



North Dakota Legislative Council

Prepared for the Education Committee

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SCHOOL CHOICE MODELS STUDY - BACKGROUND MEMORANDUM

Section 13 of Senate Bill No. 2284 (2023) ([appendix](#)) directs the Legislative Management to study nationally implemented school choice models for K-12 schools, including charter schools, magnet schools, private schools, voucher systems, and home schools. The study must include:

- A review of regulations implemented by state regulatory agencies to ensure accountability for various school choice models;
- A comparison of nontraditional school choice models implemented by other states;
- An analysis of the impact of enrollment fluctuation, including the impact on state aid;
- A review of the state's student population and the enrollment capacity and tuition costs of nonpublic schools; and
- A review of the services nonpublic schools are able to offer students with special needs.

RELATED 2023 LEGISLATION

House Bill No. 1532 (2023)

House Bill No. 1532 (2023) would have established an educational reimbursement program to reimburse qualified schools for the tuition costs of program participants. House Bill No. 1532 would have operated as a traditional school voucher program. The state would have provided a specific amount of funding directly to an approved nontraditional school to be used to offset tuition costs for participants. The program would have required:

- Payments to be used solely to offset tuition costs in an amount up to 30 percent of the per student payment rate;
- Eligible families to demonstrate household incomes equal to less than 500 percent of the federal poverty level;
- The Superintendent of Public Instruction to administer the program and refer to the Attorney General any evidence of fraud; and
- The State Auditor to audit program funds disbursed to qualified schools.

Governor Burgum vetoed the bill on April 21, 2023, and the veto was sustained. In his veto message to the Speaker of the House, Governor Burgum stated he supports school choice but declined to sign the bill because North Dakota's school choice legislation should be more comprehensive, citing a lack of meaningful incentives to expand nontraditional K-12 schools, public transparency, accountability standards, and effective measures for rural areas. The Governor suggested a more robust school choice bill could be drafted during the interim to address these issues and promote competition and innovation, naming Arizona and Iowa as model states.

NONTRADITIONAL SCHOOL CHOICE MODELS

A variety of school choice models exist with the same overarching goal of allowing every family to choose a K-12 school that best fits the needs of their children, whether that be a public school or a nontraditional school.

Charter Schools

A charter school operates under a performance contract between the charter school and the authorizing entity, such as the state or an approved government entity. Charter schools commit to obtaining specific, measurable educational objectives in exchange for a charter that allows a school to operate with greater autonomy. A charter school may have more freedom in curriculum design, focusing on content areas such as Science, Technology,

Engineering, and Math (STEM) education, the arts, or language immersion, or tailoring instruction for students with autism. Some states permit more flexibility for staffing charter schools, including employing uncertified educators.

A charter school is publicly funded. Despite greater freedom in operations and management, as a public school, a charter school must adhere to regulations imposed on public schools. For example, charter schools must meet academic and financial standards, comply with the Individuals with Disabilities Education Act, and may not have a religious affiliation or charge tuition.

Minnesota was the first state to pass a charter school law in 1991. Forty-five states, in addition to Washington, D.C., Guam, and Puerto Rico, allow charter schools. Montana, North Dakota, South Dakota, Nebraska, and Vermont are the only states without authority for charter schools.

The availability of charter schools may lead to the closure or consolidation of rural schools already struggling with low enrollment and tight budgets. Rural charter schools make up 11 percent of all charter schools nationally.

Magnet Schools

Magnet schools emerged in the 1960s as a response to school segregation protests and the civil rights movement. School choice provided a model to address educational inequality without forcing desegregation.

Magnet schools are founded on five pillars, which include diversity, innovative curriculum and professional development, academic excellence, leadership and family, and community partnerships. Magnet schools offer a special curriculum capable of attracting substantial numbers of diverse students and may focus on a particular academic subject, language immersion, the arts, gifted study, or an instructional approach like Montessori.

Magnet schools are public schools and must adhere to the same funding structure and regulations as public schools. In addition, magnet schools may receive federal grants from the Magnet Schools Assistance Program, authorized in 1965. The purpose of the program is to voluntarily desegregate communities by providing funding to promote diversity, improve student success, and sustain long-term high performance that continues after federal funding ceases.

Private Schools

Private schools rely on tuition, private grants, and donations for funding. Because private schools do not receive government funding, private schools operate under different curriculum and personnel standards. Private schools are not required to enroll every student who wishes to attend, may expel a child for behavior or academic performance, and are not required to comply with government regulations like the Individuals with Disabilities Education Act, which requires a school to provide an individualized education program to students in need of special education services. Private schools often are associated with religious institutions.

Voucher Systems

The school voucher model first emerged in the 1980s. A school voucher is a certificate representing government funding that may be used for educational costs at any approved school a parent chooses. School vouchers may provide an opportunity for a student living in a low-performing public school district to attend a high-achieving private or religious school instead, extending the free market of choice to education for all students by subsidizing the cost of tuition. Proponents of voucher systems believe that school choice creates better schools through competition. However, because private schools are not subject to the same requirement as public schools to admit every child, the beneficiaries of the program may remain limited to a subset of students, based on standards for admission.

There are a variety of voucher programs:

- In traditional voucher programs, states give parents or the selected school a voucher worth a certain amount of public education funding, usually less than the per student state aid payment, to put toward tuition for an approved private school.
- In an education savings account (ESA) program, states deposit educational funds in accounts for parents to spend on educational costs, including home schooling curriculum, private tuition, tutoring, or approved therapy.
- Another type of voucher program involves tax credit scholarships. States provide tax credits for taxpayers who donate to a scholarship organization of the taxpayer's choice and the scholarships are distributed to eligible students to use for tuition at a private school.

The Education Commission of the States reported in 2021 that 16 states and the District of Columbia had voucher programs, 6 states had ESA programs, and 19 states had scholarship tax credit programs. Key elements to consider in implementing voucher programs are funding mechanisms, eligibility conditions, and appropriate scholarship or voucher amounts. Some states limit voucher programs to students meeting certain criteria, including living beneath income thresholds, in low-performing school districts, or with a disability.

Some states use the federal poverty guidelines issued by the United States Department of Health and Human Services as a metric for determining eligibility. For 2023, the poverty guidelines for the 48 contiguous states and the District of Columbia are as follows:

Persons in family/household	Poverty guideline
1	\$14,580
2	\$19,720
3	\$24,860
4	\$30,000
5	\$35,140
6	\$40,280
7	\$45,420
8	\$50,560

To qualify for free or reduced-price meals, another indicator of eligibility in some states, a household must make equal to or below 130 percent or 185 percent of the federal poverty guideline, respectively.

School vouchers tend to benefit students who live in communities where nontraditional schools exist. For instance, a rural area may have only one public school available, rendering a voucher program ineffective. However, increased access to virtual schools provides more opportunities for students, including rural students, to take advantage of voucher programs.

Open Enrollment

Open enrollment is a school choice policy that permits a student to attend a public school other than the student's school of residence. House Bill No. 1376 (2023) provides a parent may file an open enrollment application with the school board of the parent's choice. North Dakota Century Code Section 15.1-31-06 directs each school district to set standards for acceptance and denial of open enrollment applications. Although the school district may admit or deny an application based on the school district's predetermined set of criteria, House Bill No. 1376 provides the only reason a school board may refuse to consider an open enrollment application is if enrollment has reached maximum capacity.

As a result of House Bill No. 1376, a school of residence may not deny enrollment to a student who wishes to attend an approved virtual school. The bill also provides that a student or family member may not receive gifts in exchange for enrollment in a virtual school.

Virtual Schools

North Dakota Center for Distance Education (NDCDE) is the state-sanctioned virtual school, funded by the state and administered by the Superintendent of Public Instruction, pursuant to Section 15-09-06, as amended by Senate Bill No. 2269 (2023). The North Dakota Center for Distance Education provides virtual courses to over 4,000 students. School districts that enroll students at NDCDE pay the associated enrollment fee but are not required to pay the foundation aid payment for the student.

Another virtual school is Yellowstone Virtual Academy, which was created by Yellowstone School District by contracting with Tech Trep Academy to provide virtual instruction for its students. Tech Trep is a K-8 education program that is free for students. Students who wish to participate in Tech Trep must enroll as public school students with a school district like Yellowstone School District. Tech Trep provides virtual instruction to students in exchange for an agreed upon percentage of the state aid payment for each student. With the passage of House Bill No. 1376 (2023), school districts of residence may no longer deny a student open enrollment in a virtual school, like Yellowstone Virtual Academy.

Home Schools

Home schooling is becoming more popular and is permitted by law in all 50 states. Home schooling offers parents flexibility to tailor curriculum and instruction to fit the educational needs of their children and promote personal values. The primary reasons driving the selection of home schooling include:

- Concern about school safety, drugs, or negative peer pressure;

- A desire to provide moral instruction, religious instruction, or a nontraditional approach to education;
- Emphasis on family life together;
- Dissatisfaction with academic instruction at other schools; and
- Special needs, a physical or mental health problem, or a temporary ailment.

Chapter 15.1-23 governs home education. If a parent wishes to home school his or her child, the parent must provide a statement of intent to the superintendent of the child's school district of residence each year. A supervising parent must teach the subjects required by law and keep records of the child's academic progress. Additional monitoring is required if the supervising parent does not have a high school diploma or general education development diploma or if the child scores below the 50th percentile on a standardized assessment. A child may receive a diploma from the child's school district of residence, the Center for Distance Education, or an approved nonpublic high school if the child has met the school's requirements through home education.

Senate Bill No. 2369 (2023), which would have granted qualified parents whose children attend a nonpublic school or home education program a property tax credit, failed to pass the Senate.

SCHOOL CHOICE IN OTHER STATES

A number of states passed legislation updating or implementing school choice in 2023. While school choice is a nationally trending legislative topic, opposition has halted its expansion in some states. For example, California, Georgia, Texas, and Virginia saw ESA legislation fail in 2023, and Illinois's scholarship-based school choice pilot program is slated to expire at the end of 2023.

Arizona

Arizona offers open enrollment, magnet schools, charter schools, home school, and five voucher programs, which include an ESA program and four different tax-credit scholarship programs.

Arizona's ESAs are funded at 90 percent of the state's per student base funding. Students with special needs receive funding in addition to the base funding according to their needs.

All students are eligible to receive at least one tax-credit scholarship, although less than 10 percent of students participate in the scholarship programs. The scholarships are less than \$2,000 on average, but students may be eligible for more than one scholarship. Some of the scholarships only are available to students who meet certain criteria based on family income, special needs, or foster care.

Florida

Florida expanded its ESA program in 2023, eliminating the income-related restrictions and maximum enrollment requirements. As a result, all students in the state are eligible to participate in the program.

Florida also offers tax credit scholarships granting priority to families based on a two-tier system. The top priority tier is limited to families with a household income of up to 185 percent of the income priority guidelines, with the second tier prioritizing families with a household income of up to 400 percent of the income priority guidelines.

Students in Florida also may attend charter schools, magnet schools, home school, or virtual schools.

Idaho

All K-12 students in Idaho are eligible to apply for an educational grant in the amount of \$1,000 per child, up to \$3,000 per family, for approved educational expenses, including textbooks, headphones, flashcards, and tutoring services. Awards are prioritized for families based on income, with families earning \$60,000 in annual gross income or less receiving top priority. Idaho also passed legislation in 2023 permitting open enrollment.

Indiana

Indiana expanded its school voucher program during the 2023 legislative session. The amount of the voucher per student is the cost of tuition and fees or 90 percent of the per student state funding payment, whichever is less. The program is available to students whose household has an annual income of not more than 400 percent of the amount to qualify for the federal free and reduced-price lunch program. The state also provides a tax credit equal to 75 percent of a donation made to the scholarship granting organization.

Iowa

In Iowa, families have many options to choose from, including charter schools, open enrollment, home schooling, participation in the newly enacted ESA program, or applying for scholarships from school tuition organizations. To receive a scholarship, the student's family must have an income of 400 percent of the federal poverty guidelines or less. Taxpayers who contribute to student tuition organizations, 501(c)(3) organizations, are eligible for a tax credit equal to 75 percent of the contribution.

Montana

Montana passed legislation in 2023 permitting open enrollment. Schools may set standards to accept or deny a student based on student grades, behavior, and attendance or enrollment caps.

Nebraska

Nebraska recently passed the Opportunity Scholarships Act, creating a \$25 million tax credit scholarship program, which will eventually become a \$100 million program. A taxpayer may direct half of what the taxpayer owes in income taxes, up to \$100,000, to scholarships.

Scholarship amounts are limited to the cost of tuition and fees, the average of which cannot exceed 75 percent of the state per student payment. First priority is given to families who received the scholarship the previous year. Second priority is given to students at or below the federal poverty limit, denied open enrollment, experiencing bullying, in foster care, from military families, or whose parent was killed in action. Third, fourth, and fifth priority are granted based on household income.

Oklahoma

Oklahoma has a tax credit scholarship program which has been operational since 2013. Scholarships are available for students living in households with incomes up to 300 percent of the free and reduced-price lunch program eligibility requirement or living within a school district "in need of improvement." Once a student has become eligible, the family is eligible until high school graduation or the student reaches the age of 21. The amount of the scholarship is the greater of \$5,000 or 80 percent of the state per student payment, with special needs students eligible for up to \$25,000.

South Carolina

In 2023, South Carolina passed legislation establishing education scholarship accounts. An eligible student may receive up to \$6,000 for tuition, transportation, and other supplies at a private or public school outside the student's district of residence. In the first year, education scholarship accounts will be available for 5,000 students whose families make \$60,000 or less. Within 3 years, 15,000 students will be eligible, and the income threshold will rise to \$120,000 or less.

Tennessee

Tennessee's ESA pilot program deposited approximately \$8,192 in each participating student account for the 2022-23 school year. The funds in the account may be used for educational purposes, including tuition, school uniforms, required textbooks, tutoring, summer school, after school education, transportation, postsecondary costs, dual-credit opportunities, educational therapies, technology, and fees for management of ESA funds. Eligible students must attend an approved school, not including a public school or charter school, and meet the household income requirements of not more than twice the federal income guidelines for free lunch.

Texas

Texas rural Republicans aligned with urban Democrats to defeat the ESA bill in 2017 and school choice legislation again failed in 2023. However, Texas Governor Abbott still may recall legislators to attempt to pass education reform following the end of the state's regular legislative session.

Utah

The Utah Fits All Scholarship Program is an ESA that deposits approximately \$8,000, or 57 percent of Utah's per student payment, per student into an account to be used for educational expenses, including private school, home school, tutors, learning therapy, and curriculum. Although unique learning models often only are found in urban locales in Utah, the state hopes to encourage innovation by providing educational funding for students in urban and rural settings.

STUDY APPROACH

The study must include input from stakeholders, including:

- Representatives from the Department of Public Instruction;
- Representatives from the Governor's office;
- Representatives from regional education associations;
- Public and nonpublic administrators and teachers; and
- Parents of students.

ATTACH:1

SECTION 13. LEGISLATIVE MANAGEMENT STUDY - SCHOOL CHOICE MODELS.

1. During the 2023-24 interim, the legislative management shall study school choice models implemented nationally for kindergarten through grade twelve schools, including charter schools, magnet schools, private schools, voucher systems, and home schools. The study must include input from stakeholders, including public and nonpublic teachers and administrators, parents of students, representatives from the department of public instruction, a representative from the governor's office, and representatives from regional education associations. The study also must include the following, supported by quantitative data:
 - a. A review of regulations implemented by state regulatory agencies to ensure accountability for various school choice models;
 - b. A comparison of nontraditional school choice models implemented by other states;
 - c. An analysis of the impact of enrollment fluctuation, including the impact on state aid;
 - d. A review of the state's student population and enrollment capacity and tuition costs of nonpublic schools; and
 - e. A review of services nonpublic schools are able to offer students with special needs.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.