

SCHOOL CHOICE IN WISCONSIN

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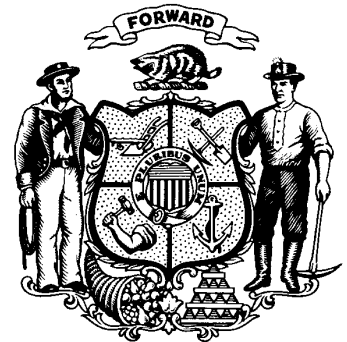


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SCHOOL CHOICE IN WISCONSIN

“School choice” is one of the hotly debated issues in the education reform movement of the 1990s. The term is used to describe a variety of programs that permit students and parents to select the educational setting best suited to the student’s needs. Recently, Wisconsin has drawn national attention for the Milwaukee Parental Choice Program, initiated in the Milwaukee Public Schools (MPS) in the fall of 1990, which is the nation’s first example of public funding for students who select private, nonsectarian schools.

This bulletin discusses the issue of school choice, summarizes some of the arguments advanced by supporters and opponents, describes various school choice programs implemented in Wisconsin and elsewhere, and reviews legislation pending in the 1995 Legislature.

I. DEFINITION OF SCHOOL CHOICE

School choice is a term popular with many Americans. It elicits a sense of power and freedom because it offers options for students and their parents. Proponents view it as a tool for equality that will enhance student performance and afford the poor the same educational opportunities as the wealthy. They claim competition will force public schools to improve. Opponents, however, question the availability of choice for low-income families, particularly if financing is limited and transportation inadequate. They challenge the admission and achievement standards of the private schools and are concerned that withdrawing support from the public schools will weaken them.

The idea of school choice, in which the student benefits from competing options, actually dates back several centuries, but the more modern application of the term can be traced to the 1970s with the creation of magnet schools. Today, the concept itself can include a myriad of options — magnet schools, postsecondary enrollment opportunities, alternative schools for dropouts or at-risk students, charter schools, intradistrict/interdistrict transfers, and private school choice through voucher, tuition tax credit, or tuition grants.

Intradistrict choice allows students to transfer from the school in their assigned attendance area to other public schools within the same district. Intradistrict programs are usually

developed at the local level without state involvement and permit selection of different programs or different schools in the district. Magnet schools or open enrollment plans are the principal examples of intradistrict choice. A magnet school is a public school with a distinctive curriculum that draws students districtwide. In an open enrollment plan, students may apply to any school operated by the district as a whole, although limitations may be imposed because of racial balance, class size, particular student needs or transportation availability.

Interdistrict choice allows students to attend public schools located outside their home districts. In the case of a comprehensive open enrollment system, a student is allowed to enroll anywhere in the state, as long as the receiving district has space available and the transfer does not interfere with any desegregation plans. The operation of a specific program will depend on several factors, such as the financial and classroom resources of the schools involved, the extent to which transportation costs can be absorbed by the state, the total number of students involved in the transfer, and racial and ethnic balance. State funding typically follows the pupil under these plans, which are optional for parents and mandatory for school districts. According to *A National Review of Open Enrollment/Choice: Debates and Description*, a 1993 study by the Morrison Institute for Public Policy at Arizona State University, 14 states had enacted some type of a legislative plan for formal interdistrict choice at either a statewide level or on a pilot basis. A summary of some of these state plans can be found in Section V of this bulletin.

Private school choice allows children to attend private schools at public expense. Unlike intradistrict or interdistrict plans involving public funds going to public schools, private school choice plans raise difficult policy questions of whether public funds should be used to finance attendance at private schools. Supporting attendance at religiously affiliated schools generates even greater controversy.

The various methods of providing this option may involve vouchers, tuition tax credits or tax deductions, tuition grants, and private performance contracting plans. A voucher program provides parents with a voucher for a designated dollar amount per school-age student, which may be redeemed at a private school of the parents' choice. (The voucher concept may also be applied in the case of interdistrict public school transfers if the school the student selects charges tuition to out-of-district enrollees.)

Although voters in Oregon, Colorado, and California rejected voucher proposals in 1990, 1992, and 1993, respectively, Puerto Rico initiated a 3-year voucher experiment in September 1993. The Puerto Rican law permitted vouchers to be used for enrollment at public or private schools, including university classes, but the law was invalidated by the supreme court of Puerto Rico in 1994 because it included religious schools.

During the 1970s, voucher proposals were put forth regularly. In an experiment in 1972 at Alum Rock Middle School in San Jose, California, a federally backed voucher program was

established to test whether offering parents vouchers that could be used in any public or private school would lead to any improvement in school performance. The experiment evolved into a limited open-enrollment school district with approximately half the schools in the district participating. The project never included private schools and ended after four years of operation.

Discussing the Alum Rock experiment in an article in the February 24, 1993, issue of *Education Week*, Lee Mitgand, senior researcher with the Carnegie Foundation for the Advancement of Teaching and chief author of the foundation's recent study, *School Choice*, stated: "Alum Rock remains one of the most carefully documented choice experiments and has relevant lessons for the current debate."

The Rand Corporation produced a six-volume study of this project and reached the following conclusions:

There were no "appreciable differences" between alternative and regular schools in student reading achievement, and parental choices were "unrelated to student achievement".

Better-educated parents were most likely to evaluate school alternatives and understand the rules governing choice.

In selecting schools, academic quality and curriculum matters take a back seat to noninstructional considerations like convenience, the desire to keep siblings or friends together, or the ethnic or social composition of the school.

An interesting note provided by Mitgand is that the findings of the Rand Corporation's study of Alum Rock support the Carnegie Foundation's current conclusions 20 years after the corporation's original study. Evaluations of the Milwaukee Parental Choice Program draw some similar conclusions and will be discussed in Section IV of this bulletin.

II. A CLOSER LOOK AT THE SCHOOL CHOICE DEBATE

Although a variety of explanations have been given for increased support of school choice, perhaps the major reason that choice and other recently developed reforms are so popular is the notion that the public schools have not adjusted to the changes that have taken place in society in the last two decades.

In 1983, the National Commission on Excellence in Education released its report, *A Nation at Risk*, stating: "[T]he educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and a people."

Many feel that the commission's conclusions continue to be as accurate and timely as they were a decade ago. Critics claim that academic performance in public schools has dropped, despite substantial increases in school spending, and they contend that many of the reforms implemented a decade ago seem to have had no real effect on the overall improvement of today's schools.

Critics advocate the development of schools that are flexible, competitive, and accountable to the student’s individual needs and goals. They contend that school choice represents a viable option for offering those changes.

Pros and Cons of School Choice

There is no shortage of literature declaring the virtues or shortcomings of school choice. Educators, state and federal lawmakers, business associations, labor unions, independent study groups, parents, and even students have put forth a full range of arguments for and against choice.

The key arguments for and against school choice, as presented below, were summarized by the Morrison Institute in *A National Review of Open enrollment/Choice: Debates and Description*. Generally, proponents claim that school choice enables parents to match the needs of their children with appropriate schools. They assert the “market” promoted by choice will motivate schools to compete in excellence and innovation and make them accountable to parents, rather than to school bureaucracy. Opponents claim that choice is not the real answer to the ills that face today’s public schools. They argue it will undermine neighborhood public schools and lead to inequities in education and student recruiting, as well as generating increased transportation costs.

The Open Enrollment Debate

Pro

Con

- Choice is a way to achieve equal educational opportunities for poor and minority youngsters.
- Choice can rescue children from bad schools.
- Competition for students and money will force schools to improve and be more accountable.
- Children have different learning needs and, therefore, need different teaching options.
- By choosing a school, parents will be more involved in, and committed to, their child’s education.
- Choice can promote voluntary desegregation.
- Choice will force schools/districts to streamline their bureaucracies.
- Choice will lead to a higher level of professionalism and expertise among teachers.
- Choice should involve a variety of options for parents, including the ability to use state funds for private and religious schools.

- There is no convincing evidence that competition will improve schools or pupil achievement.
- The children most in need – those without supportive, capable parents – will likely be left with the worst choices.
- Choice will work against low-income families unless transportation is provided; money spent on buses is better spent in the classroom.
- Private school choice will drain money from already needy public schools.
- Choice is a red herring that diverts the public’s attention from the need to adequately finance public schools.
- Encouraging student transfers will undercut efforts to increase school-community ties.

Implications for Policymakers Adopting a School Choice Plan

In addition to the pros and cons listed, school choice presents a series of considerations that policymakers must balance between the private concerns of students and parents and the broader interests of public education and society as a whole. *Educational Choice: Implications*

for *Policymakers*, prepared in 1990 for the Indiana Department of Education by the Indiana Education Policy Center, Indiana University, cited the following considerations:

- Choice alone is not enough; simply increasing the number of mediocre schools to which students have access will do little to promote higher student achievement.
- If a state wishes to advance school reform through choice, it must be prepared to earmark substantial dollars for school improvement initiatives.
- A crucial component for the development of an effective choice program is planning.
- Student selection policies must be fair, clear, nondiscriminatory, adequately communicated, legally sound, and uniformly applied to all students.
- Financial support for transportation is a critical factor in making possible fair and equal participation in educational choice.
- Effective school restructuring likely has been a major contributor to the success of choice initiatives.
- A system of choice requires parents to make informed, educated decisions about the education of their children.
- While policymakers must be sensitive to legal issues, at present it does not appear that federal or state constitutional provisions pose a significant barrier to the implementation of choice plans unless sectarian schools are included in the programs.
- For inter-district choice to be successful, states need to reduce funding and per-pupil expenditure disparities among school districts.

These issues are critical for Wisconsin policymakers at both the state and local levels as they consider proposals for school choice within the public system and through cooperation with private institutions.

III. CHOICE WITHIN THE WISCONSIN PUBLIC SCHOOLS

Intradistrict and Interdistrict Transfer at Local Option

In Wisconsin, local school districts may permit intradistrict transfers between their own attendance areas. State law does, however, specifically focus on intradistrict transfers to promote racial balance in the district's schools.

State law also provides for individual student transfers between districts. Subchapter V of Chapter 121, Wisconsin Statutes, titled "Tuition Payments", permits a school board to admit nonresident pupils who meet its entrance requirements, provided facilities are adequate. These pupils have the same rights as resident students and are also subject to the same rules and regulations. The receiving district must charge tuition for the nonresident pupil, and this amount is usually paid by the child's parent or guardian, unless there are special circumstances which obligate the state, county or another district to pay the tuition.

Section 121.78 (1) (a), Wisconsin Statutes, permits school districts to initiate interdistrict transfers. School boards of any district may allow pupil transfers to adjacent districts with the approval of the State Superintendent of Public Instruction. Tuition is paid by the school district of residence to the school district of attendance.

Chapter 220 Transfer Program

Over the past two decades, Wisconsin has used both intradistrict and interdistrict transfers to create better cultural and racial balance. Responding to litigation which resulted in a federal court order that Milwaukee Public Schools (MPS) must develop a desegregation plan, the 1975 Wisconsin Legislature established a limited form of public school choice, beginning with the 1976-77 school year.

Chapter 220, Laws of 1975, provided state financial incentives for school districts to desegregate schools by: 1) establishing an intradistrict program in which pupils could attend school outside their neighborhood attendance area to improve balance within the district and 2) an interdistrict program principally designed to permit MPS and the Milwaukee suburban schools to exchange students. (Note: The formula is drawn so that both sending and receiving schools receive some aid for an interdistrict transfer.)

Chapter 220 defines the “minority group pupil” as “a pupil who is a Black American, a Native American, a Spanish-surnamed American or an Oriental American”. State aid for integration transfers was approved based on the minority composition of sending and receiving schools, and 30% minority enrollment was the dividing line between a “nonminority attendance area” and a “minority attendance area”.

Although focused on MPS, the law was written to allow other districts to participate in the program. To date Beloit, Milwaukee, Racine and Wausau have received intradistrict transfer aids, but Milwaukee and its neighboring districts are the only interdistrict participants. Although Madison had an intradistrict program which met Chapter 220 standards, it did not receive transfer aid for other reasons.

In 1984, after efforts to resolve the segregation problem via the Chapter 220 program proved ineffective, interested parties brought a suit against 24 Milwaukee suburban school districts to force those districts to take more Milwaukee minority students into their schools. This lawsuit, settled out of court in 1987, resulted in an agreement between Milwaukee and 23 of the 24 suburban school districts in which the districts agreed to voluntarily increase their participation in the interdistrict transfer program. (The Muskego-Norway district had been dismissed from the suit.) The parties initially agreed to participate in the program until June 30, 1993, but they subsequently extended the agreement to June 30, 1995. The MPS district board indicated in November 1994 that there would be no extension beyond June 30, 1995. Whether Chapter 220 transfers will continue on a district-by-district basis has not yet been de-

cided. The continuation and structure of the program will depend on legislative action on the 1995-97 budget. (See Section VII – Legislation Pending in the 1995 Legislature.)

An evaluation by the Legislative Audit Bureau presented a detailed description of Chapter 220 operations from 1976-77 to 1993-94, including its costs and results. Chapter 220 aid began as a separate sum sufficient appropriation, but Chapter 34, Laws of 1979, combined it with the general equalization aid appropriation. The program has grown from \$8.2 million to \$92.6 million in 1993-94, and 96.1% of the 1993-94 expenditures were MPS related. In 1993-94, the program served 30,713 intradistrict transfer pupils (full-time equivalent) and 6,454 interdistrict pupils (FTE). The interdistrict transfers all relate to MPS desegregation with 5,677 students (88%) transferring from Milwaukee to the suburban schools and 777 transferring into MPS schools.

Overall, only 17% of the Chapter 220 transfers were interdistrict, but they accounted for 60.8% of the estimated 1994-95 expenditures. Although the average payment per interdistrict transfer was \$7,241 per student, the payments to receiving districts varied from \$5,253 for Milwaukee to \$12,714 for the Nicolet Unified School District.

In the 1993-95 budget bill, Governor Tommy G. Thompson proposed the elimination of the Chapter 220 program, but the legislature called instead for a performance and financial audit by the Legislative Audit Bureau, which would focus on the effect of the program on desegregation and the academic achievement of Chapter 220 students. The bureau's evaluation, dated November 1994, reported the program had increased minority enrollments in suburban districts. It questioned, however, whether the transfers could significantly alter de facto segregation in Milwaukee public schools because of the changing demographics of the MPS district where the number of resident white students is expected to drop from 50.6% in 1978 to less than 20% in 1998.

The evaluation found that both minority and nonminority transfer students did better than their counterparts in their home district. Participants and their parents were supportive of the program, superintendents and some teachers were mixed in their reactions, while other teachers and nonparticipating students and parents were opposed.

The audit pointed out that costs for the Chapter 220 program could change dramatically if the state decides to assume 67% of local school costs as approved by the 1993 Legislature. It also cautioned that discontinuing the program might result in more litigation on the desegregation issue.

Charter Schools

Charter schools generally are public schools that operate with fewer mandates and more flexible structure than the typical public school. They usually are tuition free and nonsectarian. Supporters of charter schools stress their innovation, freedom and accountabil-

ity to parents. Opponents claim the semiprivate character of the schools weakens the public system, and they argue money should not be diverted from existing schools that need the resources.

Charter school legislation was first passed in Minnesota in 1991. California followed in 1992, and six states, including Wisconsin, enacted laws in 1993. Wisconsin's charter school legislation was part of the 1993-95 state budget (1993 Wisconsin Act 16). The law permits a local school board, upon petition by a required number of teachers or on its own initiative, to contract for the operation of no more than two schools in the district. The State Superintendent of Public Instruction must authorize establishment of charter schools and is required to approve the first 10 applications received from the districts. Statewide, the maximum number of districts permitted in the program is 10, and the districts currently participating (or scheduled to participate) in the program are: Beaver Dam, DeForest, Lake Mills, Madison, Middleton-Cross Plains, Milwaukee, Racine, Stevens Point, Verona, and Weyauwega-Fremont.

Teachers in charter schools must be licensed, and they are considered school district employees and members of the Wisconsin Retirement System. The school board contracting for the charter school cannot spend more per pupil on its charter school pupils than it does on its noncharter pupils in the regular district schools. The district must include the charter school in its annual performance report, and it must include charter students in the regular pupil assessment tests required by state law. Other provisions of the law specify a charter school cannot be sectarian, and it must not charge tuition or discriminate in its admission policies.

IV. MILWAUKEE PARENTAL CHOICE PROGRAM

1989 Wisconsin Act 336 created the Milwaukee Parental Choice Program (hereafter referred to as "Choice"), the first private school choice program in the nation to provide public funds for private school enrollment. As originally passed by the legislature, the program had a five-year sunset limit, but that feature was vetoed by Governor Thompson. The Choice law authorizes a limited number of low-income students from Milwaukee Public Schools to attend private, nonsectarian schools within the City of Milwaukee. In 1994-95, the maximum number of students allowed to participate in the program in any one school year was increased to 1.5% of the MPS enrollment. (In preceding years, it had been limited to 1.0%.) The state pays the private school an amount equal to the per pupil student aid it offers MPS for the school year, regardless of the tuition charged at the school; no further tuition can be charged the student, parent or guardian. The state then reduces the MPS general equalization aid by the same amount.

According to the Legislative Audit Bureau, a total of 1,636 different children have participated in Choice over its five-year history at a cost of approximately \$8.4 million, which would have been paid to MPS if they had been enrolled in public schools. The bureau estimates related transportation costs at \$390,500, but it points out some of the riders might have required transportation if they had remained in public schools so this expense may not be completely Choice-related.

Milwaukee Parental Choice Program, 1990-91 – 1994-95

School Year	Legal	Participating Schools	Applicants	Enrollment		
	Enrollment Maximum*			Available Placements	Actual Enrollments	As % of Available
1990-91	931	7	577	406	341	84.0%
1991-92	946	6	689	546	521	95.4
1992-93	950	11	998	691	608	89.7
1993-94	968	12	1,049	811	733	91.5
1994-95	1,452	12	1,046	982	830	84.5

*In 1994-95 the limit on enrollments was increased to 1.5% of the MPS enrollment from the previous 1% maximum.

The program limits Choice participation to children whose family incomes do not exceed 175% of the federal poverty level. (For 1994-95 this equates to \$17,220 for a family of two; \$21,560 for three; and \$4,340 for each family member over three.) New students entering the program cannot have been enrolled in a public school outside of the MPS district or in a private school, other than a Choice school, in the previous school year.

Schools which participate in the Choice program must be private, nonsectarian institutions with no religious affiliation or training. Over the course of the program 22 to 23 Milwaukee schools met these criteria and in the last three years about half have participated. Eligible schools may not discriminate among the Choice students on the basis of their race, religion, gender, prior achievement or prior behavioral records. In 1994-95, Choice students can comprise no more than 65% of the individual school's total enrollment. (In preceding years, the maximum was 49%.) If a particular class is oversubscribed, selection must be on a random basis, although, in practice, siblings of students selected for other grades are exempt from the random selection requirement. Choice schools were exempted by court ruling from the Education for All Handicapped Children Act.

Legal Challenges

Even before the Choice program could be implemented, it was challenged by several groups including the State Superintendent of Public Instruction.

The first challenge, in May 1990, by the Milwaukee branch of the National Association for the Advancement of Colored People (NAACP) and various parent and teacher groups was unsuccessful. They petitioned the Wisconsin Supreme Court to review the law because, they

claimed, it violated the Wisconsin Constitution on a variety of grounds. The court denied the petition without comment.

On June 25, 1990, six private schools and several interested students and parents sued State Superintendent of Public Instruction Herbert Grover in Dane County Circuit Court to compel him to implement the Choice program immediately without imposing any further regulations on the schools wishing to participate in Choice. The previously unsuccessful petitioners entered this action as defendant intervenors, asserting the law's unconstitutionality. On August 20, 1990, the circuit court held that the Choice program was not unconstitutional. It also decided, as previously asserted by the U.S. Department of Education, that the private schools did not have to comply with federal laws relating to education for handicapped children.

Opponents of the program had challenged the constitutionality of the law on three points: 1) it violated the public purpose doctrine which prohibits the state from spending public funds for private purposes; 2) it violated the school uniformity clause because it created two categories of publicly funded schools; and 3) passage of the law had violated Article IV, Section 18, Wisconsin Constitution, which prohibits the legislature from passing a private or local provision as part of a multisubject bill.

In November 1990, the Court of Appeals reversed the circuit court decision and declared the program was unconstitutional because it was enacted as a local/private provision in a multisubject bill. (The Court of Appeals did not address the other two constitutional challenges.) On March 3, 1992, the Wisconsin Supreme Court reversed the Court of Appeals decision on a vote of 4-3 in *Davis v. Grover*, 166 Wis. 2d 501 (1992), and ruled that the enactment of the Choice program did not violate the constitution in regard to any of the three questions raised.

Recently, the U.S. District Court for the Eastern District was called upon to decide the question of whether the Choice program violated the First Amendment to the U.S. Constitution by excluding sectarian school students. Judge John W. Reynolds ruled in *Miller et al. v. Benson*, Civil Action Number 93-C-1063 (March 14, 1995), that "to expand the current Choice Program to make tuition reimbursements directly payable to religious private schools who admit eligible Choice Program schoolchildren would violate the Establishment Clause." Thus, he concluded, the exclusion of religious schools from Choice was not unconstitutional. (As will be discussed later, current proposals to include religious schools in Choice would make tuition payments to the parents, not to the schools, in hopes of complying with federal and state constitutional provisions.)

Evaluations of the Milwaukee Parental Choice Program

Under contract with the Department of Public Instruction (DPI), Professor John Witte of the Robert M. La Follette Institute of Public Affairs, University of Wisconsin-Madison, has performed four annual evaluations of the Choice program to date, ending with the 1993-94 school year. He concluded that Choice students generally scored no better or worse than MPS students. However, he pointed out the relatively small number of participating students, the fact that many are young, and the high annual attrition rate (with 30.3% of the students not returning to the program) have made meaningful comparisons of academic achievement test results difficult, if not impossible. His evaluation did point out that, since many Choice students were already in academic difficulty at their MPS schools, the program has succeeded to the extent that they do not have lower scores in their new schools. Professor Paul E. Peterson, director of Harvard University's Center for American Political Studies, reinforced this point in an independent report in January 1995, where he asserted that Witte's data indicate that Choice schools are taking a more disadvantaged pool of students and educating them on a par with Milwaukee public schools at about half the cost.

The act creating Choice required that an audit be performed by the Legislative Audit Bureau after the program had been in operation five years. In February 1995, the bureau released Audit 95-3, "An Evaluation of Milwaukee Parental Choice Program". Its key findings, which were similar to Witte's, indicated: 1) information is too sparse to draw meaningful conclusions about the academic achievement of Choice students; 2) the Choice program does not appear to be siphoning off the most academically talented students from the public schools; and 3) the parents of choice students are more involved in and more satisfied with their children's education experiences.

Fears that the private schools would skim off many of the gifted MPS students were unfounded. On the contrary, Choice children are generally drawn from among those students who are most at risk for low academic achievement or dropping out. The studies determined that the parents who selected the Choice option were better educated and were more interactive in their child's schooling. Witte found parents more satisfied with the Choice program than with their previous experience in public school. He also surveyed parents who withdrew their children. In most cases, they indicated they were dissatisfied with school staff, the strict discipline, or the lack of religious instruction in the private schools.

V. SCHOOL CHOICE LEGISLATION IN OTHER STATES

Introduction

Since the State of Minnesota initiated the first interdistrict open enrollment option in the nation in 1987, many other state legislatures have been experimenting with their own forms of school choice legislation.

A 1992 report issued by the Consortium for Policy Research in Education, entitled *School Choice Legislation: A Survey of the States*, described the type of school choice legislation enacted:

With few exceptions, the school choice laws that have been passed by state legislatures are modest experiments. Legislatures have been cautious about introducing a concept that has the potential for radically altering the way local communities provide for public education. . . .

In most instances there are practical reasons for the constraints which legislatures placed in the language of school choice laws. These reasons include fiscal considerations, and the unwillingness or inability to pay for unrestricted school choice.

A National Summary

The 1993 Morrison Institute report provides a state-by-state summary of all school choice legislation. The summary in Table A on page 13, taken from the study, provides the status of intra- and interdistrict choice in each of the 50 states and the District of Columbia at the time. A total of 14 states had specific legislation regarding intradistrict choice, while 24 enacted interdistrict choice laws. The term “formal” means participation is governed by legislation or code, whereas “informal” means participation is voluntary and no governing legislation is involved.

According to the Morrison Institute, 14 states had enacted a formal intradistrict choice program at either the statewide level or as a pilot program as of July 1993. Colorado and Wisconsin were included, but their programs are not statewide.

Table B on pages 14–16 summarizes the key program components found in those states’ choice programs, including issues such as transportation, guidelines for student acceptance, information issues, athletic recruiting, and funding. These items were considered by the authors to represent the real “nuts and bolts” information relative to school choice programs that legislators are seeking.

Table A

NATIONAL REVIEW: EDUCATIONAL CHOICE 1993

State	Intradistrict				Interdistrict				
	Formal/ Limited Formal	Informal	Number of Transfers/ K-12 Pop.	1993 Legislation Considered	Formal/ Limited Formal	Informal	Number of Transfers/ K-12 Pop.	1993 Legislation Considered	
Alabama	LV-1991		na			V	na		
Alaska			na			V	na		
Arizona	LV<1981		(1992) 29,971/683,648	yes	LV<1981		(1992) 10,115/683,648	yes	
Arkansas		V	na		V-1989		1,041/440,682		
California		V	na	yes	V<1968		na	yes	
Colorado	M-1990		na		1990	V	(1992) pilot - 52/568,491 (1992) Informal 5,984/568,491		
Connecticut		V	na		D only		680/492,000		
Delaware		Prohibited				Prohibited			
Florida		V	na			V	na		
Georgia		V	na			V	na		
Hawaii		V	(1991) 13,644/174,249		Hawaii only has 1 school district				
Idaho	M-1993		na		V-policy by 1991		3,294/231,700		
Illinois		V	na			V	na	yes	
Indiana		V	na		LV-1976		na		
Iowa		V	na		M-1990		7,500/485,819		
Kansas		V	na			V	(1991) 6,500/445,390		
Kentucky	L-1990	V	na		L-1990	V	na		
Louisiana		V	na			V	na		
Maine		V	na		LV-1981		(1992) 430/211,853		
Maryland		V	na			V	na		
Massachusetts		V	na		V-1992		3,209/861,468	yes	
Michigan	LM-on hold	V	na			V	na		
Minnesota		V	na		V-1987 M-1990		(1992) 9,885/766,647		
Mississippi		V	na			V	na		
Missouri		V	na		L-1990	V	na	yes	
Montana		V	na		V-1947 V/M-1993		na	yes	
Nebraska		V	na		V-1990/91 M-1993/94		4,755/281,301		
Nevada		V	na			V	na		
New Hampshire		V	na			V	na		
New Jersey		V	na			V	na	yes	
New Mexico	LM-1978		(1990) 7,085/284,737		LM-1978		(1990) 1,669/284,737		
New York		V	na	yes		V	na	yes	
North Carolina		V	na			V	11,074/ 1,106,967		
North Dakota		V	na			V	na	yes	
Ohio	V-1989 M-1993		na		V-policy by 1993		559/1,629,438		
Oklahoma		V	na		V<1968		(1992) 25,131/587,130		
Oregon	LV-1991		na		LV-1991		na		
Pennsylvania		V	na		LV-1949		na	yes	
Rhode Island		V	na			V	na		
South Carolina		V	na			V	na		
South Dakota		V	na			V	599/122,285		
Tennessee		V	na		V-1991		21,961/857,435		
Texas		V	na			V	na		
Utah	M-1993		na		V-1946 M-1993		7,000/461,259		
Vermont	LV		na		LV		na		
Virginia		V	na			V	na		
Washington	M-1990		na		M-1990		11,746/894,748		
West Virginia		V	na			V	na		
Wisconsin	M-1976 D (4 Districts)		(1992) 31,102/791,910		V-1987 D		(1992) 6,446/791,910		
		V	na		(private schools)		613/95,311 (Milwaukee)		
Wyoming		V	na			V	na		

KEY: L=limited; V=voluntary; M=mandatory; D=desegregation; na=not available.

Source: Louann Bierlein, *A National Review of Open Enrollment/Choice: Debates and Description*, Morrison Institute School of Public Affairs, Arizona State University, July 1993.

Table B

“FORMAL” STATE CHOICE PROGRAMS 1993

	ARKANSAS	CALIFORNIA	COLORADO	IDAHO	IOWA
Intradistrict	V	V	M-1990/91	M-1993/94	V
Interdistrict	V-1989/90	V-pre-1968; 1987	V-1990/91 (pilot project)	V-district policy by 1991	M-1990/91
State Guidelines for Rejecting Transfers	capacity; no program; deadline; desegregation	desegregation	not specified	capacity; no program; deadline; discipline problem	capacity; no program; deadline; discipline; desegregation
Application Deadline/ Reapply	April 17/no	district option	district option	February 1/yes	October 30/ October 30 of 4th year
Pupil Commitment	no	no	no	1 year	4 years
Transportation Responsibility/ Subsidized	parent-school/no	parent-school/no	parent-school/no	parent-border/no	parent-border/ low income - yes
Funding for Transfer Students/Local funding	R counts; prior year funding w/ some current year support/ local \$ not transferred	R counts; current year funding/local \$ not transferred	R counts; current year funding/local \$ not transferred	R counts; current year funding/local \$ not transferred	S counts/R bills; prior year funding/local \$ follows student
Athletes Ineligible	yes - 1 year	yes - 1 year	no	yes - 1 year	yes - first 90 school days
Annual Report	specific data only	no	yes	yes	yes
1993 Interdistrict Transfers/state K-12 population (% Usage)	1,041/440,682 (0.2%)	data not collected	1993 not available 1991/92 = 52/568,491 (<0.1%)	3,294/231,700 (1.4%)	7,500/485,819 (1.5%)
Key Reasons Given for Leaving District	data not collected	data not collected	program; learning opportunities	data not collected	proximity to school; education benefits; curriculum; activities
Special Appropriation	none	none	\$300,000 allocated by Department of Education for each year of pilot	none	none
% Minority in State K-12 Population	24%	56.6%	25%	10%	5.9%

KEY: V=voluntary; M=mandatory; R=receiving district; S=sending/resident district.

Table B—Continued**“FORMAL” STATE CHOICE PROGRAMS 1993**

	MASSACHUSETTS	MINNESOTA	NEBRASKA	OHIO	OKLAHOMA
Intradistrict	V	V	V	V-1989/90; M-1993/94	V
Interdistrict	V-1991/92	V-1987/88; M-1990/91	V-1990/91; M-1993/94	V-district policy required by 1993/94	V-pre-1968
State Guidelines for Rejecting Transfers	not specified	capacity; deadline; desegregation	capacity; deadline; desegregation	capacity; no program; racial balance	not specified
Application Deadline/ Reapply	district option	January 15/no	January 1/no	May 1/ district option	May 15/yes
Pupil Commitment	no	1 year	1 year	no	no
Transportation Responsibility/ Subsidization	parent-school/no	parent-border/ low income – yes	parent-school/ low income – yes	parent-border/ low income – yes	parent-school or border/no
Funding for Transfer Students/Local funding	R counts; current year funding/state deducts S funds/local \$ not transferred	R counts; current year funding/local \$ not transferred	R counts; prior year funding w/ some current year support/ local \$ not transferred	S counts/R bills; current year funding/ local \$ not transferred	R counts/prior year funding/local \$ not transferred
Athletes Ineligible	no	no	no	no	yes – 1 semester
Annual Report	no	no	yes	yes, first year only	names and grades of transfer students to State Board
1993 Interdistrict Transfers/state K-12 population (% Usage)	3,635/848,000 (0.4%)	1993 not available 1992 = 9,885/766,647 (1.3%)	4,755/281,301 (1.7%)	559/1,629,438 (<0.1%)	25,131/587,130 (4.3%)
Key Reasons Given for Leaving District	data collected, but not analyzed	data collected, but not compiled	curriculum offerings	data not collected	data not collected
Special Appropriation	For district reimbursement: 1991/92 = \$2.9 million 1992/93 = \$7 million	For transportation: 1987/91 = \$50,000/year 1992/93 = \$15,000	For transportation: 1990/91 = \$61,337 1991/93 = \$137,423/year	none	none
% Minority in State K-12 Population	20%	10%	10%	17%	27%

KEY: V=voluntary; M=mandatory; R=receiving district; S=sending/resident district.

Table B—Continued

“FORMAL” STATE CHOICE PROGRAMS 1993—Continued

	TENNESSEE	UTAH	WASHINGTON	WISCONSIN
Intradistrict	V	M-1993/94	M-1990/91	M-1976 (for desegregation within 4 districts)
Interdistrict	V-1925; 1992	M-1993/94	M-1990/91	M-1990 Milwaukee Parental Choice Program (private schools)
State Guidelines for Rejecting Transfers	not specified	capacity; no program; deadline; as needed to maintain heterogeneous population; discipline problem	desegregation	only 1% of Milwaukee’s yearly public school enrollment eligible; # of transfers not to exceed 49% of private school enrollment*
Application Deadline/ Reapply	district option/no	January 31/no	district option	school option/no
Pupil Commitment	no	no	district option	no
Transportation Responsibility/Subsidized	parent-school/no	parent-school/no; or district w/ state reimbursement	parent-border/ low income – yes	district provides transportation to all students
Funding for Transfer Students/Local funding	R counts; current year funding/local \$ not transferred	R counts; current year funding/S sends 50% of its local portion	R counts; current year funding/local \$ not transferred	private schools paid average state per pupil amount directly by state
Athletes Ineligible	yes – 12 months	yes – 1 year	yes – 1 year	no
Annual Report	no	no	yes	yes
1993 Interdistrict Transfers/state K-12 population (% Usage)	21,961/857,435 (2.6%)	7,000/461,259 (under 1946 legislation) (1.5%)	11,746/894,748 (1.3%)	613/95,311 (Milwaukee only) (0.6%)
Key Reasons Given for Leaving District	data not collected	data not collected	program; proximity to child care/ parent’s job	quality of school; disciplinary environment
Special Appropriation	none	none	For brochures: 1991/92 = \$200,000	none
% Minority in State K-12 Population	24.4%	8.2%	18.6%	not applicable — single district program

KEY: V=voluntary; M=mandatory; R=receiving district; S=sending/resident district.

*Wisconsin Legislative Reference Bureau note: Number of transfers to one school cannot exceed 49% of the school’s total enrollment.

Source: Louann Bierlein, *A National Review of Open Enrollment/Choice: Debates and Description*, Morrison Institute of Public Affairs, Arizona State University, July 1993.

VI. STATE AID TO STUDENTS IN PRIVATE RELIGIOUS SCHOOLS

The full spectrum of school choice options encompasses private schools, including those institutions operated by religiously affiliated groups. The issue of spending public moneys on sectarian education raises complex questions under both the U.S. and Wisconsin Constitutions. These will be critical if the proposal in Governor Thompson's 1995-97 budget to expand the Milwaukee Choice program to sectarian schools is enacted.

State Regulation of Private Schools in Wisconsin

Section 118.15, Wisconsin Statutes, sets forth compulsory school attendance guidelines for all Wisconsin children between 6 and 18 years of age. In general, these children must participate in an educational program as defined by law or be considered truant. Their parents are allowed to choose between public or private education (including home instruction), but a parent's choice of a private school is limited by a number of factors, including financial resources, moral and religious beliefs, and the availability of a suitable program.

To qualify as a private school for compulsory attendance purposes, state laws require that the school must be privately controlled; provide at least 875 hours of instruction each school year; and offer a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health. A private school is not obligated to include (or exclude) from its curriculum any concept, topic or practice in conflict (or consistent) with the program's religious doctrines, but a private school must not be operated for the purpose of circumventing the compulsory school attendance requirement.

According to estimates by the Department of Public Instruction (DPI) for the 1994-95 school year, 857,000 students (84% of all K-12 students) attended public schools in Wisconsin's 427 public school districts. In the same year, 152,000 students (15% of all pupils) were enrolled in private schools, most of which had religious affiliations. Home-based private educational programs accounted for the remaining 12,000 (1%).

Any financial assistance provided to private schools by the state or local governments in Wisconsin must comply with both the U.S. and Wisconsin Constitutions, especially in the case of sectarian schools where questions of separation of church and state arise.

U.S. Constitutional Provisions

Both the U.S. and Wisconsin Constitutions generally have been interpreted to require the separation of church and state, meaning that the government is not allowed to interfere with or support the advancement of religion. The courts have viewed these constitutional provisions as barring use of public funds for the support of religious or sectarian schools.

Direct state aid to religious schools is expressly prohibited. The U.S. Supreme Court upheld the tax-exempt status of a religious organization in *Walz v. Tax Commission*, 397 U.S. 667 (1970), but it warned against state laws which foster "an excessive government entangle-

ment with religion.” In a group of 1971 cases, *Lemon v. Kurtzman*, *Early v. DiCenso*, and *Robinson v. DiCenso*, 403 U.S. 602, it ruled on the constitutionality of two laws, Pennsylvania’s Nonpublic Elementary and Secondary Education Act and Rhode Island’s Salary Supplement Act. Both were attempts to aid nonpublic schools by supplementing the salaries of teachers of secular subjects who taught in private or religious schools. The Court decided both statutes were unconstitutional, based on the excessive entanglement concept outlined in *Walz*. These cases, and in particular the *Lemon* case, led to the oft-cited “three-pronged test” for the constitutionality of state aid to religious schools:

- 1) there must be a secular purpose;
- 2) the primary effect must be neither advancement nor inhibition of religion; and
- 3) there must not be excessive government entanglement.

The U.S. Supreme Court has, however, countenanced some limited exceptions that permit both the federal and state governments to indirectly contribute financial aid to religious schools if the purpose is to aid the students as individuals, rather than assisting the institution itself. Judge Reynolds in the *Miller et al. v. Benson* decision (March 14, 1995) provided a succinct and comprehensive summary of the high court’s action to date. (The material quoted from Judge Reynold’s decision is shown in quotation marks.)

He pointed out that, under the First Amendment religion clauses, the U.S. Supreme Court has *approved* of the following state benefits for private school students:

- “School boards may reimburse parents for the transportation of children attending religious schools” – *Everson v. Board of Education*, 330 U.S. 1 (1947).
- “State may require local public school authorities to lend nonreligious textbooks free of charge to all students in grades seven to 12, including those in religious schools” – *Board of Education v. Allen*, 392 U.S. 236 (1968).
- “Federal government may provide construction grants to religious-related colleges and universities to construct facilities used for nonreligious purposes” – *Tilton v. Richardson*, 403 U.S. 672 (1971); “see also *Hunt v. McNair*, 413 U.S. 734 (1973) (state aid, rather than federal aid)”.
- “State may provide religious school students with books, standardized testing and scoring, hearing and speech diagnostic testing” – *Wolman v. Walter*, 433 U.S. 229, 241-42 (1977).
- “State may allow tax deductions for tuition, textbooks, and transportation expenses for parents of all schoolchildren, including children attending religious schools” – *Mueller v. Allen*, 463 U.S. 388 (1982).
- “State may finance a blind student’s training at a Christian college under a state vocational rehabilitation program” – *Witters v. Washington Dept. of Services for the Blind*, 474 U.S. 481 (1986).
- “School district must provide, pursuant to the Individuals with Disabilities Education Act, a sign-language interpreter to accompany a deaf child

to classes at a Catholic high school” – *Zobrest v. Catalina Foothills Sch. Dist.*, 113 S.Ct. 2462 (1993).

Applying the same constitutional rights, the U.S. Supreme Court has *disapproved* of the following state benefits programs (as summarized by Judge Reynolds):

- “State may not supplement religious school teacher salaries or reimburse religious schools for teacher salaries, even if the supplements and reimbursements are for teaching in areas that the state determines to be non-religious” – *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
- “State may not offer unrestricted direct money grants for maintenance and repairs to religious schools, unrestricted partial tuition grants to parents of low-income pupils attending religious private schools, or income tax benefits directed exclusively to parents of children attending private schools (religious and nonreligious)” – *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).
- “State may not provide remedial teaching and counseling services on religious school grounds, or loan instructional materials and equipment to religious schools” – *Meek v. Pittenger*, 421 U.S. 349 (1975).
- “Public school districts may not provide transportation for religious school field trips” – *Wolman*, at 254.
- “State may not loan instructional equipment to children attending religious schools or to their parents” – *Wolman*, at 250-51.

Wisconsin Constitutional Provisions

According to the Wisconsin Supreme Court, the state constitution prevents state financial aid for religiously affiliated schools, but direct aid to nonsectarian private schools is permissible in some situations. In more restrictive decisions, the Wisconsin Supreme Court has unequivocally interpreted the Wisconsin Constitution as barring direct aid to religious schools. Through the years, certain forms of state aid have been provided to the children enrolled in private religious schools (as opposed to aid to the schools themselves), but each type has been scrutinized for constitutional conflict and in some instances amendments to the constitution were required.

Since its ratification in 1848, the Wisconsin Constitution has required that the legislature establish schools for the public education of elementary and secondary students.

Article X, Section 3, Wisconsin Constitution, states in part:

The Legislature shall provide by law for the establishment of district schools, which shall be as uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein.

At the same time that the Wisconsin Constitution required state establishment of free public schools, it restricted the expenditure of state funds, stating in Article I, Section 18: “nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or

theological seminaries.” The Wisconsin Supreme Court determined in *State ex rel. Weiss v. District Board*, 76 Wis. 177 (1890), that “seminaries” encompasses schooling at all grade levels. “The thing that is prohibited,” it stated, “is the drawing of any money from the state treasury for the benefit of any religious school.” (215)

Transportation Aid and the Child Benefit Theory

In *Everson v. Board of Education*, 330 U.S. 1 (1947), the U.S. Supreme Court upheld the constitutionality of a New Jersey law that provided for the reimbursement of transportation costs to parents of private school students. The Court’s reasoning, which has come to be known as the “child benefit” theory, was based on the idea that since it was the child and not the religious school that was receiving the benefit of the transportation aid, it fell within the realm of permissible state activity. The state’s responsibility, according to the Court, is to remain neutral with regard to religion and to maintain the “high and impregnable wall” between church and state as set forth in the First Amendment. The majority opinion, written by Justice Hugo Black, analogized busing aid to the furnishing of general governmental services like police and fire protection, sewage disposal systems, highways and sidewalks. He noted that the statute serves a valid public purpose by only providing “a general program to help parents get their children, regardless of their religion, safely to and from accredited schools.” Justice Black seemed to reason that the state cannot exclude religion from the benefits of public welfare legislation solely because of its classification as a religion. The “child benefit” theory has become a major justification for financial assistance to nonpublic students although its definitions are not always clear.

The first attempt in Wisconsin to provide for public funding for the transportation of nonpublic school students was Chapter 648, Laws of 1961, which required school districts to offer transportation to public schools for all students of the district who resided two or more miles from the public school they attended (or were entitled to attend). It did not require the district to deliver the private school pupil to the private school. Presumably, the students most likely to take advantage of the program were those whose private school was located within reasonable walking distance of their assigned public school to which they could be transported.

On petition by Attorney General John Reynolds, the Wisconsin Supreme Court accepted original jurisdiction of the matter and found in *State ex rel. Reynolds v. Nusbaum*, 17 Wis. 2d 148 (1962) that the law violated the Wisconsin Constitution. In voiding the statute, the court pointed out that most private schools in Wisconsin had religious affiliations and assisting them in transporting their pupils would benefit them financially at the taxpayers’ expense. The court indicated that it could not sustain the law on the theory that it would promote the health and welfare of all children because direct grants of public funds to parochial schools might also be sustainable on the same basis.

Following the *Nusbaum* decision, an amendment to the Wisconsin Constitution to permit transportation aid was ratified in April 1967 by a vote of 494,236 to 377,107. Article I, Section 23, was created to read:

Nothing in this constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning.

Chapter 68, Laws of 1967, implemented the constitutional amendment by providing state aids for transportation of students to and from both public and private schools. This requirement that private school students be transported directly from their homes to their private school was more extensive than the invalidated 1961 law.

Textbook Loans

The U.S. Supreme Court has ruled that it is permissible to provide textbooks directly to private school students, as opposed to providing them directly to the religious schools. In *Board of Education v. Allen*, 392 U.S. 236 (1968), the Court affirmed the right of the State of New York to require local public school officials to lend secular textbooks, approved by the public school authorities, to private or parochial school students in grades 7 to 12 free of charge. The Court combined the “child benefit” theory from *Everson* and the “secular purpose and primary effects theory” from *Abington School District v. Schempp*, 374 U.S. 203, in which the U.S. Supreme Court held that if either the purpose or primary effect of a statute is the advancement or inhibition of religion, then it is unconstitutional. Writing for the majority, Justice Byron White stated:

... The law merely makes available to all children the benefits of a general program to lend school books free of charge. Books are furnished at the request of the pupil and ownership remains, at least technically, in the State. Thus no funds or books are furnished to parochial schools, and the financial benefit is to the parents and children, not to the schools. Perhaps free books make it more likely that some children choose to attend a sectarian school, but that was true of the state-paid bus fares in *Everson* and does not alone demonstrate an unconstitutional degree of support for a religious institution. (243-244)

Under current Wisconsin law, school boards may purchase textbooks for the public schools in the district and arrange to loan, rent, or sell them at cost to pupils. In addition, federal school aids to Wisconsin have been spent on textbook loans to both public and private school students, including those in religious schools. However, repeated attempts to provide state aid for textbook loans to private schools, which date back to 1935 Senate Bill 58, have been unsuccessful. The most recent proposal, 1989 Senate Bill 38, involved directing the State Superintendent of Public Instruction to develop a list of textbooks available for borrowing by both private and public school pupils. Had the bill passed, the state superintendent would

have been required to purchase the book and loan it to the pupil upon written request of the pupil or the pupil's parent or guardian if sufficient funds were appropriated by the legislature.

Tuition Assistance for Students at Religious Schools

While there are no general state tax credits, tax exemptions, or direct grants for parents of Wisconsin private school students, Wisconsin, with its Milwaukee Parental Choice Program, is the first state to experiment with limited direct public financing of private education.

Numerous bills have been introduced in the Wisconsin Legislature over the years to provide tax credits or exemptions to parents of students attending private schools. None has passed. Most were designed to benefit the families of either parochial and nonsectarian private school students, and it was argued that a tax credit or tax exemption used by a parent was permissible under the principle of separation of church and state because the state was not making a direct payment to the parochial school. (This same argument with some type of payment to the parents would probably be used to permit the inclusion of religious schools in the Milwaukee Choice program.)

The first bills seeking to aid parents of students attending private schools were introduced in the 1963 legislative session. 1963 Assembly Bill 528 would have provided an income tax exemption of up to \$20 for each dependent attending a private school. 1963 Assembly Bill 554 provided for an income tax exemption of up to \$30. Various plans to provide tax credits or exemptions have been proposed since then, most recently in 1991 Assembly Bill 982. This bill related to creating a refundable individual income tax credit for 10% of the amounts paid for certain educational expenses, including tuition, for dependents who attend certain public or private schools, up to a maximum of \$200 for each dependent. Specifically not allowed was reimbursement for expenses for driver's education, for texts or instructional materials used for teaching religious doctrines, or for extracurricular activities.

Constitutional action is another approach to providing state aid to children attending religious schools. 1969 Senate Joint Resolution 119, which failed to pass, sought to amend the state constitution to authorize the legislature to provide tuition grants for students enrolled in private schools. It made no distinction between religious or nonsectarian private schools, so children attending any type of private school would have been eligible for grants if the legislature passed appropriate enabling laws. There have been two amendment attempts since the 1969 session — one to provide a partial property tax exemption for parents whose children attended private school (1971 Assembly Joint Resolution 50) and the other to provide textbooks (1977 Assembly Joint Resolution 52). Neither received legislative approval.

Besides the constitutionality issue, another reason bills proposing to provide direct state financial aid to private schools have failed to pass is that the schools themselves are wary of accepting such aid. They are fearful that state money will come with strings attached and re-

sult in a partial loss of their control of curriculum, staffing and administration policies. Section 121.01, Wisconsin Statutes, declares that the state should be obligated to contribute to an educational program only if it meets state standards, and public schools are held accountable to the educational goals and expectations outlined in Section 118.01, Wisconsin Statutes. If a private school accepts state financial aid, it may be subject to many of these same mandates. Another concern is that private schools that take state money may have to abide by nondiscrimination laws. Currently, public schools must admit children with developmental disabilities or other needs that may require expensive special education programs, whereas private schools may reject students they cannot afford to serve.

VII. LEGISLATION PENDING IN THE 1995 LEGISLATURE

The 1995-1997 budget bill, as proposed by Governor Thompson, contains a number of provisions related to school choice, which are described below. To date, individual legislators have not proposed any measures that differ from the governor's program.

Milwaukee Parental Choice Program

The governor is advocating a major expansion of the Choice program that would permit participation by both sectarian and nonsectarian private schools in Milwaukee, beginning in 1996-97. Any private school could participate, but there would be limits on the number of students allowed in the program in 1996-97 (3,500 pupils) and 1997-98 (5,500). In the following years any number could apply for private school, limited only by the space available. The proposed law would eliminate the current restriction that a particular school cannot enroll more than 65% of its students from the Choice program.

The bill proposes to separate the Choice tuition figure from the MPS average equalization aid payment. The 1995-96 payment would remain at the 1994-95 MPS aid level (\$3,209). Beginning in 1996-97 that base would increase from year to year by the rate of inflation, but the amount paid to a private school would not exceed that particular school's operating cost per pupil, as determined by DPI. Because the amounts paid for Choice tuition are deducted from aid payments to MPS, the state's net expenditures should not increase if the Choice program expands from its estimated 1994-95 level of \$2.6 million to \$11.5 million in 1996-97 with the inclusion of religious schools.

The governor's bill seeks to avoid constitutional problems by changing the method of tuition payment for Choice students. Instead of making a direct payment to the private school that participates in the Choice program, as is current practice, DPI would send the payment to the school in the form of a check made out to the child's parent or guardian. There would be restrictions that the check would have to be endorsed to the private school to be valid.

Transfers and Enrollments

Interdistrict Transfers. The governor would provide a broader use of the interdistrict transfer option beginning with the 1996-97 school year. A student could enroll in any public school program anywhere in the state, including prekindergarten, early childhood classes and school-operated day care. The pupil's parent would have to make a timely application for the student to transfer to a program outside the district of residence. Acceptance would be based on space availability, and the district of residence would have to pay tuition to the nonresident district based on the lower tuition of the two districts.

Interdistrict Enrollments. Interdistrict enrollments for particular course options would be allowed on a similar basis, although the student would continue to attend at least one course in the district of residence.

Intradistrict Enrollments. The bill would allow a student to apply to take one or more courses at any school in the district of residence. Applications could be turned down only on the basis of space limitations or if the student were involved in a disciplinary action.

The legislature's Joint Committee on Finance decided that these transfer and enrollment provisions should be introduced in the form of separate bills. 1995 Senate Bill 161 and its companion, 1995 Assembly Bill 347, were introduced May 3 and April 28, respectively, at the governor's request, to provide for that change.

Charter Schools

The governor's proposal for charter schools would remove many of the current restrictions that apply to the charter schools developed under 1993 Wisconsin Act 16. Any district could establish any number of charter schools and spending limitations would be repealed. Charter school employees would not have to be employees of the district, and the school would not have to be an instrumentality of the district. This would allow private schools to become charter schools. The nonsectarian restriction would be lifted for Milwaukee Public Schools so that religious schools would be eligible to contract with MPS to organize as charter schools.

VIII. CONCLUSION

It is too early to draw any conclusions about the future of school choice, but it appears that debate on the issue will continue. This is evidenced by growth in both the number of states adopting school choice programs and the variety of programs being tested.

Although professional educational groups, such as the American Federation of Teachers and the National Education Association, maintain their strong opposition to school choice that includes private schools, they appear more open to public school choice as an option. In most discussions of choice legislation, both supporters and opponents hope that the debate will produce better quality education for all students.

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