



## THE FACTS ABOUT VOUCHERS

### #5: How Do Vouchers Affect Educational and Social Equity and Civil Rights?

Voucher opponents contend that voucher schools, not students, do the choosing in voucher programs, often excluding students due to special education and other factors. Private schools, unlike public schools, are not required to educate every child. They are not required to accept special-needs or disabled children, students with behavioral problems or those with academic difficulties, and may refuse to accept students on the basis of academic performance, religious affiliation, aptitude, achievement test scores, and special needs.<sup>1</sup> Yet voucher proponents have generally resisted civil rights and other protections in voucher programs.

#### Exclusion of Special-Needs Students

- A 1998 report from the U.S. Department of Education found that 85% of large central city private schools surveyed by the U.S. Department of Education would “definitely or probably” *not* be willing to participate in a voucher program if they were required to accept “students with special needs such as learning disabilities, limited English proficiency, or low achievement.”<sup>2</sup>
- This is corroborated by experiences with the two largest voucher programs. In Cleveland, where the law does not require private schools to accept handicapped students or provide special education,<sup>3</sup> voucher school operator David Brennan candidly wrote to Gov. Voinovich that “Numerous scholarship (voucher) recipients were discouraged from taking their scholarships to private schools with the full knowledge that none of the existing private schools will be able to handle a seriously handicapped child.” An Ohio Department of Education spokeswoman recently commented that the voucher office didn’t expressly discourage applications, but did inform parents that needed services may be unavailable. “Many Catholic schools are not equipped to handle handicapped children or do not offer the services they need,” she said.<sup>4</sup>
- In Milwaukee, the Legislative Audit Bureau’s February 2000 audit of the voucher program notes that seven schools—just 8%—reported that they offered special education services.<sup>5</sup> Elsewhere the LAB audit noted that the services most likely available are such lower cost services as those for children with speech, language or learning disabilities.<sup>6</sup> This prompted the Department of Public Instruction to respond that “This means, in effect, that students with certain disabilities are denied a meaningful alternative to the Milwaukee Public Schools despite the intention of the Choice program to provide this opportunity to all eligible low-income children in the city.”<sup>7</sup> The audit found 171 voucher students who had been identified by the Milwaukee Public School district as

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having special education needs. “However,” it noted, “the total of special needs pupils in the program is not known because participating schools are not required to identify and report pupils in need of special services or their levels of need.”

- Many Milwaukee voucher schools are forthright regarding their inability to accommodate students with special needs.<sup>8</sup> For example, Harambee Community School states that it is “unable to service children with a learning disability, physical disability and emotionally disturbed” [sic].<sup>9</sup> Emmaus Lutheran states that it cannot serve “CD [Cognitive Disabilities], LD [Learning Disabilities], ED [Emotional Disturbances], [and s]ome types of physically handicapped students.”<sup>10</sup> Gospel Lutheran “cannot serve wheelchair-bound students.”<sup>11</sup> Blessed Sacrament writes “We believe that students who are 2-3 years below grade level cannot be realistically brought up to grade level because we do not have a tutorial/learning center to accommodate their needs. Students who have severe emotional or behavioral problems need specific programs to assist them - we do not have a counselor or social worker.”<sup>12</sup>
- In 2001, Wisconsin State Senator Russ Decker (D-Schofield) filed a motion that would have required all Milwaukee private schools participating in the voucher program “to comply with the same statutory requirements as public or charter schools with regard to including pupils with disabilities in statewide and local educational agency-wide assessments...” as well as comply with open records and anti-discrimination laws applicable to public schools. That motion failed to get out of the state’s Joint Finance Committee, which makes recommendations on the budget, on a party-line vote.<sup>13</sup>
- Shortly after this motion failed to get out of the Committee, State Senate Democrats incorporated an anti-discrimination bill authored by Rep. Christine Sinicki into their budget package. If passed, these provisions would have required all schools funded with taxpayer dollars to follow the state’s Open Records and Open Meetings Acts and to comply with statutes barring discrimination based on physical, mental, emotional or learning disability, race, gender, disability, religion, national origin, sexual orientation and more.<sup>14</sup> “There is plenty of anecdotal evidence from parents whose children were turned away from private schools because they required special education,” said Rep. Sinicki. Sinicki’s provisions were omitted from the final budget package that was passed by the legislature.<sup>15</sup>
- In Florida, Gov. Jeb Bush’s A+ Plan voucher program has no requirement that students with special needs be accommodated in participating private schools.<sup>16</sup> Under the separate, new program providing vouchers for students with disabilities, parents may opt to use a state voucher to place their child in a private school. Participating private schools, however, are not required to accommodate all applicants, nor are they required to hire teachers with special education qualifications of any kind, and - unlike private schools in the A+ Plan voucher program - these schools do not have to accept the state voucher as full payment of tuition, leaving no option for parents who are unable to pay the difference.<sup>17</sup>

## Selection and De-Selection of Voucher Students

- According to a 1998 U.S. Department of Education survey, almost 75% of private schools review discipline records in admitting students (including 85% of Catholic schools); almost half have admissions tests, and a similar percentage of Catholic schools give preferences based on religion.<sup>18</sup> If private schools were required to accept randomly-assigned students (without regard to religion, academic achievement, special needs and more), interest in participation declines by half.<sup>19</sup>
- In Milwaukee, the law requires participating schools to select students randomly—utilizing a lottery if applications exceed available spaces—to guard against discrimination based on race, geography, academic status, religion, and other factors. However, a 1999 PFAWF/NAACP analysis of schools’ written random selection plans revealed that more than one third of the 88 participating schools were not complying with the law, and some had written plans granting illegal preferences to students based on religious, academic, and other grounds. For example, the Saint Alexander School’s plan states: “New students to Saint Alexander’s will be accepted in the following order: Siblings, *Catholic Students from Saint Alexander’s Parish, Catholic Students from other parishes, and then non-Catholic students*” [emphasis added].<sup>20</sup> DPI ordered all schools to delete such provisions from their selection plans in response to PFAWF/NAACP’s administrative Complaint, although proceedings as to several schools’ actual practices are continuing.<sup>21</sup>
- The Metropolitan Milwaukee Fair Housing Council (an independent agency that investigates compliance with civil rights laws) conducted an investigation of voucher admission practices in August 1999 on behalf of PFAWF and the NAACP following PFAWF’s analysis of voucher schools’ written selection plans. It found a number of schools charging illegal fees, engaging in improper screening and selection of applicants, and violating students’ religious freedom by discouraging parents from opting their children out of religious activities.<sup>22</sup>
- Based on these findings PFAWF and the Milwaukee NAACP filed a second Complaint with DPI in August 1999 requesting that DPI to take appropriate action. In April 2000, DPI found “probable cause” that seven schools were in violation of provisions regarding conditions on pupil admissions and school fees.<sup>23</sup> To date, it has settled with two schools, Nazareth Lutheran and Marquette University High School. The latter has agreed to change its application process in order to inform prospective voucher students that they did not have to take the schools selective entrance exam.

However, even Marquette’s final agreement emphasizes that voucher students may jeopardize their chances of admission if they do not take the entrance exam: “Among those rights for a student applying solely under the low income Choice program is the ability to avoid items 2 through 5 [the entrance exams] above. *However*, a student applying solely under the low income Choice program *may have a lower chance of admission*. Low-income parents wishing to maximize their son’s chances of admissions will want to apply under both processes” [emphasis added].<sup>24</sup> DPI’s conciliation efforts with the other schools are still pending.

- Approximately 1,900 students disappeared from the Milwaukee voucher program in the 2000-01 school year—about 24% of total enrollment. No information about those students is available because no one has to track these students’ reasons for leaving. Total enrollment in the voucher program for the 1999-2000 school year was 7,913.<sup>25</sup> Yet the number of voucher students returning this year (2000-01) was only 5,790.<sup>26</sup> Allowing for the small number of students graduating from high school,<sup>27</sup> approximately 1,900 students either left or had been asked to leave. This is not only a high attrition rate—it also points to the problems with a system in which schools do not have to report whether and why they have dropped students from their rolls. Prior to the legislature’s elimination of funding for evaluation, attrition rates for the program were between 23% and 44% in the first five years.<sup>28</sup>
- In Florida, many private school administrators stated that they would be reluctant to accept voucher students, citing lack of space and the inadequacy of the voucher amount as reasons for concern. Many schools have waiting lists and doubt there will be room for public school students.<sup>29</sup> The Florida Catholic Conference education coordinator noted that statewide, “a lot of schools are near or at capacity.”<sup>30</sup> State Rep. Carlos Lacasa (R-Miami), who has sponsored an expansion of the voucher program, acknowledged in February 2001 that only seven percent of the state’s private schools have agreed to accept vouchers.<sup>31</sup> The executive director of the Dade Association of Academic Non-Public Schools stated that “[m]ost of our private schools have tuition that’s more than the vouchers would pay. Do you think a private school that charges \$12,000 a year would be anxious to take a student for \$4,000?”<sup>32</sup>
- Other Florida private school administrators object to the provision that private schools must accept all eligible applicants for available seats. One Montessori school co-owner remarked that if “you have no say over who enters your school, vouchers will be a moot issue.”<sup>33</sup> Another headmaster said “I think there is a public perception that private schools are just sitting here waiting to take this money...But we, as a private school, are very proud of the way our school operates. A lot of it has to do with...being able to screen our students.”<sup>34</sup>
- The hotly-contested voucher initiative in California in November 2000 demonstrates that concerns about student selection are real. Under California’s Prop. 38, private schools would have been permitted to reject public school children for almost any reason, including prior academic record, religion, gender, learning disability, proficiency in English or ability to pay extra tuition and fees.<sup>35</sup>

### **Anti-Discrimination Protections and Civil Rights**

- Voucher advocate Clint Bolick has specifically opposed civil rights protections in proposed federal voucher legislation. In a memo to voucher allies in 1997, Bolick stated that he met with “representatives of the Catholic Conference who urged that the [proposed Washington D.C. voucher] bill contain the full panoply of federal civil rights regulations, including Title IX (gender) and disability provisions. *We argued strongly against those regulations.*”<sup>36</sup>

- In 1999, under pressure from some voucher advocates following the inclusion of religious schools in the expanded Milwaukee program, the Wisconsin Department of Public Instruction withdrew its requirement that participating schools sign an agreement to abide by the state's Pupil Nondiscrimination Act and a number of pupil rights protections.<sup>37</sup> The Act prohibits schools from denying admission based on, among other things, a person's sex, race, religion, sexual orientation or physical, mental, emotional or learning disability.<sup>38</sup>

State Rep. Christine Sinicki (D-Milwaukee) introduced a bill in the fall of 1999 that would hold participating voucher schools to the same anti-discrimination statutes as public schools—such as gender, sexual orientation, pregnancy or marital status.<sup>39</sup> The bill met with strong opposition from legislators who support the voucher program. In June 2001, Rep. Sinicki's bill was incorporated into State Senate Democrats' budget package, but was omitted from the final version of the budget passed by the legislature.<sup>40</sup>

- In 2001, Wisconsin State Senator Russ Decker (D-Schofield) also revisited this issue when he filed a motion with the Joint Finance Committee that would require all private voucher schools to comply with the same pupil nondiscrimination statutory requirements as public schools. The motion failed in May by a party-line vote, with all Democrats in favor and all Republicans in opposition.<sup>41</sup>

## Increased Racial and Economic Segregation

- While voucher proponents claim that vouchers will integrate private schools, evidence does not corroborate this. The Milwaukee-based *Rethinking Schools* compiled data on the racial breakdown of 6 participating Catholic schools (Catholic schools make up the majority of the participating religious schools). It found that white enrollment at each of the schools was between 64% and 97%, while white enrollment at public schools in the same areas were generally around 10% to 30%, with a low of 4.2%.<sup>42</sup>
- Two reports by pro-voucher advocates released almost simultaneously in 1999 claim that vouchers increase racial integration in private schools. However, closer examination reveals a different picture. For example, the Cleveland study claims that voucher students are more likely than public school students to attend a school whose racial composition is representative of the community-at-large. However, the authors base this claim on an apples-to-oranges comparison of Cleveland metropolitan data—which includes suburban schools—with the Cleveland district, where the voucher program is in effect. Using the relevant apples-to-apples comparison of Cleveland city school data and utilizing the guidelines set up under the desegregation order, Cleveland public school students are about *four times* more likely to attend integrated schools than voucher students.<sup>43</sup>
- School choice programs can lead to “creaming off the top”—both by parents with greater access to choice options and by schools that select their student population. A substantial number of studies finds that those who participate in voucher programs are more educated and have higher socioeconomic status than those who don't.<sup>44</sup> Even when restricted to low-income families—as is the case in Milwaukee—parents of participants were more educated than the control group.<sup>45</sup>

This in turn exacerbates segregation, as choosers with higher socioeconomic status (SES) tend to choose schools with high SES populations. Because higher SES schools usually improve achievement (whether due to peer effects, teaching conditions, or curriculum is debated), those students may benefit, while the concentration of students in lower SES schools will increase.<sup>46</sup>

- A similar creaming pattern was found in a recent study of the New York Metropolitan area, where school choice led to a large increase in racial segregation, primarily due to “white flight” to private schools or suburban public schools.<sup>47</sup>
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## ENDNOTES

- <sup>1</sup> “Statistical Analysis Report: Private Schools in the United States: A Statistical Profile, 1993-1994.” National Center for Education Statistics, US Dept. of Education OERI, July 1997, p. 74.
- <sup>2</sup> “Barriers, Benefits and Costs of Using Private Schools to Alleviate Overcrowding in Public Schools, Final Report.” U.S. Department of Education, Office of the Under Secretary, 1998, p.p. xi, 51.
- <sup>3</sup> “The Cleveland Voucher Program: Who Chooses? Who Gets Chosen? Who Pays?” A Report by the American Federation of Teachers, 1997, p. 25.
- <sup>4</sup> “Voucher plan leaves long list of broken vows: Program costs public schools, doesn’t raise private enrollment and leaves handicapped students behind,” *Akron Beacon Journal*, December 14, 1999.
- <sup>5</sup> *An Evaluation: Milwaukee Parental Choice Program*, Wisconsin Legislative Audit Bureau, February 2000, p. 26.
- <sup>6</sup> “An Evaluation: Milwaukee Parental Choice Program,” Wisconsin Legislative Audit Bureau, February 2000, Executive Summary, p. 26.
- <sup>7</sup> “An Evaluation: Milwaukee Parental Choice Program,” Wisconsin Legislative Audit Bureau, February 2000, Appendix VIII, State of Wisconsin Department of Public Instruction correspondence from John Benson, State Superintendent to Janice Mueller, State Auditor, January 25, 2000.
- <sup>8</sup> All private school statements are made available by EPIC (Empowering Parents for Informed Choices in Education). EPIC houses an online database for parents on information about Milwaukee private and public schools; the schools themselves are responsible for maintaining and updating their own data. Schools’ statements are in response to EPIC’s section “Categories of Students Which School Cannot Serve.”
- <sup>9</sup> EPIC Harambee school page, <http://epic.cuir.uwm.edu/EPIC/English/data/haramb.html>, accessed April 2001.
- <sup>10</sup> EPIC Emmaus Lutheran page, <http://epic.cuir.uwm.edu/EPIC/English/data/emmaus.html>, accessed April 2001. For definition of terms, see EPIC Terms and Definitions, <http://epic.cuir.uwm.edu/EPIC/English/terms.html>, accessed April 2001.
- <sup>11</sup> EPIC Gospel Lutheran page, <http://epic.cuir.uwm.edu/EPIC/English/data/gospel.html>, accessed April 2001.
- <sup>12</sup> EPIC Blessed Sacrament page, <http://epic.cuir.uwm.edu/EPIC/English/data/blesse.html>, accessed April 2001.
- <sup>13</sup> “Committee Rejects Cut in School Vouchers,” *Milwaukee Journal Sentinel*, May 31, 2001; Motion #883: Public Instruction—Choice, Charter and Open Enrollment, introduced by Senator Russ Decker, May 2001.
- <sup>14</sup> Press Release from the Office of State Rep. Christine Sinicki. “Sinicki Anti-Discrimination Law Could Pass in Budget,” June 13, 2001; Correspondence from Office of State Rep. Christine Sinicki, June 13, 2001.
- <sup>15</sup> Legislative Fiscal Bureau, “2001-03 Wisconsin State Budget: Comparative Summary Of Budget Provisions,” July 25, 2001. See section “Education and Building Program,” pp. 132-134. Available at: <http://www.legis.state.wi.us/lfb/2001-03budgetdocuments/ConferenceCommittee/ConferenceCommittee.htm>, accessed July 27, 2001.
- <sup>16</sup> Laws of Florida, Chapter 99-398, Committee Substitute for House Bill Nos. 751, 753 and 755.
- <sup>17</sup> John M. McKay Scholarships for Students with Disabilities Program, Fla. Stat. S. 229.05371
- <sup>18</sup> “Barriers, Benefits and Costs of Using Private Schools to Alleviate Overcrowding in Public Schools, Final Report.” U.S. Department of Education, Office of the Under Secretary, 1998, p.p. 44, 50.
- <sup>19</sup> “Barriers, Benefits and Costs of Using Private Schools to Alleviate Overcrowding in Public Schools, Final Report.” U.S. Department of Education, Office of the Under Secretary, 1998, p.50.
- <sup>20</sup> PFAWF/NAACP Administrative Complaint to the Wisconsin Department of Public Instruction, February 2, 1999, p. 3.
- <sup>21</sup> Correspondence from Charlie Toulmin, Administrator, Milwaukee Parental School Choice Program, Department of Public Instruction, to Milwaukee Parental School Choice Program Administrators/Principals regarding PFAWF/NAACP’s February 2, 1999 Administrative Complaint to the Wisconsin Department of Public Instruction, February 9, 1999.
- <sup>22</sup> PFAWF/NAACP Administrative Complaint to the Wisconsin Department of Public Instruction, August 19, 1999.
- <sup>23</sup> With regard to PFAWF’s Complaint findings regarding voucher students right to be excused from participating in religious activities, DPI did not disagree with the substance of the Complaint, but found “no probable cause” on the grounds that because DPI has not issued detailed instructions on compliance and that “the law on this point is less developed than in the areas of random selection and student fees,” the Department will try to clarify the record but will refrain from making probable cause conclusions of violations on this section of the complaint. However, it does note that the voucher program “may not be appropriate for all religious schools” if they are unable to exempt a student from religious activities. With regard to the affidavit regarding the Oklahoma Lutheran school cited above, DPI states: “It thus appears that Oklahoma Avenue Lutheran may fall into that category which if a parent chose to exempt his or her child from all such defined

activities, no true private school program would remain for that child. The department believes this school should be given an opportunity to further consider this point and review whether it should attempt to define religious activity in its curriculum so parents may have a choice.” State of Wisconsin Department of Public Instruction’s initial determination on probable cause Re: NAACP Milwaukee and PFAWF August 19, 1999 Complaint. April 28, 2000, pp. 19, 40-42.

<sup>24</sup> Agreement between Wisconsin Department of Public Instruction and Marquette University High School re: August 19, 1999 People For the American Way Foundation/NAACP Complaint, August 2000, p. 4.

<sup>25</sup> Wisconsin Department of Public Instruction (DPI), Milwaukee Parental Choice Program, MPSCP Facts and Figures for 1999-2000, <http://www.dpi.state.wi.us/dpi/dfm/sms/mpcfnf99.html> .

<sup>26</sup> Wisconsin Department of Public Instruction (DPI), Milwaukee Parental Choice Program, MPSCP Facts and Figures for 2000-2001, <http://www.dpi.state.wi.us/dpi/dfm/sms/mpcfnf00.html>

<sup>27</sup> As of the 2000-2001 school year, there were 7 high schools participating in the voucher program and two schools providing K4-12 education. (Milwaukee Parental School Choice Program - Participating Private Schools, 2000-2001 School Year, <http://www.dpi.state.wi.us/dpi/dfm/sms/schlst00.html> ). The combined enrollment for these 9 schools for the 1999-2000 school year is 895 (Number of Choice Students Enrolled by School in 1999-2000, <http://www.dpi.state.wi.us/dpi/dfm/sms/schnos99.html>). Assuming that one fourth of the students in the high schools and approximately 1/13 of the two K4-12 students graduated, that would equal about 170 students.

<sup>28</sup> Milwaukee Parental Choice Program, Fifth Year Report, John Witte, December 1995, p. 9.

<sup>29</sup> “Will There be Room in Collier Private Schools for Voucher Students?” *Naples Daily News*, February 13, 2000.

<sup>30</sup> “Vouchers Beyond Reach of Many Students,” *Miami Herald*, March 21, 1999.

<sup>31</sup> “House Panel Approves Vouchers,” *Miami Herald*, February 21, 2001.

<sup>32</sup> “Private Schools Spurn Tuition Voucher Plan: Reduced Tuition and More Governmental Control Lessen the Program’s Appeal to Private Educators,” *Miami Herald*, April 18, 2000.

<sup>33</sup> “The Voucher Experiment: A Matter of Choice? That Depends,” *St. Petersburg Times*, October 19, 1998.

<sup>34</sup> “Vouchers Beyond Reach of Many Students,” *Miami Herald*, March 21, 1999.

<sup>35</sup> Budget Brief: Are Vouchers the Way to Improve California’s Schools? California Budget Project, August 2000, p. 2; Facts At A Glance. No on Prop. 38 Campaign, April 2001, Available at [http://www.noVouchers2000.com/h/facts\\_at\\_a\\_glance.html](http://www.noVouchers2000.com/h/facts_at_a_glance.html)

<sup>36</sup> Clint Bolick, “Recent Developments” memo, Institute For Justice, 9/22/97. Emphasis added.

<sup>37</sup> “Single-sex Schools OK in Choice Plan, DPI Now Says,” *Milwaukee Journal Sentinel*, 7/31/98; Milwaukee Parental School Choice Program, Letter from State Superintendent John T. Benson, RE: Milwaukee Parental Choice—Student Rights

<sup>38</sup> Wis. Stat. 118.13.

<sup>39</sup> “Church/State Complexities,” *Rethinking Schools*, Volume 14, No. 2, Winter 1999.

<sup>40</sup> Press Release from the Office of State Rep. Christine Sinicki. “Sinicki Anti-Discrimination Law Could Pass in Budget,” June 13, 2001; Correspondence from Office of State Rep. Christine Sinicki, June 13, 2001.

Legislative Fiscal Bureau, “2001-03 Wisconsin State Budget: Comparative Summary Of Budget Provisions,” July 25, 2001. See section “Education and Building Program,” pp. 132-134. Available at: <http://www.legis.state.wi.us/lfb/2001-03budgetdocuments/ConferenceCommittee/ConferenceCommittee.htm>, accessed July 27, 2001.

<sup>41</sup> “Committee Rejects Cut in School Vouchers,” *Milwaukee Journal Sentinel*, May 31, 2001; Motion #883: Public Instruction—Choice, Charter and Open Enrollment, introduced by Senator Russ Decker, May 2001.

<sup>42</sup> “Race and Public/Private Schools in Milwaukee,” *Rethinking Schools*, Winter 1999/2000, p. 23.

<sup>43</sup> The court-ordered desegregation guideline determines that schools should be within 15% of the citywide average demographic, which is 70.4% African American. Schools with a student body between 55-85% African-American students would be in compliance. Using the data from the study seeking to prove greater integration (“Choice and Community: The Racial, Economic and Religious Context of Parental Choice in Cleveland,” by Jay P. Greene for the Buckeye Institute for Public Policy Solutions: Columbus, OH, November 1999), approximately 43% of public school students attend schools that fit this category, whereas only 11% of the voucher students do. For a complete analysis of the claims of increased racial integration in voucher schools, see “Apples vs. Oranges: A Critique of Two Flawed Studies of Vouchers & Integration,” by Elliot M. Minberg and Dwight R. Holmes, People For The American Way Foundation, December 23, 1999. Citation: pp. 2-3.

<sup>44</sup> “Educational Vouchers: Effectiveness, Choice and Costs,” Henry M. Levin, *Journal of Policy Analysis and Management*, Vol. 17, No. 3, 373-392 (1998), p. 379.

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<sup>45</sup> Milwaukee Parental Choice Program, Fifth Year Report, John Witte, December 1995, Exec. Summary p. 1.

<sup>46</sup> “Educational Vouchers: Effectiveness, Choice and Costs,” Henry M. Levin, p. 379-381.

<sup>47</sup> Levin, p. 381.