in many states, faith-based (and especially Catholic) schools continue to close despite new eligibility for public funds, most funds are used to fill seats in existing schools and rather than driving the creation of new schools, and test-score improvements have been underwhelming.

ABOUT US

The Manhattan Institute is a think tank whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility.

In order to realize all the benefits of parental-choice programs, advocates, policymakers, and participating schools have to pay more attention to implementation challenges, both when designing parental-choice policies and after new programs are enacted. This report discusses both categories of implementation challenges. The first category—challenges that result from policy design—includes features of many programs that make them difficult to implement, such as limits on the tax benefits available in scholarship tax-credit programs, low scholarship amounts, and eligibility restrictions. The second category—challenges that occur after programs are enacted—result from advocates’ and participating schools’ failure to take steps that would increase the likelihood of programmatic success, such as prioritizing academic improvement among program participants, better informing parents about the choices available to them, and encouraging the development of more and better schools and school networks.

Introduction

In July 2022, Arizona became the first state to embrace universal school choice when Governor Doug Ducey signed legislation expanding access to Arizona’s Empowerment Scholarship Account, the state’s version of an education savings account (ESA) program, to all K–12 students. Beginning on September 30, 2022, every child became eligible to receive approximately \$7,000 in public funds to spend on a wide array of educational expenses, including private-school tuition, “microschooling,” curricular materials for homeschooling, online courses, tutoring, textbooks, and educational therapies. In addition, Arizona has two programs that provide tax credits for donations to organizations funding private-school scholarships. It also offers students the option of enrolling in any public district school in the state (if space is available) or in one of more than 500 charter schools.¹

A few days after the ESA expansion took effect in Arizona, West Virginia became the second state to achieve nearly universal school choice, after the state supreme court rejected a constitutional challenge to a similar ESA program that had been enacted in 2021 but was on hold because of litigation.² Early in 2023, Arkansas, Iowa, and Utah followed suit, enacting universal education savings account programs.³ This year, several more states seem positioned to follow in adopting universal or expansive choice programs.⁴

School-choice advocates have won important victories in recent years. Thirty states, the District of Columbia, and Puerto Rico have one or more private-school-choice programs, which this year enable more than 700,000 children to attend a private school. Moreover, thanks in part to the backlash against public schools’ resistance to resuming in-person instruction during the Covid-19 pandemic, 2021 was the most successful year in private-school-choice history, with more than two dozen states enacting or expanding choice programs and several states, including Indiana, Ohio, and Wisconsin, opening participation in school voucher programs to a large proportion of K–12 students.⁵

The new programs in Arizona, Arkansas, Iowa, Utah, and West Virginia mark a significant moment in the history of the parental-choice movement for at least two reasons: first, in who is eligible for assistance—these are the first universal school-choice programs, available to every student in a state; and second, in how that assistance is provided—with education savings accounts, which, unlike most school-choice programs, offer students a more expansive suite of options that go beyond tuition assistance.⁶

CONTACTS

To request an information packet about MI, or if you have questions about how to support us, contact SUPPORT@MANHATTAN-INSTITUTE.ORG.

52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
INFO@MANHATTAN-INSTITUTE.ORG

These developments followed on the heels of the Supreme Court’s decision in *Carson v. Makin*, which made clear that while “a State need not subsidize private education ... once a State decides to do so, it cannot disqualify some private schools solely because they are religious.”⁷ The holding in *Carson*—that the First Amendment’s Free Exercise Clause prohibits states from excluding faith-based schools from private-school-choice programs—clears away major legal impediments to expanding the parental choice. Specifically, many state constitutions include provisions that purport to prohibit the public funding of “sectarian” schools (these provisions are often referred to as “Blaine Amendments”). New programs often have been challenged in state courts as running afoul of these provisions. While very few state courts have invalidated choice programs on state constitutional grounds,⁸ *Carson* makes it abundantly clear that in many, if not most, cases, they cannot rely on Blaine Amendments to do so.

Despite the promising momentum, on-the-ground, private-school-choice programs—once promoted as an education-reform panacea—arguably have fallen short of their transformational potential.⁹ Consider: (1) Private-school-choice programs still serve only about 1% of all K–12

students in the U.S. and approximately 15% of all private-school students—a number far below the enrollment in charter schools, which now serve 3.7 million students, or just over 7% of public-school students.¹⁰ (2) The number of students participating in many programs lags below capacity (and is even declining in some states). (3) Faith-based (and especially Catholic) schools continue to close in states with private-school choice (although perhaps at rates lower than they would without public funding).¹¹ (4) In most states, private-school-choice funds typically are used to fill empty seats in existing schools, rather than incentivize the creation of new ones. (5) A number of studies suggest that participation in a school-choice program only marginally improves student performance on standardized tests, and a few studies link participation to short-term learning losses.¹² Longer-term, noncognitive benefits appear to be substantial, but much more difficult to measure.¹³

These disappointing results may be partly the result of the failure of policymakers to attend to implementation challenges, both when designing private-school-choice policies and after new programs are enacted. This report discusses both categories of implementation challenges. First, some policies are designed in ways that make them difficult to successfully implement. While some of these limitations undoubtedly result from necessary political compromises (and others from unnecessary concessions), the growing momentum for private-school choice may enable legislators to avoid limiting new programs in ways that impede effective implementation and to remedy policy flaws in existing programs. Second, other implementation failures result from advocates' and participating schools' failure to take steps that would increase the likelihood of programmatic success, such as prioritizing academic improvement among program participants, better informing parents about the choices available to them, and encouraging the development of more and better schools and school networks.

This report focuses on *private-school-choice* programs—that is, programs that enable students to use public resources for private-school tuition. To the extent that education savings account (ESA) funds are used to enable participants to attend private schools, as they will be in many, if not most, cases, the report addresses implementation issues affecting ESAs. Other aspects of ESA implementation, including the use of public funds for purposes other than private-school tuition, are beyond the scope of this report and will be addressed in a subsequent report. Furthermore, while well-funded universal ESA programs address some of the challenges examined in this report, they do not address them all. While the policy landscape is shifting rapidly, and more states undoubtedly will enact universal ESAs in the months and years to come—the vast majority of parental-choice programs are, and will continue to be, limited in scope and eligibility, necessitating continued attention to the issues addressed in this report critical to their success.

A Snapshot of Private-School Choice in the United States

It is first important to understand the variety of private-school-choice mechanisms because different mechanisms entail different implementation trade-offs.¹⁴ Private-school-choice programs in the U.S. fall into roughly three programmatic buckets: voucher programs, scholarship tax-credit programs, and ESA programs. Voucher programs provide publicly funded scholarships for eligible students to attend private schools. These scholarships follow participating children to the school of their choice upon enrollment. Scholarship tax-credit programs provide credit against state tax liability for donations to private nonprofit organizations that fund private-school scholarships. These organizations, which are given different names in different states, will be referred to as SGOs (“scholarship granting organizations”) throughout this report. ESA programs provide funds that can be used for a wide variety of educational expenses, including

private-school tuition, homeschooling, “microschooling,” tutoring, and educational therapies. Missouri has a hybrid program, which grants tax credits for donations to private organizations that, in turn, provide ESAs to qualified students. Kentucky had a similar program until it was invalidated in December 2022. Additionally, a handful of states provide tax deductions or tax credits to parents for their own children’s tuition. In two states, these individual tax-credit programs are “refundable,” meaning that parents can receive a tax benefit greater than their tax liability.

Thirty states currently have at least one private-school-choice program. As of the publication of this report, there are 64 private-school-choice programs in the U.S.—26 voucher programs, 26 scholarship tax-credit programs, 12 ESA programs, and 2 programs that provide refundable tax credits for private-school tuition. Sixteen of these programs exclusively serve students with disabilities. Almost all the other programs restrict student eligibility in one or more ways.

Implementation Challenges Resulting from Policy Design

Implementation challenges that result from policy design can include: (1) caps on tax benefits provided by scholarship tax-credit programs, which hinder effective fund-raising; (2) modest scholarship amounts, which tend to result in funds being used to fill empty seats in existing schools rather than incentivizing school expansion or the creation of new schools; (3) complex eligibility requirements that make programs difficult for parents and schools to navigate; (4) lax accountability requirements; and, conversely, (5) regulatory conditions that deter some schools, including high-performing private schools, from participating. (I have discussed the last two challenges in detail elsewhere, and thus leave them mostly to the side here.)¹⁵

There are implementation trade-offs among private-school-choice mechanisms. Voucher programs are easy for parents and schools to navigate because they provide state-funded scholarships that are sent directly to schools when a participating child enrolls. They also provide, on average, larger scholarships than scholarship tax-credit programs. But voucher programs have been politically controversial—the term itself has become toxic in some circles. As a result, voucher programs have proved more difficult to enact than scholarship tax-credit programs. However, eligibility to participate in several of the largest voucher programs (Indiana, Ohio, and Wisconsin) has been expanded dramatically recently, suggesting that the political hurdles to large-scale voucher programs may be diminishing. Voucher programs also tend to impose more regulatory conditions on participating schools than scholarship tax-credit programs. There is evidence that some of these regulatory strings—including requirements in some programs that schools randomly select, and administer state achievement tests to, voucher recipients—deter some private schools from participating.¹⁶

Scholarship tax-credit programs, on the other hand, are more lightly regulated and have proved more politically palatable than vouchers, but they require private fund-raising. As a result, scholarship amounts in these programs tend to be lower than those provided by voucher programs.

ESA programs, on average, provide more funds to students than voucher or scholarship tax-credit programs—while maximizing the ways in which these funds can be used. Obviously, they are gaining political momentum. However, ESAs, which require parents to keep track of and report eligible expenditures, as well as regulators to certify them, can be difficult for parents to navigate—and, unfortunately, they are more susceptible to fraud.

Limits on the Tax Benefits Available in Scholarship Tax-Credit Programs

Roughly half of all private-school-choice programs in the U.S. are tax-credit-funded (including one ESA program). In contrast to voucher programs, in which government-funded scholarships follow recipients automatically to the school of their choice, scholarship tax-credit programs rely on private fund-raising to generate scholarship dollars. These programs offer state tax credits—typically, from individual or corporate income taxes—for donations to private organizations that fund private-school scholarships (SGOs) or, in the case of the two ESAs, scholarships and other educational expenses.

The largest private-school-choice program in the country is Florida’s tax-credit scholarship program, which benefited more than 100,000 children—10% of all students who participated in private-school-choice programs in the U.S.—during the 2020–21 school year. There are good reasons for this program’s success, including the fact that the program provides a 100% state corporate income-tax credit for donations to SGOs, with no limits on the amount of credit that a corporation can receive until the total cap on donations is reached. This year, the cap is \$873.5 million—significantly greater than in any other program—and the amount automatically increases by 25% in any year after 90% of the donation cap is reached. Scholarships in the program average about \$7,000.¹⁷

All scholarship tax-credit programs cap the total amount of tax credits permitted in a year, with limits ranging from \$1.5 million in Rhode Island to Florida’s \$873.5 million. Many limit the total dollar value of the tax credit available to donors, with caps ranging from \$150 (in Montana) to \$1 million (in Illinois). In many states, the value of the tax credit is less than that of the donation, with credits ranging from 50% to 100%. Several states provide a larger credit for donations over several years. Oklahoma provides a 50% credit for the first year and a 75% credit for subsequent donations, while Pennsylvania and Rhode Island provide a 75% credit for the first year and 90% thereafter. In addition, the IRS prohibits donors from “double-dipping” by claiming a federal tax deduction for donations to SGOs that qualify for state tax credits, although donors are permitted to claim deductions for the amount of the donation not eligible for state tax credits. These restrictions can be confusing for potential donors.¹⁸

By definition, caps on the total tax benefits available through scholarship tax-credit programs limit the amount of funds available for scholarships. The maximum amount that can be generated in Rhode Island is \$1.5 million; in Kansas, \$10 million; in Illinois, \$100 million; and in Florida, \$873.5 million. The same is true of restrictions on the tax benefit for donors, which makes fund-raising more difficult. Obviously, individuals and corporations are more likely to donate to SGOs if they receive a 100% tax credit, as opposed to a 50% credit. Not surprisingly, donations generated by scholarship tax-credit programs sometimes fall short of annual statewide caps.

The easiest way to overcome these limitations, of course, is to avoid enacting them in the first place. To the extent possible, legislators should give the donors a tax credit valued at 100% of their donation to an SGO (or as close to that as politically feasible). Legislators should set the total amount of tax credits available statewide as high as politically feasible, and they should consider including automatic cap increases in legislation. The same is true of caps on the credits available to donors, which should be set as high as politically feasible. States with corporate income tax should offer both individual and corporate donors the opportunity to participate. Legislators can be creative about the range of taxes eligible for credits. In Florida, for example, donors are eligible for a dollar-for-dollar credit against corporate income taxes, alcohol excise taxes, gas and oil production taxes, and the insurance premium tax.¹⁹ When political realities necessitate lower-than-ideal caps, legislators should seek to later increase them to enable more choices.

Obviously, statewide and individual caps will be subject to intense political negotiation, and proposals for expansive tax benefits will be condemned by opponents as fiscally imprudent. But the available evidence suggests that all parental-choice programs—especially those that lead to a large number of students switching from public to private schools—result in revenue savings because public schools spend so much more per pupil than resource outlays for private-school-choice programs. This is especially true of scholarship tax-credit programs because the revenue lost by the credits is typically only a small fraction of the per-pupil expenditures in public schools.²⁰

Low Scholarship Amounts

The amount of money provided by scholarships in most private-school-choice programs is only a small fraction of per-pupil funding for charter and district schools. These scholarships thus rarely cover private-school tuition entirely, except at the most affordable schools (almost all of which are faith-based—particularly Catholic—schools).

Caps on the financial benefits available through scholarship tax-credit programs are one reason for relatively low scholarship amounts. Not surprisingly, scholarships are, on average, lower in scholarship tax-credit programs than ESA and voucher programs. But even in the latter programs, scholarship amounts lag behind per-pupil funding in district and charter schools, partly because these programs tend to cap scholarships at the lesser of a fraction (typically 80%–90%) of the *state's* share of per-pupil public-school funding or tuition. In 2021, the average scholarship provided in scholarship tax-credit programs was \$3,955, compared with \$7,299 in voucher programs and \$9,329 in ESA programs. These amounts were well below the per-pupil funding provided for charter schools, which, in turn, receive less than district public schools.²¹ During that same year, the average per-pupil expenditure was \$15,000 in district public schools, with charter schools typically receiving several thousand dollars less for each student, although there is tremendous variation between states and districts, with much higher funding in the Northeast and in urban school districts.²² In 2020, the New York City Department of Education spent \$28,828 per pupil, Boston Public Schools spent \$27,793, and the Washington, D.C., Public Schools spent \$22,856.²³

According to the National Alliance for Public Charter Schools, charter schools receive, on average, 75 cents for every dollar that the district schools receive, equivalent to just shy of \$12,000 in 2018–19, although significant variation exists between states.²⁴ In contrast to schools participating in private-school-choice programs, charter schools in many states receive local, as well as state, funds (especially if they are authorized by school districts). Nine states allocate federal, state, and local funds to charter schools in the same way as district public schools. Additionally, many states provide charter schools with funding for facilities, which is not available for schools participating in private-school-choice programs.²⁵

There are many explanations for why the scholarships provided in private-school-choice programs are lower than the per-pupil allocation for public schools. The low scholarship amounts in scholarship tax-credit programs likely are related to the fact that these programs incentivize donations to generate scholarships but—unlike ESA and voucher programs—they do not allocate money directly for scholarships and other educational expenses. SGOs must fund-raise to generate scholarship dollars, and fund-raising efforts can be hampered by programmatic design limits.

Another reason is political: funding private-school choice at lower levels saves the state money. In 2018, Martin Lueken found that the per-pupil cost for all private-school-choice programs was only 36% of the per-pupil expenditure in district schools (\$5,059, compared with \$13,997). The cost savings were greatest for scholarship tax-credit programs and least for ESA programs (because they were funded at higher levels). Overall, ESAs were funded at 63% of per-pupil funding in district schools. Lueken estimated that private-school-choice programs through 2018 had saved

Unlocking the Potential of Private-School Choice: Avoiding and Overcoming Obstacles to Successful Implementation

states \$12–\$28 billion.²⁶ Cost savings are one lever for advocates to use when promoting new choice programs, and increasing scholarship amounts obviously reduces the effectiveness of that lever. However, even well-funded choice programs can still save lots of money. As Lueken demonstrated, even an ESA program in New York that was funded at the same level (\$9,900) as the average per-pupil allocation of state funds for students in public schools would save both the state and school districts millions of dollars.²⁷

Low scholarship amounts present several problems. First, absent additional financial assistance, the scholarships provided through private-school-choice programs place many private schools well out of the reach of many scholarship recipients. This is because the average private-school tuition in the U.S. is higher than the average scholarship provided by private-school-choice programs. In 2021, the average overall private-school tuition in the U.S. was \$12,400 (\$8,700 for elementary schools and \$14,500 for secondary schools). However, tuition amounts vary dramatically across states and across the private-school sector, with tuition at religiously affiliated private schools (and especially Catholic schools) dramatically lower than at secular private schools. In 2021, the average tuition at K–12 Catholic schools was just over \$6,000, compared with just over \$10,000 at other religious schools and \$25,000 at nonsectarian private schools.²⁸ Not surprisingly, the vast majority of students participating in private-school-choice programs attend faith-based schools.

Second, as I have previously argued, low scholarship amounts may suppress participation among higher-performing schools for the simple reason that schools that excel academically tend to have higher enrollments, sounder finances, and, thus, less need for public funding. In contrast, schools that struggle academically are more likely to struggle financially as well. Thus, weaker schools may be eager to participate to shore up shaky finances. Even when high-performing schools do participate, they usually have fewer available seats and may be disinclined, given low funding levels, to expand to accommodate choice participants, many of whom need remedial academic assistance.²⁹ These, of course, are generalizations. Despite low scholarship levels, many excellent schools participate in choice programs and embrace the challenge of remediating students who have fallen behind academically.³⁰ But low scholarship amounts may play a role on the margins.

Third, while the relevant data are difficult to collect, the funding available through private-school-choice programs appears to be insufficient to spur the development of new schools or even the expansion of existing ones. Instead, in most programs, private-school-choice resources tend to be used to fill empty seats in existing schools. Hopefully, the enactment of well-funded ESA programs will spur the development of new schools and new networks of schools. A promising recent development is the decision of the well-regarded charter network Great Hearts Academies to open a network of religious private classical schools, Great Hearts Christos, which aims to educate low- and moderate-income students using ESA funding in Arizona.³¹ In the short term, however, it is reasonable to assume that most participating students will use private-school-choice resources to attend existing schools.

There are, to be sure, benefits to participants enrolling in existing schools, especially given the demonstrated track record of many faith-based schools that have educated disadvantaged children for decades. But as private-school choice continues to expand, there might be a scarcity of available seats in existing private schools in many states (and within some regions of most states). Arizona actually has fewer private schools (just under 450, only 77 of which are high schools)³² than charter schools (more than 550).³³ Estimating the number of “empty seats” in private schools is difficult to impossible, but existing schools—especially academically excellent ones—do not have limitless capacity to welcome new students when public funding becomes available. Furthermore, not all available seats are in academically excellent schools. Hopefully, many weaker schools will leverage private-school-choice resources to improve academically. Realistically, however, the experience of public-school turnaround efforts reflects serious obstacles to school improvement, even when additional financial resources become available.³⁴

The implementation challenges posed by low scholarship amounts could easily be remedied with higher scholarship amounts—but that’s easier said than done, given the headwinds that choice advocates always face. While the enactment of relatively well-funded ESAs in Arizona, Arkansas, Iowa, and Utah (with per-pupil amounts over \$7,500 in each state) is promising, increasing scholarship amounts is no easy feat, especially in light of the political and fiscal reality that increased funding will reduce, although not eliminate, cost savings for the state.

The question “How much is enough?” is difficult to answer in the abstract, especially given the vast differentials among the many relevant factors—including tuition levels at private schools and the financial resources needed to spur the development of new schools, both of which vary dramatically by region. Achieving funding parity with charter schools is one possible benchmark.³⁵ After all, charter schools are always, at least technically, “new” schools, although they are, as mentioned, often eligible for facilities funding and—even with those funds—many depend heavily on philanthropic giving to cover capital expenditures and other costs. Another benchmark would be parity with the full share of the state’s share of per-pupil funding for district public schools.

Eligibility Restrictions

Almost all existing private-school-choice programs limit eligibility in one or more ways. A majority of programs are means-tested, with income limits ranging between 185% and 400% of the federal poverty level. Some means-tested programs have several levels of funding, depending on family income. Indiana’s voucher program has four levels of funding. Many means-tested programs restrict eligibility to students transferring from a failing public school or zoned for a failing school or school district. Other programs combine one or more of these eligibility limitations with others—for example, limiting eligibility to low-income students who are: (1) transferring from a public school; (2) beginning kindergarten or high school; (3) siblings of current participants; (4) in the foster-care system; (5) children of active-duty military personnel; or (6) bullying victims. (Before its expansion this year, students could qualify for Arizona’s ESA program in nine different ways.) Twenty-three programs (in 14 states) are limited to students with disabilities (or, in some cases, students with specific disabilities such as dyslexia and autism). A number of programs cap the number of participants, either limiting the total number of participants to some specific number of students or pegging enrollment limits to some percentage of total public-school enrollment.

These limitations increase the political salability of private-school choice in two ways. First, although the shift to universal eligibility has been a winning (or perhaps *the* winning) political strategy, advocates have historically argued that parental choice is needed for children who are not well served by district public schools, including economically disadvantaged students and students with disabilities.³⁶ Second, caps on eligibility make programs more politically palatable to those worried about the fiscal effects of choice on public schools.³⁷ Martin Lueken’s research, discussed previously, shows that one factor influencing the savings generated by private-school choice is the number of students who exit public schools for private ones when resources become available for them to do so. Logically, higher scholarships ought to lead to more switchers by reducing and, in some cases, eliminating, the differential between the available funding and private-school tuition costs.

But eligibility limits make choice programs less effective. Limiting the program to those who are transferring from a public school, for example, means that income-eligible students who are currently enrolled in private schools cannot participate unless their parents withdraw them for a year. These restrictions can generate resentment among income-eligible families that have already enrolled their children in private schools before choice became available. Moreover, studies suggest that students almost always suffer some short-term learning loss when switching schools, so “switching” requirements are harmful to student learning.³⁸ Other criteria, such as

that a student be zoned for a failing school, can be difficult for parents as well as participating schools to understand and navigate. The criteria for designating districts and public schools as “failing” vary across states and are subject to manipulation by regulators. These designations fail to capture in any real way whether a given district school is failing any individual child. Although ESA programs theoretically provide parents with maximum flexibility, parents may find the accounting requirements daunting. Finally, programs targeting special-needs students are particularly arcane and burdensome for private-school administrators who lack experience with the complex regulatory apparatus of the Individuals with Disabilities Education Act.

There has been a trend toward reducing or eliminating these eligibility restrictions. In addition to the universal ESA programs, several voucher programs’ income-eligibility limits now encompass half or more of K–12 students in a state. States have begun to adopt a variety of “on ramps” that bypass “switcher” requirements—for example, extending ESA or voucher eligibility to siblings of current recipients, to children entering kindergarten or high school, or to students who have previously participated in a scholarship tax-credit program.

Although this trend is encouraging, it presents a challenge. Historically, there has been tension between access and funding levels: expansive eligibility often has meant lower scholarship amounts. Moreover, programs with broad or universal eligibility have been more difficult to achieve politically, although more recent developments suggest that this is changing in the post-pandemic world.

Overcoming Self-Imposed Implementation Hurdles

While addressing these programmatic issues would eliminate some roadblocks to the success of private-school-choice programs, successful implementation entails hard work on behalf of advocates, regulators, and private schools. Choice advocates may be tempted to declare victory when a program is enacted, rather than attend to the very real challenges of program implementation in the months and years that follow. Regulators may fail to provide parents with clear information about their choices (or, worse, may obfuscate or erect unnecessary hurdles that make it difficult for parents and schools to access available funds). And, understandably, private schools—having wandered in the desert without public support for so long—can be given to believing that all their problems are money problems and thus assume that receiving public funds will be tantamount to entering the promised land. This section discusses how shortsightedness about program implementation can result in self-imposed impediments to success and, conversely, what steps can be taken to unleash the potential of private-school choice.

Prioritize Academic Improvement

Over the past few decades, arguments for parental choice have been less about efficiency and more about opportunity. Building on the important work of Milton Friedman, who first proposed the idea of school vouchers in 1955, early choice proponents tended to focus on subjecting the public-school monopoly to efficiency-enhancing competition. This argument has virtually disappeared from choice debates—which is unfortunate, since most studies suggest that subjecting district public schools to competition improves their academic performance.³⁹

In recent decades, the central justification for private-school choice has shifted to the need to give disadvantaged children the chance to exit failing public schools and enroll in ones that will better serve them. As Howard Fuller, architect of the nation’s first modern private-school-choice

program, has observed, parental choice is today “more of a rescue mission than a fight for broad societal change.”⁴⁰ Most recently, momentum for parental choice was fueled by the fact that—at least where they were permitted to do so—private schools resumed in-person instruction as soon as possible during the pandemic, while district public schools remained shuttered. Mounting evidence about the devastating effects of remote instruction on student learning, particularly for disadvantaged minority children, further supports the wisdom of policies giving parents educational options for their children. Tellingly, students in Catholic schools, most of which opened in autumn 2020, suffered almost no learning losses during the pandemic.⁴¹

This shift has significant implications for debates about private-school choice. If the goal of parental choice is rescuing kids from schools that are failing them, the natural question that follows is whether the programs are “working.” This question is generally translated as “Are the kids in these programs doing better than their public-school peers on standardized tests?” or “Does participating improve academic outcomes?” The answers to these questions can roughly be summarized as: “Usually, but not always by much.”⁴² Most studies of private-school-choice programs find positive effects on academic performance over time, as well as more significant longer-term effects on noncognitive variables, including high school graduation rates, college matriculation and persistence, and a reduced likelihood of involvement in the criminal-justice system.⁴³ But some studies have found that participants actually lose ground academically, at least in the short term, when they transfer from public to private schools (at least as measured on standardized tests), leading some to conclude that school choice does not “work.”⁴⁴

Parental-choice policies advance other goals, of course, including some that undoubtedly are more important than improving standardized test scores. In addition to the improvements in life outcomes and noncognitive variables, choice promotes educational pluralism, advances religious liberty, and subjects poorly performing district public schools to competition.

Moreover, standardized test scores clearly are only one of a range of factors influencing parents’ evaluations of school quality. Many parents prioritize other factors (including school culture, extracurricular activities, after-school care, safety, discipline, proximity, high school graduation rates, and a religious learning environment) when choosing their children’s schools.⁴⁵ Arguably, all these things matter more than standardized test scores. Choice policies empower parents—especially disadvantaged parents, who are too often ignored by the education establishment—to assume control over their children’s education. And when these parents do participate in choice programs, they overwhelmingly express satisfaction with their chosen schools.⁴⁶ Similarly, the present debate about universal ESAs has emphasized the moral imperative of empowering parents—who know their children better, and love them more, than any education bureaucrat—to take control over the formation and education of their children.

Still, there are two related reasons that choice advocates and participating schools should resist the temptation to downplay or dismiss disappointing test scores. The first reason is that proponents of parental choice themselves regularly place distressing achievement-test results—especially among disadvantaged students attending public schools—front and center in debates about parental choice. And they are right to do so. While standardized tests are blunt instruments, they do (more or less) measure what they set out to measure, which is the level of academic achievement in basic subjects among test takers. Our failure to help disadvantaged kids reach even basic proficiency levels is a national disgrace.

The recently released results of the latest National Assessment of Educational Progress (NAEP) found that students experienced historical learning losses in both reading and math during the recent pandemic. Fourth-grade math proficiency levels declined from 34% to 26% nationwide between 2019 and 2022. In Detroit, math proficiency levels declined among fourth-graders from 6% to 3% during the same period.⁴⁷ These results followed a new report finding that the national average composite score on the ACT for the class of 2022 was the lowest in 30 years, with 42% of

test takers not meeting the college-readiness benchmark in any of the four test areas.⁴⁸ A recent study by Harvard's Center for Education Policy Research found that disadvantaged students experienced the largest learning losses during the pandemic, partly because they were more likely to attend a school remotely for longer.⁴⁹

There are, to be sure, disputes about whether a given test appropriately defines what it means to be "proficient." In almost all cases, academic growth is a better measure of the academic quality of a school than proficiency levels. However it is measured, the achievement levels of our most vulnerable children are, in far too many cases, shockingly low. Addressing these deficiencies is a moral imperative.

The second reason that test scores matter is related to the first: in the same political debates about parental choice, opponents tout studies finding that students in parental-choice programs barely outperform (or, in some cases, fail to outperform) their public-school peers on standardized tests as proof that these programs do not "work." This is ironic, of course. In other contexts, public-school advocates tend to downplay or dismiss as irrelevant discussions of abysmal test scores. But they trumpet disappointing results in a handful of studies as definitive evidence that private-school choice is a fool's errand that diverts needed resources away from public-school students.⁵⁰ In parental-choice debates, bad news is always bad news.

One possible explanation for these disappointing results has to do with program design. Some of the eligibility limits discussed previously—for example, means-testing and failing-school requirements—result in participating students falling behind academically *before* enrolling in private school, at which point they need substantial remediation. Moreover, most studies focus on school-choice programs that require the administration of state exams as a condition of program participation, which allows for easier comparison with public schools. But only a handful of programs meet this condition: although many states require participating private schools to administer some evidence-based standardized assessment, they usually do not have to administer the same test as district and charter schools. In most states, therefore, comparing the performance of choice-participants with their public-school peers is difficult, although not impossible.⁵¹

Many private schools choose to administer "norm-referenced" tests, which compare students' performance against that of their peers, reporting relatively straightforward percentile scores. In contrast, most state accountability regimes continued to rely on "criterion-referenced" exams, designed to measure whether students have achieved "proficiency" in certain state-determined learning goals. Only one program—Indiana's voucher program—requires participating schools to administer the state test to all students. A few other programs—for example, voucher programs in Louisiana and Wisconsin—require participating schools to administer the state test, but only to students participating in the program. In these states, there is likely incongruence between the school's curriculum and the tested content, resulting in the program participants being unprepared for, or unfamiliar with, the test material. One study determined that the negative achievement effects of the Louisiana voucher program, initially, were about twice as large in grades in which the state test is heavily aligned with the public-school curriculum, compared with grades in which the test is only lightly aligned.⁵² This is one reason that, as I have previously argued, states should give participating schools flexibility to choose from a range of testing options to satisfy accountability requirements.⁵³

Participating schools clearly can and should do more to ensure academic improvement. Intense remediation efforts for students who struggle academically, especially in the post-pandemic era, often will be necessary. School closures led many students in district and charter schools to fall behind—in some cases, dramatically behind—in the last two years. The need for remediation is likely to be particularly acute for students transferring from schools engaged in prolonged remote learning—including many urban public schools—to a school where most of the students

returned to in-person instruction early, as in many private and religious schools. The most recent NAEP scores found that students in Catholic schools suffered almost no Covid-related learning losses, with the exception of eighth-grade math (where Catholic-school students fell behind, but far less so than their public-school peers).⁵⁴

It is also important for participating schools to address their own academic limitations. Many excellent schools participate in private-school-choice programs, but many struggle academically. There is a substantial literature on the challenges of improving the performance of academically weak schools in the public sector, much of which suggests that successful school turnarounds require Herculean effort. Private schools likely have fewer institutional impediments to change than district public schools (for example, unionized teaching forces and large bureaucracies) but may still resist needed reforms. Unfortunately, many private-school administrators assume that their problems are primarily financial, not academic, and thus believe that school-choice program funding will be a panacea.

Private-school teachers and administrators are not immune from the natural tendency to resist self-reflection about their own limitations and to overestimate the quality of their academic programs. This is one reason that it is important to increase scholarship amounts to levels that are sufficient to incentivize the creation of new schools. New schools face many challenges, but entrenched institutional impediments to academic improvement are not among them.⁵⁵ Indeed, one reason for the apparent academic successes of charter schools,⁵⁶ especially those serving disadvantaged children, is that all charter schools are, at least technically, new schools.⁵⁷ But most students participating in private-school-choice programs will enroll in existing schools, so attention to academic achievement in these schools is an imperative.

Embrace Transparency

I have previously written about the need for regulators to encourage better and more transparent access to information about the quality of private schools participating in private-school-choice programs.⁵⁸ Information about charter schools and district schools is far more readily accessible to parents than information about private schools participating in parental-choice programs because federal law requires states to administer the same standardized test to all district and charter schools and to report the results of these assessments, along with other measures of school quality, in a uniform school “report card.”

In contrast, only three states require schools participating in private-school-choice programs to administer the state assessment and report the results. Indiana subjects all private schools participating in the state’s voucher program—but not those in the scholarship tax-credit program—to the same academic accountability measures as district schools and charter schools. That is, they must administer the state assessment, which forms the foundation of an A–F grade, along with several other measures, including growth. Louisiana and Wisconsin require schools participating in voucher programs to administer state tests to voucher recipients but not to students who are enrolled but do not receive vouchers. In the past, Ohio had the same requirement, but a recent reform gave participating schools the option of using a range of tests to satisfy accountability requirements. These states also make the test results publicly available. However, because only a subset of students are tested, the results provide an incomplete, and perhaps inaccurate, snapshot of school quality. While most states require that schools participating in private-school-choice programs administer some evidence-based standardized assessment, not all require schools to make these results publicly available. And those that require reporting do not necessarily provide a central access point for these data. Some programs do not require participating schools to administer standardized tests at all.⁵⁹

Many private schools have a strong aversion to transparency when it comes to releasing test-score results. One survey of private schools in parental-choice states found that 21% of the nonparticipating schools cited mandatory disclosure of test results as a factor in their decision.⁶⁰ Undoubtedly, some are motivated by legitimate concerns, including the belief that standardized test results are less important than moral and character formation. Other schools may resist reporting results because the results are disappointing.

But private schools should overcome their resistance to transparently reporting information about their students' academic performance. Private schools increasingly participate in complex educational markets where parents choose, and are being empowered by education policy to choose, from a range of educational options, public and private. This is especially true in states with private-school-choice programs, where disadvantaged parents can now consider private schools in addition to district and charter schools.

As parents become more accustomed to making these educational decisions, they will naturally seek information about the options available to their children. Not all parents prioritize, or care about, test scores. But many, if not most, parents who are newly empowered to choose a school for their child will at least want to have access to information about test scores. That information is already publicly available for district and charter schools. If private schools make it impossible or even simply difficult to access—say, by making it available only when parents explicitly ask for it—some will eschew private schools altogether.

Failing to embrace transparency about academic achievement may also result in regulators subjecting participating private schools to requirements that they find more objectionable, such as compliance with the entire suite of accountability regulations imposed on district and charter schools. Regulators should resist the temptation to sweep private schools participating in choice programs into state accountability regimes—if for no other reason than to avoid discouraging some private schools from participating in choice programs. Most private schools have good reasons for choosing not to administer state exams. Some believe that nationally normed tests provide a better picture of student performance. Others worry that testing mandates will force them to align their curricular content with state exams, which may unduly constrain their ability to innovate and differentiate themselves from other schools.

I have previously argued that a compromise position would be for regulators to permit private schools participating in choice programs to administer the researched-based testing regime of their choice but require them to publicly report results—ideally, for all children enrolled in their school and not only those participating in the choice program. While several testing regimes complicate comparisons across sectors and among private schools, even this level of transparency will give parents far more information than is currently available publicly, while preserving schools' curricular autonomy. But private schools should not wait for regulators to mandate transparency; they can and should freely share information about their students' performance voluntarily, along with information about a range of other indicators of school quality that matter to parents choosing schools.

Where such information is available, the state should collect it and share it publicly on an easily navigated website—and legislators should adequately fund these reporting efforts. Adequate funding for these efforts is important because, especially given the academic challenges facing many program participants, student growth (rather than proficiency) is often a better measure of school quality. Short of public reporting, and in states where resistance to government collection and dissemination of information about school-level performance prevents public reporting, states can make school-level reporting voluntary and adequately fund needed statistical support. Private websites such as GreatSchools.org can partially fill the gap by encouraging private schools to voluntarily report achievement data. Access to this information will increase the likelihood that private-school-choice programs will succeed, by giving parents the information that they

need in order to decide whether to choose a private school over other available options and by encouraging healthy competition within the private-school sector and among district, charter, and private schools.

Concentrate Fund-Raising Efforts in Fewer SGOs

I have previously discussed design features of Florida's scholarship tax-credit program that contribute to its success. But there is another reason the program has flourished, independent of program design. A single SGO—Step Up for Students—captures nearly all the available tax benefits early in the year and then provides scholarships to students to attend a wide range of schools throughout the state.⁶¹ Step Up for Students, in other words, operates much like a privately operated statewide voucher program. It provides a single point of contact for schools as well as students interested in taking advantage of school choice in Florida and guarantees that scholarships follow children when they transfer from one school to another.

In other states, several SGOs compete for donations. While many states have 10 or fewer SGOs—currently, Arkansas has 2; Indiana, Oklahoma, and Rhode Island have 6 each; Alabama and Illinois have 7 each; Ohio has 8; and Kansas has 10—some states have dozens, if not hundreds. Arizona has more than 50,⁶² and Pennsylvania has 226.⁶³ The proliferation of SGOs is, in some cases, the result of program design. States that require SGOs to spend a greater proportion of donations on scholarships tend to have fewer SGOs than states that require SGOs to spend less. This is because SGOs in the latter states have more money to spend on administrative overhead and less incentive to combine forces than those in the former. Tellingly, the state with the greatest number of SGOs (Pennsylvania) is also the state that requires SGOs to spend the lowest proportion of donations—only 80%—on scholarships. In contrast, Florida allows SGOs to expend only 3% of donations on operating expenses.⁶⁴

The proliferation of SGOs also results from the understandable impulse to focus donations and their impact on a single school, set of schools, or type of religious schools. After all, schools and school operators—for example, a Catholic diocese or archdiocese—may be naturally hesitant to “share” the resources that they raise through scholarship tax-credit programs with other schools (including their competitors). Donors with ties to particular schools or school systems understandably may prefer to donate only to those schools. Catholic donors understandably may want to ensure that their donations go to fund scholarships for students enrolled in Catholic schools; Jewish donors may wish to support students in Jewish day schools; and so on.

The proliferation of SGOs competing for taxpayer donations dilutes the impact of scholarship tax-credit programs. To begin, some percentage of resources raised by each SGO necessarily will go to overhead, leaving less to be spent on scholarships. Because the total pot of money available is almost always capped, more SGOs means more resources going to overhead and less going to scholarships. There also is a risk that elite schools with ties to wealthier, more sophisticated, donors may capture a share of the available tax benefits that is disproportionate to the number of participants whom they serve. Moreover, spreading the available scholarship resources among several SGOs makes programs more difficult for qualifying parents to understand and navigate, since there is no single point of contact providing information about available scholarship resources. In many states, scholarships made available to attend one school may not be portable if parents wish to transfer their children to a new school. (Many, but not all, scholarship tax-credit programs require SGOs to provide scholarships to more than one school, and some prohibit them from directing contributions to scholarships at a particular school, but these restrictions do not ensure portability.)

Only one state—Montana—limits the number of SGOs that can operate (to one). Such a limitation seems unwise for a variety of reasons, including the risk that the designated SGO will underperform—at both fund-raising and scholarship distribution—if it does not face the risk

of being displaced by a new entrant. Additionally, pluralism among SGOs (for example, those focusing on one region or type of school) may be a good thing, in some cases. No one can say for sure what the optimal number of SGOs in a state is. However, legislatures can and should limit the proliferation of SGOs by placing strict limits on the amount of donation revenue that can be retained from year to year and spent on overhead rather than scholarships. Florida's 3% cap is a good target. SGOs should be required to provide scholarships to several schools and to make scholarships portable, at least during the academic year.

Develop New Private-School Management Organizations

In the charter-school sector, the rise of nonprofit charter management organizations (CMOs) has fueled the growth of, and academic achievement in, charter schools. Currently, about 30% of charter schools are managed by a CMO, and an additional 9% are managed by for-profit educational management organizations (EMOs).⁶⁵ (Not all states allow the latter, which have been the subject of substantial criticism.) The available evidence suggests that charter schools operated by CMOs outperform, on average, stand-alone charter schools.⁶⁶ CMOs intentionally formed to educate the most disadvantaged students, and some appear to have cracked the achievement-gap code: KIPP, Achievement First, and Success Academies⁶⁷ are perhaps best known. Other CMOs have a proven track record at establishing high-quality classical schools (e.g., Great Hearts Academies)⁶⁸ and STEM-focused schools (e.g., BASIS).⁶⁹

Private schools participating in choice programs should consider emulating their charter-school counterparts by forming independent private-school management organizations (PSMOs). Currently, only a few PSMOs exist. The Partnership Schools operate 11 Catholic schools serving nearly 3,500 children in New York City and Cleveland (the latter of which primarily educate students receiving vouchers);⁷⁰ the Independence Mission Schools operate 14 Catholic schools serving 4,000 students and participate in Pennsylvania's scholarship tax-credit programs;⁷¹ and the Seton Catholic Schools operate 11 schools serving 2,500 students,⁷² most of whom participate in the Milwaukee Parental Choice program; the LUMIN Schools operate eight Lutheran schools serving 1,400 children who participate in the same program;⁷³ and the HOPE Christian Schools operate six schools serving 3,500 children who receive public funds through the Milwaukee and Racine Parental Choice Programs in Wisconsin.⁷⁴

PSMOs are distinct from other types of private-school organizations, such as religious organizations that provide broad oversight (diocesan Catholic schools) or looser networks of schools with similar educational programs or philosophies (Cristo Rey Network).⁷⁵ Unlike those organizations, PSMOs control the day-to-day operation of the schools. As Andy Smarick and his coauthors have argued, the growth of PSMOs, like the growth of CMOs, represents an important opportunity for private schools to maximize the potential of choice programs by pooling resources and engaging in focused investment.⁷⁶ Learning more about how existing PSMOs operate and developing new PSMOs that replicate existing successes is important for parental-choice advocates eager to ensure the success of existing and new programs.

The development of high-performing PSMOs ought to be a priority for the philanthropic efforts of donors to private schools and, more broadly, those interested in expanding the number of high-quality schools serving disadvantaged children. Here, again, there are lessons to be learned from the charter sector, especially from the success of "venture philanthropy" efforts like the Charter School Growth Fund and New Schools Venture Fund, which have fueled the growth of high-performing charter-school networks. Currently, there is at least one venture philanthropy endeavor—the Drexel Fund—engaged in efforts to support private schools participating in private-school-choice programs, although the organization has thus far focused primarily on funding new individual schools.⁷⁷ States might consider incentivizing the formation and growth of networks of high-performing private schools through competitive grant programs, as states and the federal government do to incentivize the replication of high-performing charter schools.

Invest in Informing Parents About Their Choices

As parental-choice opportunities continue to expand, the need to provide parents with information—about the choices available to their children across several educational sectors and about how to access their school-choice options—becomes all the more important. Many, if not most, parents of school-age children grew up in a world without school choice. As such, they may continue to assume that the default option—the district public school geographically assigned to their child—is the only option. Even those aware of other options may find themselves overwhelmed by an increasingly dizzying array: open enrollment, interdistrict choice, magnet schools, charter schools, and private-school choice.

Understanding the landscape of private-school choice (especially in states with several programs) can be daunting for parents. Vouchers are the most easily accessible choice mechanism, since the publicly funded scholarship automatically follows the child upon enrollment at a qualifying school. ESA funding for private-school tuition functions similarly to a voucher. Parents seeking to use ESA funds for expenses other than tuition face different challenges. While ESA programs provide maximum flexibility, even well-educated parents may find the record-keeping required as a condition of participation frustrating. Parents with less formal education may find it nearly impossible. Helping parents navigate and access the scholarships generated in scholarship tax-credit programs (or even informing them that such scholarships are available) is the most challenging, since typically parents do not find out about them until they seek to enroll their child in a private school. This is one reason that developing SGOs that provide scholarships across the private-school sector, such as Florida’s Step Up for Students and Empower Illinois, is so important.

While providing parents with information about educational options ought to be a priority for education reform generally, it is of paramount importance for private-school-choice advocates. Parents may be unaware of the district- and charter-school options available to their children; but once they become aware of them, these options are free and the funding allocated for them automatically follows the children to the school of their choice. This is not necessarily the case in private-school-choice programs. Voucher and ESA funds “follow the child” to the school of their choice; but typically, parents must apply to participate in the program and also to enroll in their chosen school. Moreover, the scholarships provided do not always cover tuition expenses. This problem is worse in most scholarship tax-credit programs, which typically provide lower scholarships than voucher and ESA programs. Parents without the financial ability to cover the difference between the private-school-choice funds available and tuition may be unaware of privately funded scholarship opportunities that could enable them to enroll their children in private schools.

Regulators implementing school-choice programs can and should take steps to address these informational challenges. As discussed previously, state departments of education should ensure that their websites not only collect information about available school-choice options, public and private, but ensure that regulators have sufficient funding to do so. These websites should include information about all publicly funded school-choice options, including private-school-choice programs, as well as information about academic quality where available. The Ohio Department of Education’s “Ohio School Options” website is an exemplar. In states with ESAs, regulators should take care to employ user-friendly systems for keeping track of educational expenses. Several such systems are currently available, including ClassWallet, which has been the early-adoption option for several states with ESAs, and newer entrants: Odyssey and Merit.⁷⁸

Private organizations can and should do more to invest in informing parents about their school-choice options. Many state-level private-school-choice advocacy groups have begun to do so, developing websites that inform parents about their scholarship options. A good example is the Indiana-based Institute for Quality Education’s “My School Options” website.⁷⁹ Some SGOs,

including Step Up for Students, do so as well. Most of these efforts focus exclusively on the private-school-choice landscape, to the exclusion of charter- and district-school options. EdChoice’s website includes detailed information about private-choice programs, including an eligibility calculator for every program in the country.⁸⁰ Promisingly, the number of organizations that provide cross-sector information for parents appears to be on the rise. More can and should be done to engage in cross-sector cooperation. For example, the nonprofit Families Empowered not only provides online information for parents about their schooling options in Arizona and Texas but also offers individualized counseling to help parents navigate the options. Some advocates argue that new parental-choice legislation should include funding for “parent navigators” to help families understand their options, apply to participate in parental-choice programs, and assist them in finding and enrolling in schools. Private philanthropy could also support these efforts.⁸¹ Such efforts are promising, provided that the counselors engage in informative—rather than prescriptive—advising, taking care to respect parents’ ultimate decision about what is best for their children.

Conclusion

This is an opportune time to devote careful attention to the implementation issues discussed in this report. Parental-choice proponents have many reasons for optimism, as more states seem poised to enact more expansive programs than imaginable even a few years ago. Over the 30-plus years since Wisconsin enacted the first modern voucher program in 1990, private-school choice has steadily gained momentum. Parental choice has undisputedly made the leap from the margins to the mainstream. All, most, or many students are now eligible to participate in private-school-choice programs in several states, and several more states seem poised to join this expansive parental-choice roster. As they do, getting the implementation question right—both before and after programs are enacted—will be critical to the success of individual programs and to the future success of the private-school-choice movement more broadly.



About the Author

*Nicole Stelle Garnett is a senior fellow at the Manhattan Institute who also writes regularly for City Journal. She is the author of *Lost Classroom, Lost Community: Catholic Schools' Importance in Urban America* (University of Chicago Press, 2014) and *Ordering the City: Land Use, Policing and the Restoration of Urban America* (Yale University Press, 2009), as well as numerous articles on education policy, urban development, and land-use planning.*

Garnett is the John P. Murphy Foundation Professor of Law at the University of Notre Dame, where she is also a fellow of the Institute for Educational Initiatives and the senior policy advisor for the Alliance for Catholic Education, a program engaged in a wide array of efforts to strengthen and sustain K–12 Catholic schools.

Prior to joining the faculty at Notre Dame in 1999, Garnett served as a law clerk for Associate Justice Clarence Thomas of the Supreme Court of the United States and Judge Morris S. Arnold of the U.S. Court of Appeals for the Eighth Circuit. She also practiced law at the Institute for Justice, a nonprofit public-interest law firm in Washington, D.C., where she helped to defend the inclusion of faith-based schools in private-school-choice programs. She received her B.A. in political science, with distinction, from Stanford University and her J.D. from Yale Law School.

Endnotes

- ¹ Nicole Stelle Garnett, “A Radical Step in the Right Direction: Arizona’s Universal School-Choice Program Will Improve Students’ Educational Options—Public and Private,” *City Journal*, Oct. 2, 2022.
- ² A total of 93% of West Virginia students are eligible for this program, which requires that applicants have previously attended a West Virginia public school or be enrolled in kindergarten. See Andrew Handel and Rose Laoutaris, “Victory for West Virginia Families: Historic Education Opportunity Program Declared Constitutional,” American Legislative Exchange Council (ALEC), Oct. 10, 2022.
- ³ Brett Rains, “Arkansas Gov. Sarah Huckabee Sanders Signs Education Bill into Law,” 40–29 News, Mar. 8, 2023; Stephen Gruber-Miller and Katie Akin, “Jubilant Kim Reynolds Signs Iowa’s Seismic ‘School Choice’ Bill into Law. What It Means,” *Des Moines Register*, Jan. 24, 2023; Andrew Handel, “Utah Parents and Students Celebrate Passage of Universal Education Savings Accounts,” ALEC, Jan. 30, 2023. Like Arizona, Arkansas, Iowa and Utah also have unrestricted open-enrollment policies for district public schools and charter schools. West Virginia authorizes open enrollment and charter schools but currently caps the number of charter schools at 10 and allows districts to set their own open-enrollment policies. See National School Choice Week (NSCW), Iowa School Choice Roadmap, Jan. 24, 2023; Utah School Choice Roadmap, Jan. 28, 2023; West Virginia School Choice Roadmap, Jan. 19, 2023; Arkansas School Choice Roadmap, Jan. 19, 2023.
- ⁴ States with active legislation include Arkansas, Florida, Idaho, Indiana, Nebraska, Ohio, Oklahoma, and Texas; Nathan Cunneen, “School Choice Rolls On,” *Washington Examiner*, Feb. 1, 2023.
- ⁵ American Federation for Children, “Our Impact Across America.”
- ⁶ Nicole Stelle Garnett and Richard W. Garnett, “From School Choice to Parent Choice,” *City Journal*, Jan. 31, 2023.
- ⁷ *Carson v. Makin*, 142 S. Ct. 1987 (2022) at 2000, quoting *Espinoza v. Montana*, 140 S. Ct. 2246 (2020).
- ⁸ See Nicole Stelle Garnett, “Sector Agnosticism and the Coming Transformation of Education Law,” *Vanderbilt Law Review* 70, no. 1 (January 2017): 21–31.
- ⁹ John E. Chubb and Terry M. Moe, *Politics, Markets, and American Schools* (Washington, DC: Brookings Institution Press, 1990), 217: “[W]e think reformers would do well to entertain the notion that choice is a panacea. . . . It has the capacity all by itself to bring about the kind of transformation that, for years, reformers have been seeking to engineer in myriad other ways.”
- ¹⁰ National Alliance for Public Charter Schools, “How Many Charter Schools and Students Are There?” May 20, 2022.

Unlocking the Potential of Private-School Choice: Avoiding and Overcoming Obstacles to Successful Implementation

- ¹¹ Blythe Bernhard, “Archbishop: Declining Enrollment, Income Spurred Closing of 2 St. Louis Catholic High Schools,” *St. Louis Post-Dispatch*, Sept. 29, 2022; Nate Tinner-Williams, “2 Black Catholic Schools Closing Permanently in New Orleans and Mobile,” *Black Catholic Messenger*, Jan. 12, 2022; Greg Dolan, “The Role of Catholic Schools in Education Choice Programs,” *Education Next*, Dec. 11, 2018.
- ¹² Nicole Stelle Garnett, “Post-Accountability Accountability,” *University of Michigan Journal of Law Reform* 52, no. 1 (2018): 170–72. See also Heidi H. Erickson, Jonathan N. Mills, and Patrick J. Wolf, “The Effects of the Louisiana Scholarship Program on Student Achievement and College Entrance,” *Journal of Research on Educational Effectiveness* 14, no. 4 (August 2021): 861–99; R. Joseph Waddington and Mark Berends, “Impact of the Indiana Choice Scholarship Program: Achievement Effects for Students in Upper Elementary and Middle School,” *Journal of Policy Analysis and Management* 37, no. 4 (August 2018): 783–808; Ann Webber et al., “Evaluation of the DC Opportunity Scholarship Program: Impacts Three Years After Students Applied,” Institute for Education Sciences, U.S. Dept. of Education, May 2019.
- ¹³ Matthew M. Chingos et al., “The Effects of Means-Tested Private School Choice Programs on College Enrollment and Graduation,” Urban Institute, July 2019.
- ¹⁴ For detailed programmatic information, see EdChoice, “The ABCs of School Choice, 2023 Edition,” Jan. 25, 2023; idem, “School Choice in America,” dashboard; American Federation for Children (AFC), “2021 School Choice Guidebook”
- ¹⁵ Nicole Stelle Garnett, “Accountability and Private-School Choice,” Manhattan Institute, Oct. 5, 2021.
- ¹⁶ Garnett, “Accountability,” 8–9; Corey A. DeAngelis, Lindsey M. Burke, and Patrick J. Wolf, “When Being Regulated Is a Choice: The Impact of Government Policies on Private School Participation in Voucher Programs,” *Journal of School Choice* 15, no. 3 (June 2020): 417–40.
- ¹⁷ AFC, “2021 Guidebook,” 28.
- ¹⁸ Internal Revenue Service, “Final Regulations on Charitable Contributions and State and Local Tax Credits,” June 11, 2019.
- ¹⁹ Florida Dept. of Revenue, “Florida Tax Credit Scholarship.”
- ²⁰ Martin F. Lueken, “Fiscal Effects of School Choice: Analyzing the Costs and Savings of Private School Choice Programs in America,” EdChoice, November 2021.
- ²¹ AFC, “2021 Guidebook,” 5; Yueting (Cynthia) Xu and Jamison White, “How Are Charter Schools Financed?” National Alliance of Public Charter Schools, Mar. 26, 2022; DeAngelis, Burke, and Wolf, “When Being Regulated Is a Choice.”
- ²² Sylvia Allegretto, Emma García, and Elaine Weiss, “Public Education Funding in the U.S. Needs an Overhaul,” Economic Policy Institute, July 12, 2022; Mark Lieberman, “State K–12 Spending Is Inequitable and Inadequate. See Where Yours Ranks,” *Education Week*, Oct. 28, 2021; Institute of Education Sciences, “Revenues and Expenditures for Elementary and Secondary School Districts,” March 2020.
- ²³ U.S. Census Bureau, “Per Pupil Spending Continues to Increase in 2020,” press release, May 18, 2022.

Unlocking the Potential of Private-School Choice: Avoiding and Overcoming Obstacles to Successful Implementation

- ²⁴ Xu and White, “How Are Charter Schools Financed?”
- ²⁵ Center for Public Education, “Research Brief: How States Fund Charter Schools,” September 2021.
- ²⁶ Martin F. Lueken, “Education Savings Accounts: How ESAs Can Promote Educational Freedom for New York Families and Improve State and Local Finances,” Manhattan Institute, October 2021.
- ²⁷ Ibid.
- ²⁸ Education Data Initiative, “Average Cost of Private School,” Dec. 27, 2021.
- ²⁹ Garnett, “Accountability,” 7–8; George A. Akerlof and Rachel E. Kranton, “Identity and Schooling: Some Lessons for the Economics of Education,” *Journal of Economic Literature* 40, no. 4 (December 2002): 1167–1201; Thomas Stewart and Patrick J. Wolf, *The School Choice Journey: School Vouchers and the Empowerment of Urban Families* (New York: Palgrave Macmillan, 2014).
- ³⁰ Heidi Holmes Erickson, “How Do Parents Choose Schools, and What Schools Do They Choose? A Literature Review of Private School Choice Programs in the United States,” *Journal of School Choice* 11, no. 4 (2017): 491–501. See also Douglas N. Harris and Matthew F. Larsen, “What Schools Do Families Want (and Why)?” Education Research Alliance for New Orleans, Jan. 15, 2015.
- ³¹ Great Hearts Academies, “Introducing Great Hearts Christos,” Jan. 30, 2023.
- ³² Private School Review, “Best Private Schools in Arizona, 2023”; HighSchools.com, “Arizona High Schools.”
- ³³ Arizona Charter Schools Association, “About Arizona Charter Schools.”
- ³⁴ Garnett, “Sector Agnosticism,” 36–42; Andy Smarick, “The Turnaround Fallacy: Stop Trying to Fix Failing Schools: Close Them and Start Over,” *Education Next*, November 2009; idem, “The \$7 Billion School Improvement Grant Program: Greatest Failure in the History of the U.S. Department of Education?” *Education Next*, Jan. 20, 2017.
- ³⁵ National Alliance for Public Charter Schools, “Equitable Access to Capital Funding and Facilities”; Meagan Batdorf et al., “Charter School Funding: Inequity Expands,” School Choice Demonstration Project, April 2014.
- ³⁶ Derrell Bradford, “What the Pandemic Taught Us: Direct Funding for Families,” in “Unlocking the Future: Toward a New Reform Agenda for K–12 Education,” Opportunity America, February 2023.
- ³⁷ Of course, while opponents often complain that private-school-choice programs drain resources from public schools, that is true only to the extent that schools lose the per-pupil funding allocation for exiting students. Since public schools are funded partly by local funds (unlike private-school-choice programs) and many aspects of public-school finances are fixed, districts are typically left with more funding per pupil when students exit. Ibid., 3. See also Garnett, “A Radical Step in the Right Direction.”

Unlocking the Potential of Private-School Choice: Avoiding and Overcoming Obstacles to Successful Implementation

- ³⁸ Eric A. Hanushek, John F. Kain, and Steven G. Rivkin, “Disruption Versus Tiebout Improvement: The Costs and Benefits of Switching Schools,” National Bureau of Economic Research (NBER), working paper no. 8479, September 2001; Joshua M. Cowen et al., “Going Public: Who Leaves a Large, Longstanding, and Widely Available Urban Voucher Program?” *American Educational Research Journal* 49, no. 2 (Spring 2012): 231–56.
- ³⁹ Garnett, “Post-Accountability,” 168–70. See also Huriya Jabbar et al., “The Competitive Effects of School Choice on Student Achievement: A Systematic Review,” *Educational Policy* 36, no. 2 (March 2022): 247–81.
- ⁴⁰ Howard Fuller, quoted in Larry Miller, “No Principles, No Progress,” *Rethinking Schools* 29, no. 2 (Winter 2014–15).
- ⁴¹ Kevin Clarke, “Catholic Schools Outperform Public and Charter Counterparts in First Post-Covid National Assessment,” *America Magazine*, Oct. 25, 2022.
- ⁴² M. Danish Shakeel, Kaitlin P. Anderson, and Patrick J. Wolf, “The Participant Effects of Private School Vouchers Around the Globe: A Meta-Analytic and Systematic Review,” *School Effectiveness and School Improvement* 32, no. 4 (April 2021): 509–42.
- ⁴³ Garnett, “Post-Accountability,” 171–76; Patrick J. Wolf, “The Effects of Private School Choice,” presentation Mar. 22, 2022; idem, “The Academic Effects of Private School Choice: Summary of Final Year Results from Experimental Studies,” presentation, May 6, 2021; Corey A. DeAngelis and Patrick J. Wolf, “Private School Choice and Character: More Evidence from Milwaukee,” *Journal of Private Enterprise* 35, no. 3 (Fall 2020): 13–48.
- ⁴⁴ Ulrich Boser, Meg Benner, and Erin Roth, “The Highly Negative Impacts of Vouchers,” Center for American Progress, Mar. 20, 2018.
- ⁴⁵ Holmes Erickson, “How Do Parents Choose Schools?”; Harris and Larsen, “What Schools Do Families Want?”; Thomas B. Fordham Institute, “What Parents Want: Education Preferences and Trade-Offs,” August 2013.
- ⁴⁶ Evan Rhinesmith, “A Review of the Research on Parent Satisfaction in Private School Choice Programs,” *Journal of School Choice* 11, no. 4 (2017): 585–603.
- ⁴⁷ Kevin Mahnken, “‘Nation’s Report Card’: Two Decades of Growth Wiped Out by Two Years of Pandemic,” *The 74*, Sept. 1, 2022; Sarah Mervosh and Ashley Wu, “Math Scores Fell in Nearly Every State, and Reading Dipped on National Exam,” *New York Times*, Oct. 24, 2022.
- ⁴⁸ Cheyanne Mumphy, “ACT Test Scores Drop to Lowest in 30 Years in Pandemic Slide,” Associated Press, Oct. 12, 2022.
- ⁴⁹ Dan Goldhaber et al., “The Consequences of Remote and Hybrid Instruction During the Pandemic,” Center for Education Policy Research, Harvard University, May 2022.
- ⁵⁰ Valerie Strauss, “34 Problems with Standardized Tests,” *Washington Post*, Apr. 19, 2017.
- ⁵¹ Examples of studies measuring effects across different testing metrics include David N. Figlio, “Evaluation of Florida’s Corporate Tax Credit Scholarship Program Participation, Compliance and Test Scores in 2009–10,” Florida School Choice, August 2011; Anna J.

Unlocking the Potential of Private-School Choice: Avoiding and Overcoming Obstacles to Successful Implementation

- Egalite, D. T. Stallings, and Stephen R. Porter, “An Analysis of the Effects of North Carolina’s Opportunity Scholarship Program on Student Achievement,” *AERA Open* 6, no. 1 (March 2020).
- ⁵² Jonathan N. Mills and Patrick J. Wolf, “Vouchers in the Bayou: The Effects of the Louisiana Scholarship Program on Student Achievement After Two Years,” *Education Evaluation and Policy Analysis* 20, no. 10 (February 2017): 1–21.
- ⁵³ Josh Cunningham, “Accountability in Private School Choice Programs,” National Conference of State Legislatures, December 2014; Garnett, “Accountability.”
- ⁵⁴ Clarke, “Catholic Schools Outperform.”
- ⁵⁵ Garnett, “Sector Agnosticism,” 36–42.
- ⁵⁶ Center for Research on Education Outcomes (CREDO), “Urban Charter School Study: Report on 41 Regions,” 2015.
- ⁵⁷ See Andy Smarick, *The Urban School System of the Future* (Lanham, MD: Rowman & Littlefield Education, 2012), chaps. 5 and 7. Some districts enlist charter-school organizations in school turnaround efforts by running failing district schools. Even in these cases, the district school is technically closed and reopened as a new charter school. See also Garnett, “Sector Agnosticism,” 36–42.
- ⁵⁸ Garnett, “Accountability.”
- ⁵⁹ Information about the testing and reporting requirements in all private-school-choice programs is available in AFC, “2021 Guidebook,” 95–97.
- ⁶⁰ David A. Stuit and Sy Doan, “School Choice Regulations: Red Tape or Red Herring,” Thomas B. Fordham Institute, May 2014.
- ⁶¹ There are two SGOs in Florida, but Step Up distributes almost all the available scholarship resources.
- ⁶² Arizona Dept. of Revenue, “Certification for School Tuition Organizations.”
- ⁶³ Pennsylvania Dept. of Community and Economic Development, “List of Scholarship Organizations Effective 01/01/2022–12/31/2022.”
- ⁶⁴ AFC, “2021 Guidebook,” 28.
- ⁶⁵ Jamison White and Yueting (Cynthia) Xu, “How Are Charter Schools Managed?” National Alliance for Public Charter Schools, Feb. 10, 2022.
- ⁶⁶ James L. Woodworth et al., “Charter Management Organizations,” CREDO, 2017.
- ⁶⁷ KIPP Academies, <https://www.kipp.org>; Achievement First, <https://www.achievementfirst.org>; Success Academies, <https://www.successacademies.org>.
- ⁶⁸ Great Hearts Academies, <https://www.greatheartsamerica.org>.
- ⁶⁹ BASIS.ed, <https://based.com>.

- ⁷⁰ See <https://thepartnershipschools.org/at-a-glance>.
- ⁷¹ See <https://imsphila.org>.
- ⁷² See <https://www.setoncatholicschools.com>.
- ⁷³ See <https://www.luminschools.org>.
- ⁷⁴ See <https://www.hopeschools.org>.
- ⁷⁵ See <https://www.cristoreynetwork.org>.
- ⁷⁶ Juliet Squire, Kelly Robson, and Andy Smarick, “Private School Pioneers: Studying the Emerging Field of Private School Management Organizations,” Friedman Foundation for Educational Choice, December 2015.
- ⁷⁷ Drexel Fund, “2018 Overview.”
- ⁷⁸ See <https://classwallet.com>, <https://www.withodyssey.com>, and <https://www.merits.com>.
- ⁷⁹ Institute for Quality Education, “My School Options.”
- ⁸⁰ See <https://www.edchoice.org>.
- ⁸¹ Travis Pillow, “Parent Navigators Are Worth the Investment for School Choice Supporters,” Thomas B. Fordham Institute, Feb. 6, 2023. State-mandated contracts with “parent navigators” raise their own set of implementation challenges.