

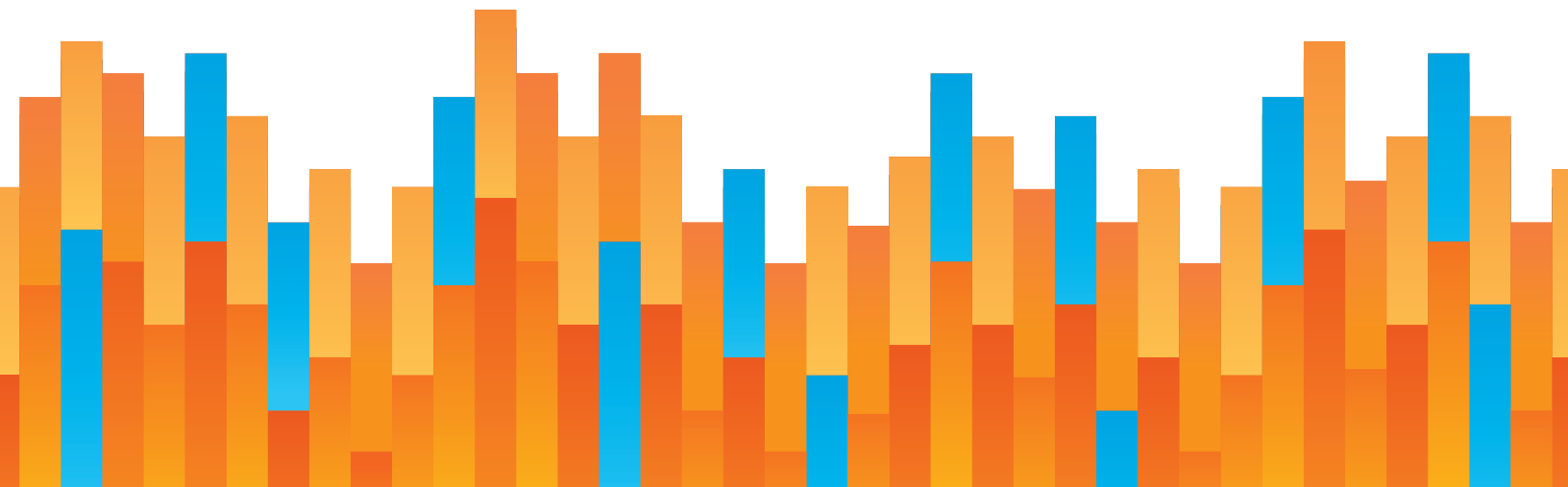


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# ANNUAL PRIVATIZATION REPORT: EDUCATION

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by Christian Barnard  
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## PART 1

# INTRODUCTION AND GENERAL TRENDS

Over 56 million students were enrolled in U.S. elementary and secondary schools in the 2017–2018 school year.<sup>1</sup> The most recent available fiscal data evaluated total K-12 spending at \$724 billion annually, a figure that has grown in real dollars by 22% over the last 15 years and 125% over the last 40 years.<sup>2</sup> Today, compared to the other 35 countries in the Organization for Economic Cooperation and Development (OECD), the U.S. has the fourth-highest per-pupil spending rate.<sup>3</sup> And yet, U.S. progress in student achievement has not been commensurate with these remarkable spending increases. According to the OECD's Programme for International Student Assessment, which compares students in 71 countries, American students ranked only average in science and reading, and just below average in math.<sup>4</sup>

A quick survey of national education data exposes how the relationship between spending and student outcomes is, at best, weak. In general, American schools could benefit from more choice, transparency, and innovation. Various school choice policy prescriptions have been utilized across the country to expand the availability of a quality education to all students. These prescriptions are detailed below:

**Charter Schools:** Charter schools are public schools that are privately run. Operated either independently or by larger charter management organizations, charter schools must follow the terms of their charters—contracts with the government that are fixed in length and that typically specify expectations for student achievement and overall accountability.

Compared with traditional public schools, charter schools have more freedom to experiment and innovate with different approaches to education. In exchange for this increased autonomy, charter schools are generally expected to produce high outcomes. Absent sufficient outcomes, the government can refuse to renew the charter or shut the school down.

**Tax Credit Scholarships:** Tax credit scholarship programs enable individuals or corporations to receive partial or full tax credits for donations they make to scholarship-granting organizations (SGOs). SGOs are nonprofits that issue private school tuition scholarships to students. States generally set the terms for what percentage of a donation is tax deductible, and they usually place caps on the total number of credits they will issue each year.

**School Vouchers:** School vouchers are essentially checks given to families for the amount the state would have otherwise spent on the student's public schooling that can instead be spent on private school tuition. In many states, vouchers cannot be spent toward private religious schools.

**Education Savings Accounts (ESAs):** ESAs are similar to vouchers because they give families a portion of the public dollars that would have otherwise been spent on a student's public schooling. However, they differ from vouchers in that they can be used for more than just private schools. ESAs can be spent toward a wide variety of educational services, including private tutors, online programs, and educational materials. To prevent fraud, states require that all ESA-sponsored services be provided by approved vendors. Additionally, ESA funds roll over from year to year, giving parents an incentive to economize and save money.

**Student-Based Budgeting (SBB):** Also known as "weighted student funding," SBB is a school funding mechanism where dollars are attached to individual students. Students receive funds based on "weights" assigned to challenges individual students face, including learning English for the first time, living in poverty, or overcoming learning or intellectual disabilities. When properly implemented, SBB gives principals significant autonomy over school funds, generates greater per-pupil funding equity, boosts transparency, and paves the way for enhanced school choice.

## PART 2

# FEDERAL HIGHLIGHTS

While states and local school districts bear the brunt of the responsibility for funding and administering education, the federal government still makes significant investments in programs for students with disabilities, who are low-income, and who are learning English as a new language. It also funds Native American education, safety programs, tuition grants, and many other special programs broadly directed at improving schools. In total, Congress appropriated around \$71.6 billion to the U.S. Department of Education for FY 2019, roughly \$500 million more than the previous fiscal year.<sup>5</sup> The federal appropriations included a \$125 million increase in Title I (aid for low-income students) spending and another \$125 million in increased Title IV block grants to states, which can be used for programs in student safety, mental health, and technology.

Beyond the approved budget, the legislature also passed a significant tax reform bill in December of 2017. Among the many changes the bill brought was the expansion of 529 savings plans, making tax-advantaged savings accounts available for K-12 private school tuition. Prior to the bill's passing, 529 accounts could only be used for post-secondary school tuition.<sup>6</sup> The law now permits withdrawals of up to \$10,000 annually to cover K-12 private school tuition.

One effect of the tax bill could end up harming school choice in high-tax states. The new federal tax law caps state and local tax deductions at \$10,000, including donations to

private school tuition-granting organizations. In September of 2018, the IRS released guidance clarifying that it would not permit any work-around for the cap, cracking down on high-tax states that previously saw taxpayers claiming state and local deductions greater than \$10,000.<sup>7</sup> With this tax incentive now gone, high-tax states will likely see decreased donations to scholarship-granting nonprofits, reducing access to private school scholarships.

Another federal development is Puerto Rico's July 2018 implementation of a student-centered funding system using federal dollars from the Every Student Succeeds Act (ESSA) pilot program grant.<sup>8</sup> The federal pilot program allows states and territories to combine federal, state, and local funding and apply it at the individual level, allowing funds to follow students to schools of their choice, including charters. Though the ESSA pilot allows for up to 50 districts to receive federal support in implementing a flexible funding formula, only one other district, Arizona's Roosevelt School District #66, has applied to join Puerto Rico.<sup>9</sup> Early in 2018, four other school districts applied for the pilot program, but were each rejected.<sup>10</sup>

Other congressional actions on education failed. Among those actions was the Native American Education Opportunity Act, a bill introduced in June 2017 by the late Senator John McCain that would create and fund ESAs for students attending federally funded Bureau of Indian Affairs schools.<sup>11</sup> Senator Ben Sasse also sponsored a bill introduced in March of 2018 that would create ESAs for students in military families.<sup>12</sup> Both bills stalled in committee and then officially died when the 115<sup>th</sup> Congress adjourned.

### **SUPREME COURT RULING IN *JANUS V. AFSCME CASE***

Over the course of the last year, Congress has seen some activity on school choice policy. But federal courts were also an area of interest, featuring frequent legal challenges that have lasting implications for school choice and education reform.

One such decision came on June 27, 2018, when the Supreme Court ruled that public employees, including teachers and school staff, may not be forced by a state to pay union dues if they are not members of that union.<sup>13</sup> Because teacher unions engage in a significant amount of political activity, the *Janus* ruling gives teachers the freedom to completely disassociate from organizations they disagree with and not be forced to fund activities they do not endorse.<sup>14</sup>

## PART 3

# STATE-LEVEL REFORM

### 3.1

## TAX CREDIT SCHOLARSHIPS

In terms of the number of students they serve, tax credit scholarships are the most popular form of school choice legislation in the United States. There are 23 tax credit scholarship programs across 18 states, with a total of 270,786 students using them.<sup>15</sup>

### 3.1.1 NEW PROGRAMS

In **Florida**, Governor Rick Scott signed HB 7055 in March of 2018, an appropriations bill that included a new Hope Scholarship Program for the state.<sup>16</sup> As Florida's second education tax credit, the Hope Scholarship fund provides private school tuition for students who are victims of bullying or physically attacked in school. The scholarships are to be funded by voluntary donations from motor vehicle purchasers who will receive a 100% credit against any auto sales tax they owe.

Florida's Hope Scholarship is the first school choice program specifically aimed at victims of bullying, and should receive much attention in Florida, where 45,000 bullying incidents were reported in public schools during the 2016–2017 school year.<sup>17</sup> Any of the roughly 2.8 million students in state public schools who report an incident of bullying to a principal



must be notified of the scholarship opportunity within 15 days of the incident or upon completion of an investigation, whichever comes first.<sup>18</sup>

### 3.1.2 EXPANDED PROGRAMS

Many other states expanded already-existing tax credit scholarship programs. **Iowa**, **Pennsylvania**, and **South Carolina** all passed legislation increasing the caps for the total value of scholarship deductions they allow in a year.<sup>19</sup> While South Carolina increased its cap from \$11 million to \$12 million, Pennsylvania added \$25 million more in budget space for its Education Improvement Tax Credit.<sup>20</sup> Iowa passed Senate File 2417, a massive tax reform bill that increased the state tax credit scholarship program cap by \$1 million.<sup>21</sup>

**Florida**, **Iowa**, and **South Dakota** all expanded eligibility for their existing scholarship programs.<sup>22</sup> Florida made its Tax Credit Scholarships available to students attending low-performing schools, while Iowa raised the income threshold for its School Tuition Organization Tax Credit program from 300% to 400% of the federal poverty level.<sup>23</sup> South Dakota's HB 1221 expanded eligibility for the state's tax credit scholarship to students at tribally controlled schools on Native American reservations.<sup>24</sup>

Additionally, in June 2018, **New Hampshire** passed HB 1686, which expands revenue sources for its state tax credit scholarship by allowing individuals who donate to scholarship organizations to receive an 85% deduction against taxes on interest and dividends.<sup>25</sup> Prior to the reform, only businesses could make deductible donations to scholarship-granting organizations.

### 3.1.3 FAILED LEGISLATION

Many more bills were introduced at the state level over the past year that failed to make it over the finish line. **Oklahoma** and **Rhode Island** both introduced unsuccessful bills to increase their tax credit scholarship caps.<sup>26</sup> Oklahoma's SB 1384 failed in committee in March of 2018 and Rhode Island's House Finance Committee recommended in May that HB 7055 be studied more before further action. In a similar vein, **New Jersey** and **Utah** introduced legislation to create new tax credit scholarship programs.<sup>27</sup> Utah's HB 490, which would have allocated up to \$12 million in credits, was indefinitely postponed, and New Jersey's SB 505, which would establish a pilot tax credit scholarship program for low-income students, is still pending in the Senate Education Committee.

## 3.2

## SCHOOL VOUCHERS

There are 26 school voucher programs in America, serving just over 180,000 students total.<sup>28</sup> While no new school voucher programs were passed in the 2017–2018 legislative session, several programs received increased funding or expanded eligibility.

### 3.2.1 EXPANDED PROGRAMS

Several states and the District of Columbia expanded their already-existing voucher programs. **Maryland**, **North Carolina**, and **D.C.** all passed bills that increased funding for their existing voucher programs.<sup>29</sup> D.C. passed a budget increasing funding for its voucher program from \$15 million the previous year to \$45 million, and Maryland increased its voucher's budget cap from \$5.5 million to \$8.9 million, while North Carolina increased funding for its Special Education Scholarship Grants by \$3 million.<sup>30</sup> Additionally, **Arkansas** and **Wisconsin** increased access to their voucher programs—the former making its Succeed Scholarship Program, which is a voucher for special needs students, also available to foster children and children currently in private schools, and the latter increasing its income limit for voucher-eligible families from 185% to 220% of the federal poverty line.<sup>31</sup>

### 3.2.2 FAILED LEGISLATION

Legislators in **Mississippi** and **Nebraska** introduced bills that would have created new voucher programs. Mississippi's HB 2398 would have created \$25 million in opportunity scholarships for students at low-performing schools, but it failed in committee in January.<sup>32</sup> Likewise, Nebraska's LB 608, which would have created private school choice scholarships for any student in the state's lowest-performing schools, was indefinitely postponed.<sup>33</sup>

**Ohio** introduced HB 200 in May 2017, intended to consolidate the state's three voucher programs into one Opportunity Scholarship.<sup>34</sup> The single program would offer up to \$5,000 to K–8 students and as high as \$7,500 to high school students.<sup>35</sup> After being referred to the state's Education and Career Readiness Committee in the same month, the bill eventually died once the legislature adjourned.

## 3.3

## EDUCATION SAVINGS ACCOUNTS

Education Savings Accounts (ESAs) are the youngest form of school choice policy programs, with the first created in Arizona in 2011.<sup>36</sup> Four more states have adopted ESAs since, and now over 15,000 students use them.<sup>37</sup> Legal challenges to ESAs have been unsuccessful thus far, with state supreme courts in both Nevada and Arizona upholding the constitutionality of their own ESAs.<sup>38</sup> While one state managed to expand its ESA program, no new ESA programs were created in 2018.

### 3.3.1 EXPANDED PROGRAMS

In February of 2018, **North Carolina** expanded eligibility for its ESA program, established in 2017, which provides up to \$9,000 a year for families with disabled children.<sup>39</sup> While the funds were previously limited mostly to students transferring from a public to a private school, the new amendment prioritizes students with severe disabilities and expands eligibility to homeschooled students and students already enrolled in private school.<sup>40</sup>

### 3.3.2 FAILED LEGISLATION

Many states, including **California**, **New Hampshire**, and **Mississippi**, introduced ESA bills that ended up failing.<sup>41</sup> California's SB 1344 failed in April, which would have created ESAs for all K–12 students in the state. SB 193 in New Hampshire would have created a temporary ESA program for all students between the ages of five and 20, but the state's House Finance Committee voted to recommend the bill for interim study before further action.<sup>42</sup> And Mississippi's SB 2623, which would have expanded eligibility for the state's ESA program to kindergarteners, 1st graders, and children of active duty military families, failed to pass before the legislature adjourned in April.<sup>43</sup>

**Pennsylvania**, **South Carolina**, and **Virginia** also introduced ESA legislation that failed to make it over the finish line.<sup>44</sup> SB 2 in Pennsylvania, which would have created ESAs for students assigned to low-performing schools, was sent to committee in October and died when the legislature adjourned.<sup>45</sup> Virginia's HB 1286, a bill which would create Parental Choice ESAs for low- and middle-income and disabled students, also died in the House Education Committee.<sup>46</sup>

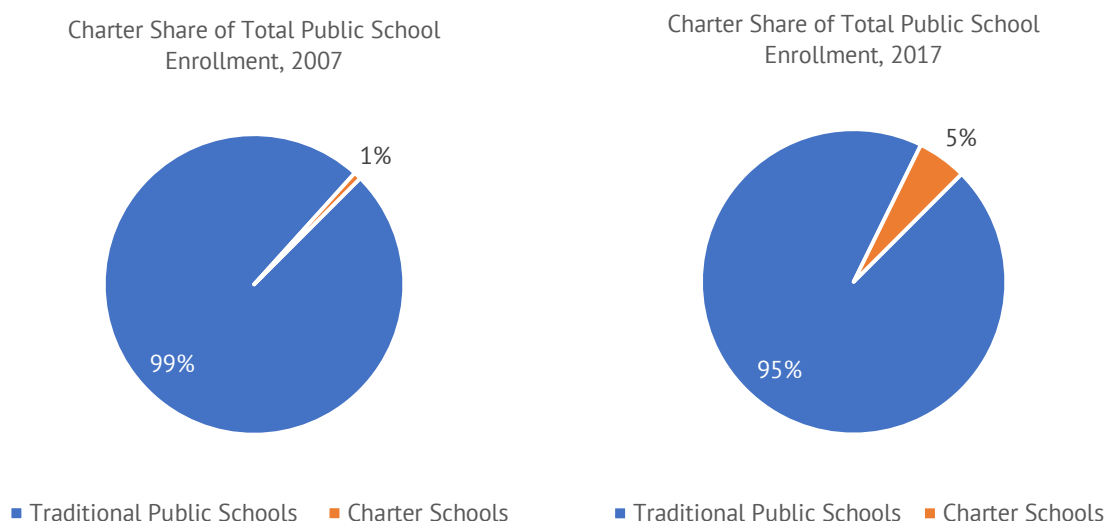
## 3.4

## CHARTER SCHOOLS

## 3.4.1 CHARTER SCHOOL MARKET SHARE

Forty-three states and the District of Columbia allow for the existence of charter schools, with 13 of them placing no statutory limitations on the growth of charters.<sup>47</sup> Over the past decade, charter school enrollment has nearly tripled, sitting at an estimated 3.2 million in 2017, though representing only about 6% of all public school students.<sup>48</sup> The number of charter schools is expanding nationwide, asserting the most influence in the nation's large, urban districts.

**FIGURE 1: COMPARISON OF CHARTER SCHOOL FRACTION OF U.S. SCHOOL ENROLLMENT, 2007 AND 2017**



Source: "Public Charter School Enrollment." National Center for Education Statistics.

According to the National Alliance for Public Charter Schools, 35 states have 2% or more of all their public students enrolled in charters, and eight states enroll 10% or more in public charters.<sup>49</sup> As mentioned earlier, a good portion of the charter population is concentrated in a handful of heavily populated urban districts. While 208 districts have at least 10% of their public students in charters, 10 districts alone serve nearly one-quarter of America's total charter student population (Table 1).<sup>50</sup> Notably, since charter schools exist outside the purview of public school districts, students attending charter schools are not counted in district enrollment figures. Table 1 displays the count of students who were attending either a charter or traditional public school within a district's geographic boundaries.

**TABLE 1: TOP 10 CHARTER SCHOOL DISTRICTS, PERCENTAGE OF TOTAL ENROLLMENT, 2016–2017**

Districts	State	Charter Enrollment	District Enrollment	Total Enrollment	Charter Enrollment Share
<b>Los Angeles Unified School District</b>	CA	163,720	476,260	639,980	26%
<b>New York City Department of Education</b>	NY	102,960	946,170	1,049,130	10%
<b>Philadelphia City School District</b>	PA	64,270	134,130	198,400	32%
<b>Miami-Dade County School District</b>	FL	62,280	294,610	356,890	17%
<b>Chicago Public Schools</b>	IL	59,270	319,400	378,660	16%
<b>Detroit Public Schools Community District</b>	MI	50,460	44,890	95,350	5.3%
<b>Houston Independent School District</b>	TX	50,310	195,980	246,290	20%
<b>Broward County School District</b>	FL	46,750	225,380	272,130	17%
<b>New Orleans Public School System</b>	LA	44,380	3,520	47,900	93%
<b>District of Columbia Public Schools</b>	DC	41,490	48,510	90,000	46%

Source: “A Growing Movement.” National Alliance for Public Charter Schools.

### 3.4.2 CHARTER EXPANSION LEGISLATION

State legislatures have managed to pass a number of bills this year that aid the expansion of charter schools. **Florida** and **Nevada** passed legislation that makes charter schools easier to open and operate.<sup>51</sup> HB 7055 in Florida, the same bill that created the Hope Scholarship program, also created a new formula for the funding and maintenance of charter facilities, as well as made it easier to open new charters that replicate the operation of existing high-performing charter schools.<sup>52</sup> Nevada’s AB 49, signed in June of 2017, helps high-performing charters expand their talent pools and allows charters serving high-need populations to adopt attainable and appropriate accountability standards for high-need students.<sup>53</sup> Rather than specific numerical benchmarks, these standards are likely to quantify the increment of improvement.

**Missouri** and **North Carolina** failed to pass bills that would have strengthened charters.<sup>54</sup> Missouri's HB 2247 would have allowed charter schools to open in any district with one or more low-performing schools. It was passed by the House in March of 2018 but failed to receive any more movement. North Carolina's SB 562, which died after being referred to committee in April 2017, required that local charters receive local per-pupil funding equal to the local per-pupil funding received by district schools.

## PART 4

# STATE-LEVEL LEGAL HIGHLIGHTS

New education reform policies are frequently challenged in the courts based on state constitutions. Currently, 12 states have ongoing lawsuits over their school funding systems alone.<sup>55</sup> As a general note, voucher programs have been struck down in several states in the past for allegedly funding parochial schools. ESAs, on the other hand, have yet to be defeated in any state or federal supreme courts. While not all legal battles are directly related to school choice, some states are in the middle of litigation that will have significant consequences for school choice programs.

The **Florida** State Board of Education continues to battle Citizens for Strong Schools over the legitimacy of their tax credit scholarship programs under the state constitution.<sup>56</sup> Both the trial courts and the appellate court have found the school choice programs to be constitutional, and the case is now pending before the Florida Supreme Court.

In **Arizona**, Save Our Schools, an advocacy group opposing school choice expansion, collected enough signatures to get a veto referendum on the ballot for the November 6 midterm elections. The referendum passed and halted the expansion of the state's ESA program, which had originally been approved by the legislature in 2017.<sup>57</sup> Despite the setback, policymakers will now have a chance to tweak the original legislation and vote on it again in the next session.<sup>58</sup>

In early April, the **Montana** Supreme Court heard arguments over the constitutionality of the state's tax credit scholarship program in the case *Espinoza v. Montana Department of Revenue*.<sup>59</sup> The Revenue Department currently excludes religious schools from eligibility for the tax credit scholarships, a decision proponents of the scholarship program are challenging in the courts. On December 12, 2018, the high court declared Montana's tax credit scholarship program unconstitutional, marking the first time a state supreme court has struck down this type of school choice program.<sup>60</sup> In a 5-2 decision, the court concluded that because families may use the program to send their children to religious schools, that it is unconstitutional. An appeal to the U.S. Supreme Court is underway.<sup>61</sup>

Following the devastation wrought by Hurricane Maria in September 2017, **Puerto Rico** sought to rebuild by introducing charter schools and a new voucher program.<sup>62</sup> While the new policies were challenged in the courts, school choice proponents ultimately won out on August 9, when the territory Supreme Court ruled the programs were constitutional.<sup>63</sup>



## PART 5

# CONCLUSION

School choice has often been referred to as a new frontier for civil rights reformers. The landmark 1954 Supreme Court ruling in *Brown v. Board of Education* established that all children, regardless of race or social status, should have equal access to a quality education. Today many disadvantaged students, confined by zip codes and limited resources, are forced to attend underperforming or ill-suited schools. Moving forward, policymakers should consider the value that increased choice can bring to K–12 education.

# ABOUT THE AUTHOR

**Christian Barnard** is an education policy analyst at Reason Foundation. He studies the relationship between spending and educational outcomes, as well as student-based budgeting in public school finance. Christian holds a bachelor's degree in philosophy and economics from Messiah College.

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