



Issue Brief

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Legislature Expands Risky Experiment of Education Privatization As Traditional Public Schools Suffer

Key Findings:

- **Florida is pursuing education privatization further and faster than any other state.** New laws in effect for the 2011-12 school year expand eligibility and funding for school choice programs. Florida already is the leader nationally in the number of students and tax dollars appropriated in voucher programs.
- **While they cut funding for public schools, legislators expanded every alternative to traditional public schools.** They directed tens of millions of dollars into programs that serve students in private schools and those operated by for-profit educational management companies. Some Florida policymakers want to go even further: establishing a voucher program that would give public money to parents to pay their child's tuition in private schools.
- Policymakers have expanded these choice programs despite a consensus among researchers that **voucher and charter school programs perform no better than traditional public schools.**
- **Evidence accumulates that choice programs hurt traditional public schools.**
- **These changes in the state's education system move Florida further away from providing a uniform system of free public schools, as the state constitution requires.**
- To increase the possibility that a new voucher program would be found constitutional, **the legislature has placed a proposed constitutional amendment on the 2012 ballot to remove language prohibiting public funding of private schools, including religious schools.**
- These programs and additional expansions constitute **a risky experiment with the education of Florida's 2.6 million public school students and with the schools that serve them.**

Florida Public Education Today

Florida's Constitution sets a high standard for the state's public school system:

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...¹

The requirement that the state make "adequate provision" for a "high quality" system – considered one of the strongest constitutional clauses concerning education among the states,² was enacted by voters as an amendment to the constitution in 1998.

Since then, two lawsuits alleging failure to meet constitutional requirements have failed.³ Another, specifically alleging that the state has violated the constitutional language above, is pending.⁴

Floridians who believe the state has failed in its constitutional duty to make "adequate provision" for "high quality" schools cite, among other points, four straight years of budget cuts to public schools.⁵ These budget decreases culminated in a \$1.4 billion reduction in the 2011 legislative session, about 8 percent lower than the previous year. That reduced per-student funding by about \$550.⁶ Since 2007-08, the per-student allocation is down 12 percent.

Even before the most-recent budget cuts, Florida ranked near the bottom of the states in K-12 funding⁷:

- 47th in per capita expenditures by state and local governments for all education
- 50th in state government spending for all education per \$1,000 of personal income
- 36th in per capita expenditures by state and local governments for public K-12 schools
- 41st in current expenditures for public K-12 schools per student
- 48th in current expenditures for public K-12 schools per \$1,000 of personal income

That low level of funding is provided to educate 2.6 million prekindergarten-12th grade students. Enrollment is growing again, after two years of declines related to the recession.⁸ The student population has changed with the demographics of Florida residents. "Minority" students, mainly Hispanic and African-American, became the majority of public schools students in 2003-04. Growth in minority student enrollment continues to outpace growth in white students.⁹

Florida's public school students in the aggregate are increasingly poor. In 2010-11, 56.1 percent of were eligible for free- or reduced price lunches, an 8 percent increase from 2008-09 and a rise of about one-

third in the last 10 years.¹⁰ Only the District of Columbia and 10 other states, mostly in the South, have higher rates of free and reduced-price lunch eligible students than Florida.¹¹

A few scattered public schools existed in the decades following Florida’s statehood in 1845. The state’s legislature provided for a system of free public schools (although with limited opportunity for blacks) in

Since their beginnings, public schools have filled the role of educating all students, regardless of their wealth or status in society, alongside others of different backgrounds.

1869 and established a state board of education and a state superintendent for public instruction – but with insufficient funding.¹²

Since their beginnings, public education systems in the nation have filled the role of providing education for all students, regardless of wealth or status in society. Advocates for public schools thought it important that students learn alongside

others of different backgrounds. They believed too that to make democracy work, all children needed to learn to read, write, and do math.

The state’s public school system, now in existence almost 150 years, has been changed substantially in the last 15 years. Among the new challenges it faces are the proliferation of school choice programs.

Legislature Expands All Choice Programs and Considers More

While decreasing the budget for public schools, the legislature in its 2011 session expanded four taxpayer-financed options to traditional public schools, each generally held less accountable by the state than traditional public schools: charter schools, the McKay Scholarships for Students With Disabilities Program; the Florida Tax Credit Scholarship program, and virtual online schools.

The McKay and tax credit programs allow state funds to be spent for private school tuition. Charters and virtual schools permit for-profit companies to receive public money for school management, diverting money from traditional public schools.

These Florida school choice programs already were the most extensive in the nation before they were expanded this year.¹³

Governor Rick Scott and some legislative leaders – aided by a new commissioner of education known as a strong choice advocate¹⁴ – have said they intend to push for a voucher bill that would further direct tax money away from public schools and toward private ones,¹⁵ a school-privatization goal of some for generations.

A proposed voucher program would expand tax-funded aid to more students in private schools and home education – not just to low-income students and those with disabilities.

They propose the creation of a voucher system (or “Education Savings Accounts”) that would expand publicly funded but privately operated school choice programs to more students in private schools or in

home education – beyond the current eligible populations of low-income students and those with disabilities.¹⁶

The voucher proposal, if enacted, would add another strain to a system already required to absorb major new mandates from the legislature: for example, creation of a system of merit pay for teachers, revisions to the Florida Comprehensive Assessment Test (FCAT), increased high school graduation requirements, creation of end-of-course exams, and provision of district-level online schools. School districts are expected to accomplish these mandates not only without new funding, but also despite budget cuts.

Florida Provides More Choice Options Than Any State

Florida enrolls about 54,000 of the 200,000 students receiving vouchers in the nation today, and the state has appropriated more money for vouchers than any other state.¹⁷ Florida also ranks third in the nation in charter school enrollment¹⁸ with about 154,000 students in charter schools.¹⁹

Combined charter school and voucher enrollments in Florida total more than 200,000 students. They are a relatively small portion of the 2,650,000 students expected to enroll in public schools in the 2011-12 school year,²⁰ but their numbers are growing.

In addition to K-12 choice programs, parents of the 150,000 four-year-olds enrolled in the Voluntary Prekindergarten Program,²¹ funded with tax dollars, are provided the choice between either school-based or private preschool programs.

School Options Include Private Schools and Home Education

Alternatives to traditional public schools include the two oldest: home education and private schools. Private schools that don't participate in the state's two voucher programs receive no public funding, but those in voucher programs receive public funds for payment of part or all of tuition. Home-schooled students may receive the benefits of relatively small amounts of public dollars.

Home Education

Home education, first authorized as a choice for Florida parents in 1985, is used by almost 70,000 students in 48,000 families.²²

Florida law requires home-schooled students to meet only a few requirements. Parents must notify the district school superintendent of their intention to home-school their child; maintain a portfolio of educational records; and provide an annual evaluation of student progress from either an assessment by a certified teacher or administration of some national or state standardized test. Home-education students may receive testing and evaluation services for exceptional students at publicly funded diagnostic and resource centers, and they can participate in the tax-funded online school.²³

Private Schools

Private schools enroll about 306,000 students in Florida currently, down from 381,000 in 2003-04. The number of private schools also has dropped, from 2,231 to 2,055,²⁴ perhaps as a consequence of the recession.

Private schools are not under the jurisdiction of the Florida Department of Education.²⁵ Nor does the legislature “regulate, control, approve, or accredit private educational institutions”²⁶ or require them to be accredited.²⁷ Private schools are not required to hire certified teachers, and students in private schools are not required to take the FCAT or other standardized tests.

A private school may be parochial, religious, denominational, for-profit, or nonprofit.²⁸ State law imposes limited requirements: that the owners undergo fingerprint and background checks and provide information to the Florida Department of Education for an annual private school survey.²⁹ Unless private schools participate in one of the state’s voucher programs, they don’t receive funding from the state. But those participating in the tax-funded disabilities and tax credit programs must comply with a few additional requirements.

For-profit private schools – like Sylvan Learning Centers or small childcare centers – can earn profits from tuition payments from parents. Most private schools, however, are not-for-profit.³⁰

Choice Programs for Students in Public Schools

The legislature in the 2011 session expanded each of the five publicly funded choice programs discussed below. Most are treated differently from traditional public schools. Some operate free from most of the state education laws and regulations that apply to traditional public schools and operate outside the state’s school accountability and school grade system. Students in some programs are not required to take the Florida Comprehensive Assessment Test (FCAT).

All of the alternatives to traditional public schools allow for public money to be directed to either private schools or to for-profit education management companies.³¹

Critics of these choice programs raise concerns about redirecting public funds to private companies that exist to make a profit and therefore have an incentive to operate as inexpensively as possible, regardless of what is needed to educate children best. They also believe that money retained in profits by education management organizations should instead be directed to traditional public schools. Supporters argue that for-profit education companies can take advantage of economies of scale and invest in innovations not often developed in traditional public schools.³²

Charter Schools

Charter schools are non-sectarian public schools, funded the same way as traditional public schools, but exempt from most laws and regulations that apply to other public schools. Charter schools are required to hire certified teachers, however, and all but the smallest are subject to the state’s accountability system, including receiving school grades based in part on results of the Florida Comprehensive Assessment Test.³³

Charters, essentially contracts between a school district and a nonprofit, can’t be granted to for-profit companies, but they can be operated by private, for-profit educational management organizations (EMOs)³⁴ such as Academica, Imagine Schools, and Charter Schools USA, so called “education entrepreneurs”. Florida is one of the leaders in charter schools operated by for-profit companies – 145 in 2009-10, second in the nation.³⁵

Contracts between a sponsor of a charter school and an education management organization go beyond the typical outsourcing used by school districts for years, for janitorial services or transportation, for example. EMOs sign contracts with the sponsors of the charter schools to receive fees for assuming executive authority over the school, often including recruitment and admission of students, the curriculum, and hiring of teachers.^{36, 37}

Although many charters provide high-quality education, others have struggled. Since charters were authorized in 1996, 179 charter schools have closed,³⁸ some shut down because of financial

Major Choice Programs

School/ Program	2010-11 Enrollment	Tax Money to Private Schools/ Companies?	Expanded in 2011-12?
Charter Schools	154,000	Yes; to education management companies	Yes
McKay Scholarship	22,000	Yes	Yes
Tax Credit Scholarship	32,910	Yes	Yes
Opportunity Scholarship	1,431	No	Yes
Florida Virtual School	About 100,000 earning credit	Yes	Yes

mismanagement.³⁹

Fifteen charters were among the 31 Florida schools receiving a school grade of F for 2010-11, making charters seven times more likely to receive an F than traditional schools. Charters also were more likely to receive a D grade.⁴⁰

In the 2010-11 school year, 459 charter schools enrolled more than 154,000 Florida students.⁴¹ A law

passed in the 2011 legislative session expands the number of charter schools and enrollment. Charters designated “high-performing” can open additional schools and add additional grades and branches.⁴² Evidence already exists that more charters operated by for-profit companies are on the way.⁴³ Several state legislators have ties to charter schools or for-profit management companies.⁴⁴

The composition of charter schools differs from traditional public schools. The student body in one out of eight charter schools is 90 percent or more of a single race or ethnicity, compared to one out of 12 traditional public schools.⁴⁵

McKay Scholarships for Students with Disabilities Program

The McKay program, created in 1999, provides tuition vouchers to about 22,000 students with disabilities who have an Individual Education Plan (IEP). The vouchers use public money to pay for private schools, including religious schools, if the parents withdraw their children from public schools.⁴⁶

The pool of eligible students was expanded in the 2011 legislative session to include those with “504 plans,” developed for students with less serious or short-term disabilities. More than 51,000 students have 504 plans and could be eligible for the McKay vouchers.⁴⁷ Costs of the McKay vouchers fall within the Florida Education Finance Program based on the program cost factor the student would generate in a traditional public school.⁴⁸ Costs to the state for McKay students in 2010-11 totaled almost \$149 million.⁴⁹

Private schools receiving public funds for McKay scholarship students must have employees submit to fingerprinting and background checks, meet safety regulations, and demonstrate fiscal soundness.⁵⁰ The Department of Education has limited authority to conduct site visits.

Less regulated than charter schools, some private schools in the McKay scholarship program have faced questions about fraud and quality, leading the chair of the Florida Senate Committee on Education Pre-K-12 to express concern about the lack of scrutiny in the program.⁵¹ In another recent case, a private school receiving McKay scholarship funds closed after a newspaper story found that the principal had a felony record and that some coursework completed by transfers from the school was not accepted in public schools or universities.⁵²

Florida Tax Credit Scholarships Program

The tax credit program is a voucher program that uses money that ordinarily would be owed in taxes to the state to be directed instead to private schools. Contributors receive state tax credits for funds donated to nonprofit scholarship funding organizations that use the money for tuitions for low-income students.⁵³

In 2010-11, about 33,000 students received funding for tuition in 1,097 private schools. Of those schools, 961 were religious and 27,954 of the students attended religious schools.⁵⁴ Scholarship vouchers were about \$4,100 per student in 2010-11,⁵⁵ below the \$6,268 cost per student in traditional public schools.

The legislature expanded the program in the 2011 session by increasing the cap on tax credits from \$140 million annually to \$175 million and by increasing the value of a company's tax credit from 75 percent of tax liability to 100 percent.⁵⁶ This means that \$175 million in tax liabilities will never go into the state treasury, but will be sent to private schools instead.

The only scholarship funding organization operating in the state – Step Up for Children – wrote the bill (HB 165) that expanded the program.⁵⁷ Step Up for Students is linked to a network of pro-voucher organizations. Its chairman and creator, John Kirtley, is also vice chairman of American Federation for Children, a national organization funded primarily by conservative advocates for school vouchers and scholarship tax credit programs.⁵⁸ He is chair of the Florida Federation for Children, registered as an election communications organization in Florida, which has spent about \$898,000 since mid-2010 on political campaigns. American Federation for Children's political action committee provided the bulk of the funds to the Florida Federation for Children.⁵⁹

The effectiveness of the private schools that tax credit students attend has not been established.

Students receiving tax credit scholarships are not required to take the FCAT, but a national test instead. Participating private schools are not subject to school grading and generally have the same requirements as schools participating in the McKay scholarship program.

The effectiveness of the private schools with tax credit students has not been established. An annual report commissioned by the Florida Department of Education reported in 2010 that “the best interpretation” of student learning data is that “students who have transferred to the private sector using a FTC Scholarship appear to be keeping pace with the gains observed in the public sector.”⁶⁰

Supporters cite a state study that found the tax credit program saved \$36.2 million in 2008-09 because the value of the voucher is less than funding for a student in a public school.⁶¹ But another researcher finds that conclusion suspect because it assumes that 95 percent of recipients would have attended public schools without the scholarship. That assumption was “essentially pulled out of thin air,” the researcher said.⁶²

Florida Virtual School

In addition to expanding other choice programs, the legislature acted in 2011 to add enrollment in the Florida Virtual School (FLVS), a public online school providing courses to private school and home-

schooled students as well as public school students. The new law allows FLVS to expand courses to elementary school, requires that future high school students take an online course to earn a diploma, and provides a mechanism for the creation of virtual charter schools.⁶³ Students in grades K-1 and 6-12 now can enroll in the FLVS Full-Time program regardless of whether they were in public schools previously. That allows private and home-schooled students to participate in publicly funded online education.⁶⁴

FLVS partners with Connections Academy for the FLVS Full-Time program.⁶⁵ Connections is a for-profit company that operates public schools (such as charters) under management contracts.⁶⁶ Connections is one of the two companies managing virtual schools.⁶⁷

FLVS courses are provided to about 25,000 “full-time equivalent students,”⁶⁸ or about 122,000 different students taking half-credit courses. In 2010-11, 25 percent of FLVS students were home-schooled and 6 percent attended private schools.⁶⁹ FLVS reports that it saves the state more than \$2,500 per full-time student.⁷⁰

A third of students taking Florida Virtual School courses are home-schooled or attend private schools.

The 2011 legislation also requires that every school district offer “virtual education” or “digital learning” to every student. Options for a school district include operating its own virtual school, although no funding was provided for that purpose,⁷¹ or directing students to FLVS or virtual

charter schools.

Opportunity Scholarships: A Choice, But for Public Schools Only

The Florida Supreme Court stopped another choice program in 2006, ruling that providing vouchers for private schools violated the Constitution. As created in 1999, the program allowed students in “failing” schools to transfer to either another public school or to a private school. The public school choice option remains after the court decision, but involved only 1,431 students in 2009-10 school year.⁷²

As with the other choice programs, the legislature expanded the public school option, increasing the number of students who can transfer to another school by designating more schools as “failing”.^{73,74}

In doing so, however, the law set up an incongruous system in which students from a high school rated C or better in the annual school grade can transfer to a school with a lower grade. This is a result of the law identifying high schools as failing solely on the high school’s scores on the Florida Comprehensive Assessment Test (FCAT), not partially on other factors, as with the case with elementary and middle schools.⁷⁵

Supreme Court's 2006 Decision on Vouchers: They Undermine a Uniform System of Public Schools

In the 2006 *Bush v. Holmes* case, the Florida Supreme Court ruled that using tax dollars to pay tuition to private schools violated the constitutional language that the state provide “a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.”⁷⁶

The court said the Opportunity Scholarship Program “diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida’s children. This diversion not only reduces money available to the free schools, but also funds private schools that are not ‘uniform’ when compared with each other or the public system.”⁷⁷

Legislature Proposes Ending Ban on Aid to Religious Groups

In the 2011 legislative session, a bill passed by one Senate committee but subsequently not acted upon would have allowed the use of public money for an “Education Savings Account Program” for private-school and home-schooled students.

Under the program, parents would be given tax funds equal to 40 percent of basic student funding to pay for private-school tuition or to contribute to the student’s college savings plan. The bill capped enrollment in the program in the first year to whatever amount of money was appropriated.⁷⁸

One impact of the bill would be to move eligibility for vouchers beyond low-income students and those with disabilities. More tax funds would be diverted to private schools whether or not the parents needed the money and even if their children were already attending private schools. “Private religious institutions could benefit from receiving more public funds,” a legislative staff analysis review said.⁷⁹ Although the bill stalled, the sponsor said he intended to file it again in the 2012 session.⁸⁰

In its analysis of the bill, Senate staff said that “the provisions of this bill may be constitutionally challenged.”⁸¹ The analysis cited the 2006 Supreme Court ruling and also a First District Court of Appeals opinion. The latter decision found that opportunity scholarships were unconstitutional because they violated constitutional language that says “no revenue” of the state can be spent “directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

To remedy the latter problem, the legislature placed on the general election ballot in November 2012 a proposed constitutional amendment that would repeal the “no aid” provision. The Florida Education

Association and other parties have filed suit against the proposed amendment, arguing that the ballot summary approved by the legislature is misleading.⁸² “This is a shady way of opening the door for school vouchers for all,” the president of FEA said.⁸³

Origins of the Voucher and Choice Movement and the Rationale for Them: Privatizing Public Education

Conservative economist Milton Friedman is considered the founder of the voucher movement, first advocating it about 1955. He said privatizing education was needed in a “radical reconstruction” of schools because of defects in the public education system. In an essay titled “Public Schools: Make Them Private”⁸⁴ Friedman wrote that

a radical reconstruction can be achieved only by privatizing a major segment of the educational system--i.e., by enabling a private, for-profit industry to develop...that will provide a wide variety of learning opportunities and offer effective competition to public schools....The most feasible way to bring about a gradual yet substantial transfer from government to private enterprise is to enact in each state a voucher system that enables parents to choose freely the schools their children attend.

That belief retains support today. Some conservative foundations publicly support ending public schools, signing a statement that says, “I proclaim publicly that I favor ending government involvement in education.”⁸⁵ Another advocate of vouchers said this year that “Our ultimate goal is to shut down public schools and have private schools only, eventually returning responsibility for payment to parents and private charities.”⁸⁶

Some proponents of vouchers and other choice programs offer other arguments supporting the need and benefits of such programs. For example: Parents know best what their children need, so they should have their choice of schools; voucher and choice programs save tax money; and they force public schools to improve by creating competition for students.⁸⁷

Research on Choice Programs Finds Disappointing Results

An earlier rationale – that choice programs raise student achievement – is now offered less frequently, in part because of disappointing results in major studies. To date there is little indication students in choice schools perform any better on standardized tests than students in traditional public schools, leading to misgivings from some choice advocates:

[S]everal early champions of choice have publicly expressed their disillusionment. A few years ago, the Manhattan Institute's Sol Stern – author of *Breaking Free: Public School Lessons and the Imperative of School Choice* – caused a stir when he backed away from his once-ardent support. Howard Fuller, an architect of Milwaukee's school-voucher plan and the godfather of the school-choice movement, has wryly observed, 'I think that any honest assessment would have to say that there hasn't been the deep, wholesale improvement in [Milwaukee Public Schools] that we would have thought.'⁸⁸

Another voucher proponent concluded that "results in Milwaukee were not 'as startlingly positive as advocates originally hoped....' Likewise, [he] said 'the jury on charter schools is still out.'"⁸⁹

Many studies have found little if any difference in student learning from either vouchers or charter schools compared to traditional public schools.

Many other studies have found little if any difference in student learning from either vouchers or charter schools.^{90, 91, 92, 93, 94, 95}

A few choice advocates argue against the consensus.⁹⁶ They cite studies by Stanford University professor Caroline Hoxby of charter school students in New York City and another in 2004 that found positive impacts of charters on student learning.⁹⁷

Also cited by advocates are a 2008-09 report commissioned by the Florida Department of Education that found that charter school students generally recorded higher FCAT scores than students in traditional schools.⁹⁸ The study concluded only that charter schools offered "a viable option" for parents and policymakers.

A Rand Corporation study found some evidence that charter school students, although not showing much difference in learning than students in traditional schools, may be more likely to go to college. It's not known whether students (and their parents) who choose to attend a charter school would have been more likely to seek higher education anyway.⁹⁹

Do Choice Programs Hurt Public Schools?

Advocates say that choice programs don't hurt traditional public schools, but instead help by making them improve to compete for students. But that argument is questioned. For example, the chair of an education committee in the Florida Senate fears the impact of a new voucher program. "I'm not here to destroy public schools," he said.¹⁰⁰

In addition, the Florida Supreme Court already concluded in 2006 that a voucher program diverts "public dollars into separate private systems parallel to and in competition with the free public schools" and "reduces money available to the free schools."¹⁰¹

The McKay, tax credit, and FLVS programs divert tax dollars outside of traditional public schools.

Similarly, charter schools pay public funds to allow for-profit educational management companies to receive public funds.

Another evidence of choice programs hurting traditional public schools: The legislature in 2011 gave the entire \$55 million available for school construction, repairs, and maintenance to charter schools. None of those tax dollars were allocated for traditional public schools.¹⁰²

The legislature also increased by \$35 million funding for the Florida tax credit program, sending to private schools money that may otherwise have been appropriated to public schools.

Conclusion

Florida's push for more and more school choice increasingly disrupts the traditional public school system upon which the nation and Florida have relied since the 19th century. While public school funding shrinks, choice programs and the tax dollars appropriated to them have expanded, with less oversight than provided to public schools.

Little evidence exists that choice programs are better than public schools. Nevertheless, Florida policymakers have enacted the largest array of such programs in the nation. Choice advocates increasingly push education privatization – including creation of a universal voucher program that would provide for any child in Florida to use tax dollars to pay private schools and for-profit companies.

Expanding choice programs on this scale amounts to a risky experiment, attempted by no other state, with Florida tax dollars, its public schools, and the children who attend them.

This report was researched and written by Alan Stonecipher.
The report and its findings do not necessarily reflect the views
of the FCFEP Board of Directors.

Endnotes

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