

# POLICY BRIEF

## Public funding of private schools in Washington state

*An assessment of programs that direct public funding to private schools to benefit children*

Liv Finne, Director, Center for Education

November 2018

### Key Findings

1. Public education is to provide a free, high-quality education for every child, and not to simply fund the existing monopoly school district model.
2. Many parents feel the existing monopoly school model limits the ability of their children to succeed academically and later in life.
3. Directing public funds to private schools for the benefit of children is routine, non-controversial and enjoys wide bipartisan support among lawmakers.
4. At all levels, from early daycare through college, families use public dollars every day to pay tuition at private schools, including religious schools and colleges.
5. The regular annual public funding that private school programs receive shows they are popular, effective and politically non-controversial.
6. The U.S. Supreme Court has ruled that public dollars may be spent in private schools to educate children, including private religious schools.
7. The Court has also ruled that state officials may not use the Blaine Amendment, a policy based on anti-religious bias, to discriminate against private schools from receiving general funding that provides a public benefit.
8. Expanding access to private school choice in Washington state, through choice, education saving accounts, tax credits and similar tools, would help policymakers meet the constitutional mandate to educate every child in the state.



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## Introduction

In public policy, school choice means establishing educational programs that allow parents, not government officials, to direct the money to which they are legally entitled to fund education services, whether public, private, or a combination of the two, that work best for their children.

School choice serves a public purpose because it is in the interest of the community for every child to gain access to an excellent education, particularly one that best matches each child's particular abilities and aptitudes.

It is common for public school teachers to use a portion of their salaries to pay tuition at a private school for their children. For example, the state's largest school district, Seattle, has one of the highest rates of private school attendance in the country.<sup>1</sup> While public school teachers have every right to decide how to use the salary dollars they have earned, one aspect of these decisions is that public funds are being used to educate children at private schools.

Many states have extended the same benefit to families in the private sector. The U.S. Supreme Court regularly upholds the legality of programs that provide public dollars to educate children at private schools. The Supreme Court reasons correctly that because an individual, not the state, directs the use of these funds, the programs do not violate the First Amendment's prohibition against the government establishment of religion.

In the District of Columbia, the Opportunity Scholarship program provides private scholarships to help low-income, minority students attend private schools, including private religious elementary and high schools.

Pell Grants, veterans benefits and tuition loans, funded with public money, are examples of school choice in higher education. These grants are funded with public money, but directed by individual recipients in ways that best meet each student's educational needs. In higher education, public money for private, including religious, schools is beneficial, routine, and non-controversial.

In the K-12 system, however, tax-funded school choice remains controversial. Union executives, political party activists, school district administrators and other powerful interests strongly oppose allowing parents and students under age 18 from

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1 "Seattle Private Schools," by Private School Review, accessed October 1, 2018, at <https://www.privateschoolreview.com/washington/seattle>.

having a say in how they access educational services. They say that, on principle, public money should not go to private schools, regardless of any learning benefits that might be gained by students.

Despite this vocal opposition, however, public funding of private schools occurs regularly, through a range of programs that to date have attracted little attention. Their success demonstrates that there is no policy reason to oppose public funds for private schools in principle, and show that, when carefully designed, these programs provide benefits to students, families, and the general public.

This study includes a list of programs currently allowing families to direct public funds to private K-12 schools here in Washington state. These programs are well-established, non-controversial and enjoy broad support across the political spectrum. They serve as pilot projects demonstrating the benefits students gain when public funds are used to purchase private educational services.

## **The benefits of family choice in education**

The policy of school choice originates in the recognition that parents play a central role in fulfilling the fundamental purpose of public education. That purpose is to give every child a certain level of knowledge and skills. School choice expands the options for children because it helps parents meet the public purpose of educating every child.

In addition, parents have a fundamental right to guide the upbringing and education of their children, and the government has an obligation to respect that right.<sup>2</sup>

Public school choice includes options for families to enroll their children in public charter schools, magnet schools, innovation schools and online schools. Private school choice offers families vouchers, scholarships or Education Savings Accounts, so they can enroll their children in private school.

School choice is more common than it was in the past, and states across the country are rapidly increasing access to public and private school choice. Today one in five students across the country benefit from some form of school choice.<sup>3</sup>

Opponents of school reform object to most forms of school choice, including within a public system, and to private school choice even more strongly. They generally support the assignment of students to public schools based on zip codes, not based on the education needs of the student. They oppose giving parents a role in the education of their children, preferring to allow large education bureaucracies to make these key decisions for families.

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2 “Non-public Education: A Vital Part of U.S. K-12 Education,” U.S. Department of Education, June 2008, at <https://www2.ed.gov/nclb/choice/schools/onpefacts.pdf>.

3 “Overview of public school choice programs,” Liv Finne, Policy Brief, Washington Policy Center, October 12, 2017, at <https://www.washingtonpolicy.org/publications/detail/overview-of-public-school-choice-programs>.

## The legal and constitutional grounds for private school choice

Opponents of private school choice say that, as a matter of legal principle, public dollars may not be spent in private schools to educate children, particularly at religious schools.

This claim, however, is not true. The federal courts have found that private school choice using public funding is legal and constitutional. The U.S. Supreme Court has regularly ruled that forms of public-funded choice, such as school vouchers, tax-credit scholarships and tax deductions that allow children to attend private, religious schools are constitutional.<sup>4</sup>

At the state level, opponents of private school choice point to the Blaine Amendment in the Washington state constitution to say public funds cannot go to private schools, and that such funding may not go to religious-based schools in particular.<sup>5</sup>

This claim is also not true. In the 2017 case of *Trinity Lutheran v. Comer*, the U.S. Supreme Court ruled that states may not cite the Blaine Amendment (in the 38 states that have it) to discriminate against religiously-based schools in the application of a generally available and religiously-neutral public benefit.<sup>6</sup> The Court noted that the Blaine Amendment has its origin in anti-religious bigotry of the 19th century and is in violation of citizens' rights to equal treatment under the U.S. Constitution.

The Court's view was summarized by an attorney for three Colorado families in a ruling that confirmed their access to greater educational opportunities.

"Today's order sends a strong signal that the U.S. Supreme Court will not tolerate the use of Blaine Amendments to exclude religious options from school choice programs."<sup>7</sup>

## School choice does not "privatize" public education

Opponents of school choice say these programs "privatizes" public education. The "privatization" argument assumes that the purpose of public education is to ensure that public money is spent only for the benefit of public entities, such as

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4 *Zelman v Simmons-Harris*, 563 U.S. 639 (2002), *Arizona Christian School Tuition Organization v Winn*, 563 U.S. 125 (2011) and *Mueller v Allen* 463 U.S. 388 (1983).

5 Constitution of Washington State, Article I, section 11. The text of the Blaine Amendment reads: "No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment ..." Further, Article IX, Section 4 of the state constitution reads, "All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence."

6 *Trinity Lutheran Church v. Comer*, 582 U.S. \_\_\_\_ (2017).

7 "U.S. Supreme Court raises hopes of parents who want better schools," by Liv Finne, *Tri-City Herald*, August 25, 2017, at <http://www.tri-cityherald.com/opinion/opn-columns-blogs/article169474052.html>. *Trinity Lutheran Church v. Comer*, 582 U.S. \_\_\_\_ (2017) and *Doyle v. Taxpayers for Public Education*, U.S. Supreme Court, Slip Opinion 15-556, June 27, 2017.

school districts. Yet the purpose of public education is not to maintain a utility-style public delivery system.

The fundamental purpose of public education is to ensure access to a high-quality education for every child, funded by public tax dollars.

Experience shows that the public delivery model for education fails to deliver high-quality education services to every student. In public education, the people who make critical decisions affecting the education of children may never see a student or teach in a classroom. These officials sit in offices distant from classrooms in local, state and federal offices. Public education has also allowed special interests like the WEA teachers union to gain disproportionate power over the education of children, while protecting the jobs of underperforming teachers.

Many parents feel the public schools limit the potential of their children to succeed academically and later in life. Families with financial means often choose to enroll their children in a private school, or decide to homeschool their children. Wealthy parents are allowed this option because the government recognizes the public goal of educating every child can be achieved by private schools, and by homeschools. Today 5.2 million students attend 33,619 private schools, and 1.8 million students are homeschooled.<sup>8</sup>

Expanding private school choice in Washington would help additional families and children, provide the public system with an incentive to improve, and help fulfill the public purpose of educating every child within Washington state's borders.

## Overview of private school choice in the states

Families and children in 29 states and the District of Columbia benefit from a wide variety of private school choice programs.<sup>9</sup> In 2017, these states provided Education Savings Accounts, vouchers and tax credit scholarships, to help 466,000 students attend private school.<sup>10</sup> Most of these students come from low-income, minority families, families who have historically been underserved by traditional public school bureaucracies.

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8 "Overview of public school choice programs," Policy Brief, Liv Finne, Washington Policy Center, October 12, 2017, at <https://www.washingtonpolicy.org/publications/detail/overview-of-public-school-choice-programs>.

9 These are the states of Alabama, Arizona, Arkansas, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Minnesota, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Wisconsin and Virginia.

10 "The ABCs of School Choice; The comprehensive guide to every private school choice program in America, 2018 Edition," *EdChoice*, at <https://www.edchoice.org/wp-content/uploads/2018/01/ABCs-of-School-Choice-2018-Edition-1.pdf>.

## List of programs providing public funds to private schools in Washington state

In Washington state, a number of limited programs provide families public money to educate their children in private schools. These programs are common and non-controversial. Following is a summary of these programs.

### *Public funds for special needs students at private schools*

Public schools in Washington state are required by federal law to provide a free appropriate public education (called FAPE) to eligible special education students, ages 3-21. If the students' special needs cannot be met by the local school district, administrators may contract with a private school to serve that student.

Described as “Nonpublic” agencies, these private schools, including religious schools, provide education services for special needs children, paid for with public funds. Private schools provide services outlined by the students' Individualized Education Program (IEP).<sup>11</sup>

Currently 26 private schools in Washington state provide educational services to special needs students. An additional 19 private residential programs out of state are also available to families, all at public expense.<sup>12</sup>

### *Public funds supplement the education of private schools*

The federal government provides funding to school districts under the Elementary and Secondary Education Act of 2015 to administer the provision of federal education services to students attending private, nonprofit elementary and secondary schools in Washington state.<sup>13</sup> These include tutoring and after-school services for private school students, and services for private school administrators.<sup>14</sup>

School districts are required by ESSA to identify and offer services to private school students eligible under Title I, Part A/Improving the Academic Achievement of the Disadvantaged, Title I, Part C/ Migrant Education Program, Title II, Part A/ Teacher and Principal Quality, Title III/ English Language Acquisition, Carl D. Perkins/ Career and Technical Education, and Special Education/Individuals with Disabilities Education Act (IDEA).

For example, Seattle Public Schools uses federal Title I funds to hire private tutors for low-income students attending private school, including religious schools. These private tutors help students meet the state's academic expectations. Seattle

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11 “Current Nonpublic agencies, Special Education,” Washington state Office of Superintendent of Public Instruction, at <http://www.k12.wa.us/SpecialEd/NonpublicAgency.aspx>, accessed on September 13, 2018.

12 Ibid.

13 “Private Schools and the Every Student Succeeds Act,” The Council for American Private Education, 2016, at <http://www.capenet.org/pdf/ESSACAPE.pdf>.

14 “Private School Federal Programs,” Seattle Public Schools at <https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=2775756>, accessed September 18, 2018.

Public Schools maintains a webpage listing private tutors eligible and available to students for this help.<sup>15</sup>

In addition, private schools, including religious schools, receive federal funding for school lunch programs, anti-drug programs, technology grants, government contracts, and government loans.<sup>16</sup>

### *Public funds for private preschool*

Washington's Early Childhood Education and Assistance Program (ECEAP) preschool is a program for 3-5 year old children from low-income families. Washington's 2017-19 state budget provides \$58.1 million to fund 12,491 ECEAP slots in fiscal year 2018, increasing to \$67.8 million in 13,491 slots in fiscal year 2019.<sup>17</sup>

Approximately half of Washington state's ECEAP slots are provided by public schools, while the remaining half are provided by private child care centers, faith-based facilities, family child care homes, non-profit organizations, and head start facilities.<sup>18</sup> Accordingly, about \$60 million in public funds are provided each year to help families enroll their children in private preschools, including religious preschools, in Washington state.

### *Public funds for private daycare and early learning*

The Working Connections Child Care (WCCC) Program is funded by the Department of Early Learning (DEL), for families receiving temporary assistance for needy families (TANF), families with a child with special needs, and other low-income families. The purpose is to help these families enroll their children in high-quality daycare to prepare the child for kindergarten, to help the child's parents secure gainful employment. DEL's publication is titled, "You Have a Choice! A Guide to Finding Quality Child Care."<sup>19</sup>

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15 "Tutor Openings, Private School Title I Tutor Openings, Seattle Public Schools at <https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=43975562>, accessed September 18, 2018.

16 "The Rehabilitation Act of 1973 (Section 504) as Applied to Private Schools," FindLaw for Legal Professionals, accessed online September 13, 2018 at <https://corporate.findlaw.com/litigation-disputes/the-rehabilitation-act-of-1973-section-504-as-applied-to.html>.

17 "Operating Budget, 2017-19," Substitute Senate Bill 5883, passed June 30, 2017, signed by Governor Inslee June 30, 2017, page 152 and page 257, at <http://leap.leg.wa.gov/leap/budget/lbns/171Omni5883-S.SL.pdf>.

18 "2016-17 ECEAP Outcomes Report," Washington state Department of Early Learning, page 35 at [https://www.dcyf.wa.gov/sites/default/files/pdf/eceap/ECEAP\\_Outcomes\\_2016-17.pdf](https://www.dcyf.wa.gov/sites/default/files/pdf/eceap/ECEAP_Outcomes_2016-17.pdf).

19 "You Have a Choice! Washington State, A Guide to Finding Quality Child Care," by Department of Early Learning, page 4, at <https://depts.washington.edu/cqel/PDFs/ChoosingChildCare.pdf>, accessed September 18, 2018.



In the 2017-19 state budget, 33,000 Washington households are receiving \$501 million in federal and state funding for this program.<sup>20</sup> Low-income families can select a child daycare early learning program from one of 7,400 private licensed child care centers, licensed family child care programs, and licensed or exempt school-age programs.<sup>21</sup>

### *Public funds for private tutoring, and private school choice for foster care youth*

The Supplemental Education Transition Planning (SETuP) Program for 13 to 21-year-old foster youth helps foster children and young adults make the transition from high school to postsecondary enrollment, career or service. Providers include private organizations like Youthnet, Seattle YMCA, Pierce County Alliance, Community Youth Services, Volunteers of America, and Catholic Child and Family Services.<sup>22</sup>

The Passport to College Promise Scholarship gives foster care students assistance in attending college, including foster care students still in high school. These funds pay for private tutors to help prepare foster care children for college.<sup>23</sup> This program also provides funds to help students apply to and attend private colleges, including religious schools, awarding scholarships of \$4,500 each to 335 students in 2016-17.<sup>24</sup>

The Education and Training Vouchers (ETV) for current and foster youth provides a scholarship of \$5,000 to pay for expenses related to education. This voucher can be used to attend one of 67 public and private institutions of higher learning in Washington state, including religious schools like Seattle University, Gonzaga University, and other independent, private colleges.<sup>25</sup>

### *Washington state public funds for college*

College students in Washington state frequently use public money to attend private universities, including religious schools. The Washington State Need Grant provides low-income students scholarships to attend college. In 2016-17, this program served 69,000 students, who received Student Need Grants totaling \$287

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20 “Operating Budget, 2017-19,” Substitute Senate Bill 5883, passed June 30, 2017, signed by Governor Inslee June 30, 2017, page 93, at <http://leap.leg.wa.gov/leap/budget/lbns/171Omni5883-S.SL.pdf>.

21 “You Have a Choice! Washington State, A Guide to Finding Quality Child Care,” by Department of Early Learning, at <https://depts.washington.edu/cqel/PDFs/ChoosingChildCare.pdf>, accessed September 18, 2018.

22 “SETUP,” by Washington Student Achievement Council, at <http://www.wsac.wa.gov/setup>, accessed September 18, 2018.

23 “Passport to College: 2015-16 Incentive Grant Summary,” by Washington Student Achievement Council, March 2017, at <http://www.wsac.wa.gov/sites/default/files/2017.PassportGrantInformation.pdf>.

24 “Passport to College Promise Scholarship,” by Washington Student Achievement Council, 2017, at <http://www.wsac.wa.gov/sites/default/files/2017.Passport.pdf>.

25 “Washington State Education Training Voucher (ETV) Program Guidelines,” by Children’s Administration, page 22 at <https://www.dshs.wa.gov/sites/default/files/SESA/publications/documents/22-1193.pdf>.

million.<sup>26</sup> These students attend 66 public and private institutions of higher learning in Washington state, including independent, private, and religious colleges.<sup>27</sup>

### *Federal public funds for private colleges*

In 2016-17, the federal Pell Grant program provided 7.1 million low-income students across the country federal Pell grants totaling \$26.6 billion to attend public and private institutions of higher learning.<sup>28</sup> Students use Pell Grants to attend private religious institutions in Washington state, like Seattle Pacific University and Pacific Lutheran University.

In 2016, the federal GI Bill provided direct education assistance to veterans and their families, through seven programs. These programs provided \$12.9 billion to pay tuition and fees for about one million veterans and their families at public and private institutions of higher learning. Of these, 22,000 individuals were residents of Washington state.<sup>29</sup>

## **Conclusion**

In political circles using public money to help the education of students at private schools remains hotly debated, but for many families and government agencies, private school choice happens every day in Washington state. At every level of education, from early daycare, to preschool, to elementary and high school, to college and technical school, families and students routinely use public dollars to pay tuition and other expenses at private educational institutions, including religious schools and colleges.

The regular annual funding such programs receive shows they are popular, effective and politically non-controversial. The broad political support they receive demonstrates that allowing individuals and families use public funds to which they are entitled to fund private education choices is a successful model that serves the public interest.

As such, expanding access to private school choice in Washington state, through choice, education saving accounts, tax credits and similar tools, as other states have done, would help policymakers meet the public policy goal of educating every child in the state.

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26 “State Need Grant FAQ,” Washington Student Achievement Council, Summer 2017, at <http://www.wsac.wa.gov/sites/default/files/FAQ.SNG.pdf>.

27 “Participating Institutions, State Need Grant, College Bound Scholarship, Passport,” Washington Student Achievement Council, at <http://readyssetgrad.org/sites/default/files/00.participatinginstitutions.pdf>, accessed September 18, 2018.

28 “Total Pell Grant Expenditures and Number of Recipients over Time, Trends in Higher Education,” College Board, at <https://trends.collegeboard.org/student-aid/figures-tables/pell-grants-total-expenditures-maximum-and-average-grant-and-number-recipients-over-time#Key Points>, accessed September 18, 2018.

29 “Benefits for Veterans Education,” Veterans Benefits Administration, U.S. Department of Veterans Affairs, March 2, 2017, at <https://www.benefits.va.gov/REPORTS/abr/ABR-Education-FY16-03022017.pdf>, accessed September 18, 2018.

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Washington Policy Center  
PO Box 3643  
Seattle, WA 98124-3643

Online: [www.washingtonpolicy.org](http://www.washingtonpolicy.org)  
E-mail: [wpc@washingtonpolicy.org](mailto:wpc@washingtonpolicy.org)  
Phone: (206) 937-9691

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### About the Author

**Liv Finne** is the Director of the Center for Education at Washington Policy Center. She is the author of *An Option for Learning: An Assessment of Student Achievement in Charter Public Schools*, which in 2011 reignited the charter school debate in Washington state. She wrote “Why parents will love charter schools,” “Why teachers will love charter schools,” and many other publications during the 2012 public debate on Initiative 1240, the nation’s first charter school initiative. When charter schools came under attack from the state teachers union, she wrote “Analysis: Why the state supreme court ruling against charter schools is wrong.” She is also the author of Washington Policy Center’s widely-read education blog, and of Washington Policy Center’s Education Reform Plan: Eight Practical Ways to Improve Public Schools. Liv holds a law degree from Boston University School of Law and a Bachelor of Arts degree from Wellesley College. She retired from civil litigation practice to raise two children and work as business partner for a small business she owns with her husband. Liv is committed to improving public schools by expanding school options for all parents, regardless of their zip code, including charter schools, vouchers, online and other innovations in education.