



EDUCATION

# Education choice can improve student outcomes



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**MOUNTAIN STATES**  
POLICY CENTER



# Students first – how education choice can improve outcomes

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*From 2016 to 2022, Idaho's school age population grew at an average rate of 2 percent annually. During the same period, public school enrollment growth averaged only 1.1 percent.*

## **Introduction**

No education policy is a panacea for perfect outcomes. Every system and every school will produce failures, and there will always be opportunity for improvement and lessons learned. Although Idaho's constitution vests the legislature with authority and a mandate to provide education for Idaho children, it is parents who "have the fundamental right and duty to make decisions concerning their [children's] education."<sup>1</sup>

Legislators can and should change the underlying incentives within Idaho's education system to give parents and students more authority, choice, and equal opportunity to achieve literacy and workforce readiness.

"Education choice" simply means allowing some of a state's education money to follow the student to the education method or school of their choice, rather than allotting all funds to the public school district where the student resides.

Education choice policies such as Education Savings Accounts shift decision-making power to those closest to the student (parents) who are best able to assess that student's unique education needs. While some families can afford to opt out of the state-sponsored system, the majority cannot.

Recent U.S. Supreme Court decisions and Idaho case law would support the legislative creation of education savings accounts. Idaho parents should have the right to decide what is best for their own children, whether that be a traditional public school, a charter school, private school, homeschool or extra tutoring that can supplement any of the above.

The competition and innovation generated by education choice will require schools to be more responsive to student needs, allowing great schools to flourish and forcing poor schools to improve. A family is never worse off by having more than one education choice.

## **Idaho education at a glance**

Idaho has held the honor of being the nation's fastest-growing state for several years running. With its low cost of living, incredible scenery, robust economy, and affordable housing, people are taking notice of the Gem State and voting with their feet. But Idaho's public school enrollment is failing to keep pace with the overall school age population growth. From 2016 to 2022, Idaho's school age population grew at an average rate of 2 percent annually.<sup>2</sup>

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<sup>1</sup> ID Code § 32-1012 (2016)

<sup>2</sup> U.S. Census Bureau Idaho data, [ages 5 to 17](#).

**KEY INFORMATION COLUMN**

*Idaho’s public school funding formula is rigid and complex. Inflexible, prescriptive funding systems are not connected to improving student outcomes.*

*There is little legislators can do to impose productivity from the top down, but they can effectively hamper it, by bogging school leaders down with inefficient process or compliance requirements.*

	
ENROLLMENT	FUNDING
Public School Enrollment: 313,641	State spending per student: \$8,376
Private School Enrollment: 17,827	2022 K-12 State Budget: \$3.2 billion
Homeschool Population: 33,876	K-12 % of State General Fund: 47.5%

3,4,5,6,7,8

During the same period, public school enrollment growth averaged only 1.1 percent.<sup>9</sup>

Despite a return to pre-pandemic normalcy, 2022-23 public school enrollment increased just 0.3 percent. Meanwhile, more than 15 percent of Idaho’s families have opted out of the government system, with roughly two-thirds choosing to homeschool and one-third choosing private school. The pandemic accelerated the exodus from public schools; consequently, for a growing number of Idaho families, the gem state offers zero assistance.

**Idaho education funding: a rigid, centralized system**

Despite the legislature’s recent education funding boost, estimated to add a minimum of 13 percent in additional student funding, legislators and parents should not expect huge strides in student outcomes. Idaho’s education funding formula is rigid and complex, making it difficult for administrators to respond to local context and individual needs, or for parents to hold their local district accountable for academic results.

More than two-thirds of Idaho’s K-12 funding comes from the state, while federal and local dollars make up the balance. Most K-12 funds are

<sup>3</sup> Preliminary [2022-23 Enrollment](#). 115 Idaho school districts with average daily attendance of 274,000 students. <sup>66</sup> [charter schools](#) serving 31,576 students. For purposes of this paper, “public schools” include public charter schools unless otherwise stated.  
<sup>4</sup> [Private School Review](#). “Best Idaho Private Schools (2022-2023).” Private School Review, n.d. Web. 30 Oct. 2022.  
<sup>5</sup> There is no official census of homeschool students. According to U.S. Census Bureau projections, Idaho’s estimated 2022 population is 1,939,033. The estimated school age population (age 5-17) is 362,600. Combined public and private school enrollment is approximately 328,724. The gap between the total school age population and those enrolled in public or private schools is 33,876. According to the 2020 [Census Bureau Household Pulse Survey](#), 10.3% of Idaho families homeschool, but each family may have multiple students. The true number of homeschooling students may be greater or less than these estimates.  
<sup>6</sup> 2020-21. Between districts, per pupil funding varies between \$6,000 in property poor districts to \$12,000 in property rich districts. The \$330 million education funding boost passed by the Legislature in 2022 is expected to add an additional 13% per student at a minimum.  
<sup>7</sup> \$2.09 billion General Fund, \$102 million dedicated funds; \$1 billion Federal. Citation: Idaho Legislature. [“K12 JFAC Presentation.”](#) Page 32. Idaho Legislature, 17 Jan. 2022. Web. 15 Oct. 2022. P. 32  
<sup>8</sup> FY 2022 Total GF-State Budget: \$4.4B. FY 2022 K-12 GF State Spending: \$2.09B.  
<sup>9</sup> Flandro, C. [“K-12 Student Enrollment Ticks Up Slightly.”](#) Idaho Education News, 16 Nov. 2022. Web. 10 Dec. 2022.



## KEY INFORMATION COLUMN

*Nearly two-thirds of school administrators say there are too many funding constraints in place.*

*Two factors result in better student outcomes – teacher quality and student-based funding.*

locked into prescribed uses and staffing arrangements. The pot of flexible funds not prescribed by Idaho Code is extremely limited.<sup>10</sup>

The majority of state funding is allocated based on “support units,” which are determined by seniority and education levels of district employees. Districts with more educated and senior staff receive more dollars per support unit. The number of support units allocated to a district is largely determined by a mix of the district size, average daily attendance, and student makeup. In fact, Reason Foundation researchers found that less than 3 percent of operating funds are given to districts based on the students they serve, and that higher per pupil funding is not necessarily tied to higher achievement for economically disadvantaged students.<sup>11</sup> This is a funding system centered around the needs of adults, not students.

### **Top-down productivity mandates don’t work**

While many of Idaho’s prescribed uses for education funding are important, this underscores the fact that such rigidity is unwarranted. Local administrators, teachers, and parents are best equipped to identify and respond to the needs within their district. Inflexible, prescriptive funding systems are not connected to improving student outcomes. Principals and other school administrators don’t like them either. Nearly two-thirds of school administrators say there are too many funding constraints in place, and a majority name state legislators as the biggest obstacle to making needed funding adjustments.<sup>12</sup>

A landmark 2019 Harvard-Stanford study analyzing 50 years of performance data from more than 2.7 million students found that the achievement gap between advantaged and disadvantaged students in the U.S. has remained unchanged—this despite a 400% increase in inflation-adjusted

### **2019 HARVARD-STANFORD STUDY**

**+ 400%**

*Per-student spending change since 1970*

**-20%**

*Class size change since 1970*

**Unchanged**

*Achievement gap since 1970*

<sup>10</sup> Idaho Legislature. “Title 33: Education. Chapter 10.” More information [here](#).

<sup>11</sup> Smith, A.G., Barnard, C., Marar, S. “[Modernizing School Finance in Idaho](#).” Reason Foundation, Jan. 2021. Web. 20 Aug. 2022.

<sup>12</sup> Education Week. “[We Asked About School Finance: What Did Districts Say?](#)” Education Week, Volume 39, Number 6. 24 Sept. 2019. Web. 20 Aug. 2022.

## KEY INFORMATION COLUMN

*Putting the principal in charge of the school can lead to better student outcomes.*

per pupil spending and a 20 percent reduction in average class size.<sup>13</sup> This is dire news for the “throw more money at it” education crowd. More money can lead to improved outcomes, but only if it is targeted correctly.

### **Bottom-up, local control and leadership: Better outcomes, more accountability**

If “one-size fits all” is not the answer, what tools and principles are policymakers left with? The answer starts with the student. The closer you get to the student, the easier to determine the needs. This is one reason why two persistent factors resulting in better student outcomes are teacher quality<sup>14</sup> and student-based funding, where schools get more funding for higher need students.<sup>15</sup>

Although remote rural districts typically produce the lowest average return on investment relative to urban, suburban, and town districts, many rural districts are productivity outliers, with outcomes surpassing those predicted by their available funds and mix of students. Researchers were unable to pinpoint any single program or expenditure to explain it. Demographic and financial factors such as student homogeneity, population affluence, district size, or per pupil expenditures were not deciding factors either (in fact, these highly productive districts spent 5 percent less than typical rural districts in their state).

This research suggests there is very little legislators can do to impose greater productivity from the top down, but they can effectively hamper it, by bogging school leaders down with inefficient process or compliance requirements. Researchers concluded:

*“Smaller isolated communities have the opportunity to leverage their more personalized relationships to their advantage, but this won’t happen automatically. Effective leaders know how to tap the talent and resources of those in their system, and put them to work in ways that generate the greatest outcomes possible for the students they serve.”<sup>16</sup>*

Adopting a more decentralized approach to education, allowing school principals to act as the CEO of their school (rather than a helpless casualty of top-down mandates), and encouraging problem-solving at the school level

<sup>13</sup> Hanushek, E., Peterson, P., Talpey, L. Woessmann, L. “[Nearly 50 Years Later, Student Achievement Gap Fails to Close.](#)” Education Next, Volume 19, Number 3. 24 May. 2019. Web. 10 Sept. 2022.

<sup>14</sup> Chetty, R., Friedman, J., Rockoff, J. “[The Long-Term Impacts of Teachers: Teacher Value-added and Student Outcomes in Adulthood.](#)” National Bureau of Economic Research. Dec. 2011. Web. 15 Aug. 2022.

<sup>15</sup> Jackson, C., Johnson, R., Persico, C., “[The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms.](#)” The Quarterly Journal of Economics, Volume 131, Issue 2, Feb. 2016. P. 157-218. Web. 10 Aug. 2022.

<sup>16</sup> Roza, M., Heyward, G. “[Highly Productive Rural Districts: What is the Secret Sauce?](#)” Edunomics Lab, Sept. 2015. P. 19. Web. 20 Sept. 2022

## KEY INFORMATION COLUMN

*Government policies that allow and equip parents to make decisions for their own children will usually lead to the best outcomes. In other words, give parents the money.*

*More than a third of Idahoans say they are not familiar with school choice.*

where community ties are stronger, will lead to greater satisfaction and outcomes for students and families.<sup>17</sup>

### **Bottom-up vs. top-down decision making**

No single, top-down policy prescription can create the same result across all types of communities. Yet policymakers are faced with the daunting task of trying to improve outcomes across an entire system. While there is no “silver bullet” for success, when faced with education proposals, legislators should consider whether the policy promotes or suppresses improved student outcomes, community relationships, local leadership, accountability, decentralization, and competition.

To that end, the most important question legislators can ask about an education proposal is, “Does this policy allow those closest to the student to make decisions?”

The ultimate “boots on the ground” authority of what is best for a child are the parents. Only parents can extend accountability to the individual student level. Governments and institutions can only impose accountability at the system level, which means individual student needs are necessarily overlooked.

This is a feature of government education, not a bug. To that end, government policies that allow and equip parents to make decisions for their own children will usually lead to the best outcomes. In other words, give parents the money, and allow it to follow the child to the school or education method of their choosing (hence, school choice).

The Idaho Supreme Court has recognized, “In the American concept, there is no greater right to the supervision of the education of the child than that of the parent. In no other hands could it be safer.”<sup>18</sup> But Idaho only facilitates such supervision within the confines of the 20<sup>th</sup>-century fossilized education system it created. While education freedom advocates have tried to help legislators pursue the benefits of an arrangement that gives parents direct control and oversight of their children’s education, they have faced heavy opposition from those who benefit under the current system.<sup>19</sup>

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<sup>17</sup> Education Resource Strategies. “[Fair Student Funding Summit: Conference Proceedings and Recommendations for Action.](#)” 26 Mar. 2010. Web. 15 Jul. 2022

<sup>18</sup> Electors of Big Butte Area v. State Board of Education, 78 Idaho 602, 308 P. 2d 225 (1957). Quotation: 78 Idaho at 613.

<sup>19</sup> McInelly, L. Echeverria, K. Grover, A. “[HB294: Still a voucher bill in grant programs clothing.](#)” IDEdNews.org. 6 Apr. 2021. Web. 2 Sept. 2022.

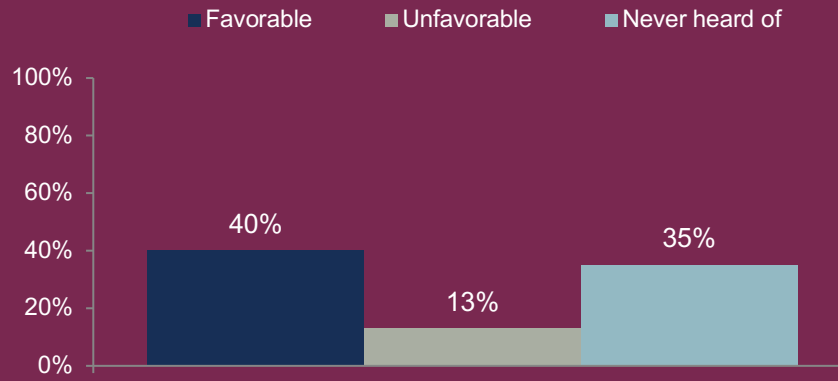
## KEY INFORMATION COLUMN

*Three-quarters of parents nationwide support Education Savings Accounts.*

*Article 9, §1 (Idaho's Uniformity Clause) creates a baseline duty for the state of Idaho, but it does not prohibit the state from promoting education through means outside of the public system. A legal argument based on Idaho's Uniformity Clause is not likely to be successful before Idaho's Supreme Court based on Idaho caselaw and legal precedent in other states.*

## EDUCATION CHOICE POLLING – IDAHO

Question: Generally speaking, do you have a favorable or unfavorable opinion of “school choice” as an education policy?



Education choice opponents such as the Idaho School Boards Association, the Idaho Association of School Administrators, and the Idaho Education Association have attempted to frame vouchers and tax credits as a debate about subsidies for private schools. But vouchers and tax credits only indirectly benefit private schools; the true beneficiaries are Idaho families. Unfortunately, education choice opponents do whatever they can to distract from this argument because education savings accounts have broad public support. In fact, three-quarters of school parents support education savings accounts.<sup>20</sup> Although more than one-third of Idahoans have never heard of school choice, those who have favor it by a large majority.<sup>21</sup>

### A constitutional strawman

Because they have been unable to win the court of public opinion, opponents have tried to scare legislators into believing that school choice violates Idaho's constitution.<sup>22</sup> There are two relevant provisions of Idaho's constitution that have been used to cast doubt upon the legality of any kind of individual credit or grant to Idaho families for education purposes.

<sup>20</sup> Morning Consult. "[The Public, Parents, and K-12 Education: A National Polling Report.](#)" Commissioned by Ed Choice. Nov. 2022. Page 48. Web. 2 Dec. 2022.

<sup>21</sup> GS Strategy Group. "[The Idaho Poll.](#)" Commissioned by Mountain States Policy Center. Dec. 2022. Page 8. Web. 1 Jan. 2023.

<sup>22</sup> Jones, J., Gramer, R. "[Opinion: Education bill undermines Idaho Constitution.](#)" Coeur d'Alene/ Post Falls Press. 29 Mar. 2021. Web. 8 Aug. 2023.



## KEY INFORMATION COLUMN

*Children do not belong to the state, and the purpose of education is to prepare them for life, not to homogenize them.*

*As a result of recent U.S. Supreme Court decisions, Idaho cannot fall back on its Blaine Amendment or the First Amendment Establishment Clause to justify prohibitions on public funding of religious schools.*

### *Idaho's Uniformity Clause*

Article 9, §1 creates a duty to “establish and maintain a general, uniform and thorough system of public, free common schools.” Many states have similar so-called “uniformity clauses,” which establish a public system of schools, but do not make that system mandatory for the state’s students—something we now take for granted. A century ago, Oregon tried to expand its public education system by making it compulsory for virtually all students.

The U.S. Supreme Court roundly rejected the attempt, stating:

*“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”<sup>23</sup>*

In other words, children do not belong to the state, and the purpose of education is to prepare them for life, not to homogenize them. A public system is one avenue for educating and preparing children, but it is not the only avenue. Parents have a duty and a right to educate their children. Article 9, §1 creates a baseline duty for the state of Idaho, but it does not prohibit the state from promoting education through means outside of the public system.

The public interest law firm Institute for Justice argues, “Uniformity Clauses were never intended to impose a limit on educational innovation and creativity in the way legislators fulfill their obligation to provide children with a basic education. Rather, they were simply intended to ensure that the public school system has certain minimal characteristics.”<sup>24</sup>

One could make a policy argument about why it would be preferable for the state to subsidize a public system only<sup>25</sup>, but a legal argument based on Idaho’s Uniformity Clause is not likely to be successful before Idaho’s Supreme Court based on Idaho caselaw and legal precedent in other states.<sup>26</sup>

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<sup>23</sup> *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 45 S. Ct. 571 (1925). Quotation: 45 S. Ct. at 573.

<sup>24</sup> Komer, R., Neily, C. “[School Choice and State Constitutions: A Guide to Designing School Choice Programs](#).” The Institute for Justice & The American Legislative Exchange Council. Apr. 2007. Page 12. Web. 5 Aug. 2022

<sup>25</sup> Such an argument would need to contend with multiple cost/benefit arguments addressed elsewhere in this paper

<sup>26</sup> Wisconsin, Alabama, Indiana, and North Carolina have all rejected similar claims. Florida, however, accepted it. Nonetheless, Florida has a successful school choice program

## KEY INFORMATION COLUMN

*Roughly three-dozen states have similar Blaine amendments in their state constitutions.*

*If a state extends financial benefits to private, non-religious schools, it must also extend those benefits to private, religious schools. If the legislature advances school choice in Idaho, opponents will sue and (eventually) lose, as they have in other states.*

### *Idaho's Blaine Amendment*

Idaho's so-called "Blaine Amendment" can be found in Article 9, Section 5 which reads:

*"Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose; provided, however, that a health facilities authority, as specifically authorized and empowered by law, may finance or refinance any private, not for profit, health facilities owned or operated by any church or sectarian religious society, through loans, leases, or other transactions."*

Roughly three-dozen states have similar Blaine amendments in their state constitutions. It's worth noting the "shameful pedigree"<sup>27</sup> and "clear manifestation of religious bigotry" that these amendments entailed when they passed.<sup>28</sup> It is a disconcerting chapter of history, further intensified by education choice opponents' vigorous defense of the provisions.<sup>29</sup>

In the past, constitutional questions surrounding Idaho's Blaine Amendment have stalled attempts to provide tax credits for scholarship programs. If Idaho's constitution were the only factor at play, that might be the end of it.

However, two recent U.S. Supreme Court cases have virtually eviscerated Blaine Amendment restrictions as applied to individual grants or tax credits: *Espinoza v. Montana Department of Revenue* (2020) and *Carson v. Makin* (2022). The *Espinoza* decision held that government attempts to exclude religious schools from public scholarship or tax credits are subject to strict

<sup>27</sup> Mitchell v. Helms, 530 U.S. 793 (2000).

<sup>28</sup> Olasky, M. "Breaking through Blaine's Roadblock." World. 24 Aug. 2002. Web 4 Aug. 2022. Arizona's Supreme Court acknowledged the state's ugly Blaine Amendment history. The 19<sup>th</sup> century was rife with anti-Catholic and anti-immigrant bigotry. At the time, most schools were Protestant. Catholic attempts to seek their own funding led to an attempt by Maine Sen. James Blaine to amend the U.S. Constitution to prevent funding of "sectarian" schools or institutions. Although the effort failed, many states followed his lead and adopted the amendments into their state constitutions. The original policy goal of preventing sectarian Catholic schools from receiving funding is a different policy goal than school choice. In Idaho, the Blaine Amendment particularly [targeted Mormons](#). Education Savings Accounts are designed to benefit students and families, not provide special privileges or grants to religious schools. Any benefit that religious or private schools receive is secondary to the primary benefit received by individual students.

<sup>29</sup> In November 2022, the Idaho School Boards Association doubled down on its antiquated support of Idaho's Blaine Amendment. The ISBA overwhelmingly passed Resolution 03 "In opposition to....Amending Article IX, Section 5, Idaho Code, also known as the Blaine Amendment." Unfortunately for the ISBA, in the wake of the Supreme Court's decisions in *Espinoza* and *Carson*, Idaho's Blaine Amendment does not have to be changed to allow parents more educational freedom.

## KEY INFORMATION COLUMN

*The Idaho Supreme Court affirms, “In the American concept, there is no greater right to the supervision of the education of the child than that of the parent. In no other hands could it be safer,” and that, “It must be conceded that under our constitution parents have a right to participate in the supervision and control of the education of their children.”*

scrutiny, meaning lawmakers must prove they have a “compelling interest” in restricting the free exercise of religion of scholarship or tax credit recipients—a difficult burden for public officials to meet.<sup>30</sup> The *Carson* majority held that “a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.”<sup>31</sup>

### RELEVANT IDAHO SUPREME COURT AND ATTORNEY GENERAL OPINIONS

#### Epeldi v. Engelking (1971)

*In 1971, Idaho’s Supreme Court established a simple test to determine the validity of a statute relative to the state’s Blaine Amendment. If the legislation is “in aid of any church” or “to help, support or sustain” any church affiliated school, then it would run afoul of the Blaine Amendment. Nonetheless, a 1997 State Attorney General Opinion clarified that a proposed income tax credit to parents who enroll their children in religious schools would likely not violate the Epeldi test because the benefits flow to the taxpayer or parent and not to the school directly. In other words, even setting aside the Espinoza and Carson rulings, Idaho’s Constitution and caselaw would support a system that awards education benefits to parents (rather than to religious schools directly).*

#### Electors of Big Butte Area v. State Board of Education (1957)

Part of this decision is worth quoting verbatim, as it shows Idaho’s Supreme Court recognizes a constitutional right and responsibility of parents to educate their children.

“It must be conceded that under our constitution parents have a right to participate in the supervision and control of the education of their children. True, the constitution vests the legislature with plenary power as well as a specific mandate to provide for the education of the children of the state, Art. 9, §1, and the board of education with general supervision of the public school system, Art. 9, §2, but it cannot seriously be urged that in clothing the legislature and the board with such powers the people transferred to them the rights accorded to parenthood before the constitution was adopted. By Art. 1, §21, such rights were retained by the people.”

32,33,34

In other words, states cannot fall back on their Blaine Amendments or the First Amendment Establishment Clause to justify prohibitions on public funding of religious schools. If a state extends financial benefits to private, non-religious schools, it must also extend those benefits to private, religious schools. In addition, a state cannot discriminate against religious beneficiaries of public scholarships or tax credits by forbidding them from using those benefits at religious schools. As a result of the *Espinoza* and *Carson* rulings, Idaho’s Blaine Amendment would likely not be recognized by the Supreme Court as a legal barrier to universal school choice. The scholarship or tax credit would go to the student’s family, who would then choose the education option

<sup>30</sup> *Espinoza v. Montana Dept. of Revenue*, 591 U. S. \_\_\_ (2020).

<sup>31</sup> *Carson v. Makin*, 596 U. S. \_\_\_ 10 (2022).

<sup>32</sup> *Epeldi v. Engelking*, 94 Idaho 390, 488 P.2d 860 (1971).

<sup>33</sup> Office of the Idaho Attorney General. “[Opinion No. 97-02](#).” Office of the Attorney General, State of Idaho, 2 Jan. 1997. Web 2 Sep. 2022.

<sup>34</sup> *Electors of Big Butte Area v. State Board of Education*, 78 Idaho 602, 308 P. 2d 225 (1957). Quotation: 78 Idaho at 612.

## KEY INFORMATION COLUMN

*The legislature is free to extend a voucher, tax credit, or Education Savings Account (ESA) benefit to all Idaho families, and doing so would be consistent with Idaho statute, which recognizes that parents “have the fundamental right and duty to make decisions concerning their [children’s] education...”*

*Education choice levels the playing field between schools and allows parents to act as a check on a system that is otherwise disposed to monopolistic pitfalls.*

best suited to that student regardless of religious content. Neither of these decisions compels states to subsidize private education, but once they do, they cannot disqualify a school solely for religious reasons. Now that Idaho’s Blaine Amendment is no longer a kill switch for universal education choice, a rigorous policy debate can occur on a level playing field.

### **Legislature has broad authority to change the public education system**

Ultimate accountability for a child’s education rests with the parent, not the state. Parents have the high duty and right to direct their children’s education, which the Idaho Court recognizes. Article 9, §1 creates a baseline education duty for the legislature, but in the wake of *Espinoza* and *Carson*, nothing prohibits the Idaho legislature from exercising its broad authority to structure tax law and education policy to benefit families directly. Maintaining that the Idaho Constitution prohibits it is simply a strawman to avoid the policy argument. The legislature is free to extend a voucher, tax credit, or education savings account benefit to all Idaho families, and doing so would be consistent with Idaho statute, which recognizes that parents “have the fundamental right and duty to make decisions concerning their [children’s] education...”<sup>35</sup>

Idaho Code 33-202 recognizes three avenues that a parent can choose to fulfill this duty: 1) home education; 2) public school or public charter school (including virtual schools); or, 3) private or parochial school. The legislature can support any option and allow the parent to choose the best match for their child.

### **Moving toward a student-centered system**

Idaho has taken baby steps to change its state funding formula, by switching one of its funding mechanisms from “Average Daily Attendance” to “Enrollment” on an emergency basis—a move widely supported by the Idaho School Boards Association, which recently voted to make the change permanent.<sup>36</sup> However, serious attempts to move toward a student-centered formula for education funding have been blocked. It is time legislators move beyond the state’s 20<sup>th</sup> century, fossilized, one-size-fits-all education model and ask, “Can we improve

#### **VOUCHER PROGRAMS**

**27**  
Programs

**16**  
States

<sup>35</sup> ID Code § 32-1012 (2016).

<sup>36</sup> Idaho School Boards Association. “[ISBA Proposed Resolution No. 14: Permanently Replace Average Daily Attendance Funding with Enrollment Based Funding.](#)” 14 Oct. 2022. Web. 28 Nov. 2022.

## KEY INFORMATION COLUMN

*Voucher programs are in place in 16 other states.*

*Nineteen states offer tax-credit scholarship programs.*

outcomes for students and families by offering more education options?” Many states have already recognized the correct answer, where it is no longer a matter of “if” but “how” they should implement school choice.

### **Vouchers and tax-credit scholarships: a limited form of choice**

Voucher programs allow a student to use public money to attend a private school. According to Education Commission of the States, there are currently 27 voucher programs in 16 states and the District of Columbia.<sup>37</sup> Voucher programs are typically restricted to paying private school tuition only, which gives them less flexibility to meet the needs of a student that does not excel in an institutional environment and may need at-home tutoring, specialized courses, or trade instruction. Vouchers are also more readily challenged in states with constitutional provisions like Idaho’s, which restrict direct payments from the state to sectarian institutions.

Scholarship tax credit programs grant tax credits to businesses and individuals for donations to nonprofits that manage and distribute donated funds as scholarships to eligible students. Scholarship tax credits are subject to the same restrictions as vouchers (providing institutional schooling options only). They are also more complicated than education savings accounts and muddy the school choice debate by raising the specter of political favoritism to wealthy donors. Nonetheless, in some states, scholarship tax credits were the only politically viable option for creating any kind of choice for families. Nineteen states oversee 24 scholarship programs.<sup>38</sup>

### **TAX-CREDIT SCHOLARSHIPS**

**24**  
Programs

**19**  
States

Education Savings Accounts are a cleaner option that provide more flexibility and choice for students.

### **Education Savings Accounts: Choice for All**

Education Savings Accounts (ESAs) are individual savings accounts funded by the state government and managed by a parent. The deposit amount varies by state, but ESA programs usually start with the parent enrolling the child in the ESA program and using the funds to purchase specific educational services, such as online courses, tutoring, curriculum, and private school tuition. ESAs allow parents to be very

<sup>37</sup> Education Commission of the States. “[Vouchers: An Overview](#),” Mar. 2021. Web. 28 Sept. 2022.

<sup>38</sup> Education Commission of the States. “[Scholarship Tax Credits: Does the state have a scholarship tax credit program?](#)” Mar. 2021. Web. 28 Sept. 2022.



**EDUCATION SAVINGS  
ACCOUNTS**

Arizona  
Florida  
Mississippi  
North Carolina  
Tennessee  
West Virginia

specific and flexible from year to year in how the child is educated. ESAs can also be set up so that special education students get access to larger annual amounts.

Arizona, Florida, Mississippi, North Carolina, Tennessee, and West Virginia have ESA programs. Some require qualifying students to have an identified disability. This is often the easiest way to float a “pilot program” within a state because the number of students is restricted, giving the state time to set up program parameters and identify potential pitfalls and acceptable uses of funds.

The **West Virginia** Hope Scholarship Program is a hybrid ESA program tailored to increase choices for families enrolled in public school. Despite a rigorous legal challenge, the program was recently upheld by its State Supreme Court. The program allocates 100 percent of the state portion of the education funding formula to parents, while federal and local funds remain with the public school district. In the wake of the program, specialized learning pods and new private schools are being created by parents and entrepreneurs to meet the unique needs of students.<sup>39</sup> A hybrid model like West Virginia’s is a palatable option for legislators to consider, as parents are equipped with funds to pursue better education models, but public schools also get a portion of the funding for a student they are not actually required to educate.

**WEST VIRGINIA**

**100%**

of state funding  
allocated to parents

**Tennessee** passed an ESA pilot program for qualifying low- and middle-income families in select counties in 2019, which covers a vast array of expenses including tuition, textbooks, and tutoring services.<sup>40</sup> School choice opponents stalled the program in a three-year losing legal battle, but the injunction was recently lifted and the program is underway. Eligible students receive approximately \$7,000 per year, or roughly half of the per pupil state and local funding normally

**TENNESSEE**

**50%**

of state funding  
allocated to parents

<sup>39</sup>Kieffer, A. “[West Virginia Leading the State on School Choice](#).” Real Clear Policy. 21 Oct. 2022. Web. 7 Nov. 2022.

<sup>40</sup>State of Tennessee. “[Rule 0520-01-16: School District Consolidation and Annexation](#).” 25 Feb. 2020. Web 15 Dec. 2022.

## KEY INFORMATION COLUMN

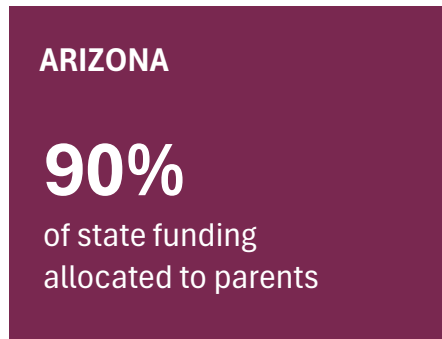
*Arizona’s ESA program is popular, with no income restrictions, no geographic restrictions and no requirements that students attend public school prior to applying.*

*Designed properly, ESAs can create incentives to keep high school graduates in state and get them enrolled in an Idaho college or trade school, making it more likely that they will become permanent, productive, tax-paying residents and business owners.*

spent on a public education in those counties. A geographic-based program is attractive in areas where rural residents fear that their local public school will go under if students have a choice to leave. While choice for some is better than choice for none, from a free-market perspective, a geographic-based ESA program arbitrarily and unfairly restricts student opportunities based solely on their address. If rural school administrators genuinely fear a mass exodus from their schools, they should work to improve and attract students, rather than shutting down a program that would equip and empower students (including those in rural areas) to choose the education that is best for them. Legislators should not sacrifice good policy on the altar of political expediency.

With more than a decade of experience and data, the most useful state to examine the downstream effects of ESAs and how to implement them is undoubtedly **Arizona**. The original program was limited to the state’s most at-risk or disadvantaged kids, such as students with special needs and foster care students. The

program grew in success and popularity, from 144 students in 2012 to 6,423 in 2019. Approximately 12,000 students participated in the program just prior to its expansion in 2022 to become the nation’s first universal school choice ESA program. There are no income restrictions, no geographic restrictions, and no requirements that students attend public school prior to applying. Today, more than 45,000 students participate in the universal ESA program, which offers parents access to 90% of state funds – or about \$7,000 per student. Demand is so high that the Arizona Department of Education warns parents that it may take months to process their application.<sup>41</sup>



### Principles of a well-designed ESA program

ESAs allow education dollars to follow the student, rather than any institution. They enrich student outcomes and family satisfaction by improving the match between the education method or school and by promoting competition to increase the supply of high-quality schools. A well-designed ESA program should be simple, clear, understandable, and place as much of the decision-making power as possible with parents. Even the United Nations recognizes that parents have a “prior right to choose the kind of education that shall be given to their children.”<sup>42</sup>

ESAs should not be used as a license to tighten the regulatory noose around the state’s homeschool and private school population. Attempting to

<sup>41</sup> Arizona Department of Education. “[Empowerment Scholarship Account \(ESA\) Program](#).” n.d. Web 10 Dec. 2022.

<sup>42</sup> Universal Declaration of Human Rights (1948). Article 26 Section 3.

## KEY INFORMATION COLUMN

*As with any government program or institution, some level of fraud or misuse is unavoidable with an ESA program, as it is within Idaho's existing public school system.*

*In Arizona, a public school is 15 times more likely to lose a student to another public school than a private school.*

replicate the network of rigid public school regulations in a private or homeschool setting would defeat most of the advantages of an ESA program, not to mention incite legal challenges and vehement opposition from the existing homeschool and private school populations. Fifteen percent of Idaho citizens have paid for their children's educations entirely out of pocket, often at great financial sacrifice. Legislators can create an "opt-in" ESA program that extends choice to more families without destroying the choices of families who have already opted out of the public school system on their own dime.

Idaho's existing education laws provide for enforcement action against parents who fail or neglect their children's education.<sup>43</sup> As with any government program or institution, some level of fraud or misuse is unavoidable with an ESA program, as it is within Idaho's existing public school system.<sup>44</sup> This should not be seen as a reason to deep six a program that would grant an escape hatch to parents who are too poor to opt out of the current government monopoly.

Legislators can tailor ESAs to be as broad or restrictive as political expediency demands, but from a policy standpoint, programs that allow the greatest number of parents the greatest amount of educational choice will create the best outcomes. Nothing can duplicate market success like competition and choice. Legislators should embrace this economic reality, and refrain from measures that would raise legal, cultural, and religious conflict by controlling the curriculum and religious choices of parents.

### **Benefits of ESA programs to public schools**

While it is obvious that ESAs are widely beloved by parents and students, their effects on public schools are also important. Idaho legislators have a duty to "establish and maintain a general, uniform and thorough system of public, free common schools." Legislators must anticipate how an ESA program would impact this duty and understand the effects on public schools.

Contrary to the claims of school choice detractors, ESAs are not a death knell for public schools. In Arizona, for example, 90 percent of the per pupil funding goes into an ESA, but the remaining 10 percent goes back to the public where the child would have attended, or back into the general education fund for legislators to use for other education needs. The Goldwater Institute found that among eligible populations, a public school was 15 times more likely to "lose" a student to another public school, rather than the ESA program. In 2020, Arizona also used \$3 million in ESA savings to overhaul the state's IT system servicing all public schools.<sup>45 46</sup>

<sup>43</sup> Idaho Title 33, Chapter 2.

<sup>44</sup> Idaho State Board of Education. "[Internal Audit and Advisory Services \(IAAS\): Internal Audit Reporting Concerns](#)." n.d. Web. 28 Dec. 2022.

<sup>45</sup> Beienburg, M. "[The Public School Benefits of Education Savings Accounts: The Impact of ESAs in Arizona](#)." The Goldwater Institute. 13 Aug. 2019. Web. 15 Oct. 2022.

<sup>46</sup> Gunn, A. "[Could public-private partnerships help replace aging school buildings?](#)" Mountain States Policy Center. 17 Oct. 2022. Web. 15 Nov. 2022.

## KEY INFORMATION COLUMN

*Arizona also used \$3 million in ESA savings to overhaul the state's IT system servicing all public schools.*

*Poorly performing schools will need to adapt or watch some of their students leave to pursue better opportunities.*

### HOW ESA'S ALLEVIATE STATE & LOCAL BUDGET PRESSURES

- They serve students with severe disabilities at lower cost—a population that districts can only help by redirecting funds from other students.
- They can boost per pupil public school spending by redirecting state and federal dollars to the remaining public school students.
- The redirected funds can reduce the need for local levy funding, alleviating pressure on local taxpayers.
- They ease enrollment pressure on public schools, which could have major downstream effects on Idaho's capital budget, currently facing a school construction funding problem approaching \$1 billion.

ESAs are not the end of public schools. Designed correctly, they will serve to make public schools more responsive to student needs, while alleviating budget pressure. If a public school is truly serving students and communities well, families will continue to enroll there. On the other hand, schools that are not generating positive outcomes for students and are unresponsive to parents should be worried when families are no longer forced to go there. Poorly performing schools will need to adapt or watch some of their students leave to pursue better opportunities. Giving families the option to pursue better opportunities enhances the vision of Idaho's Board of Education, which is, "A student-centered education system that creates opportunities for all Idahoans to improve their quality of life."<sup>47</sup>

School choice opponents have tried to frighten rural legislators into believing that ESAs will destroy local public schools and their communities. This is a scare tactic that has been used successfully in conservative or conservative-leaning legislatures (Texas, Idaho, Oklahoma, and Iowa for example) to block education choice. Whether opponents are misinformed or disingenuous, there is no evidence that rural public schools are harmed by school choice. In fact, despite 70 percent of Florida student eligibility for choice scholarships, enrollment in private schools has risen from 2.4 percent to 6.9 percent in ten years. Florida Representative Kaylee Tuck, who represents a rural

<sup>47</sup> Idaho State Board of Education. "[Board Mission and Strategic Plan—2023-2028](#)." n.d. Web. 28 Dec. 2022.

## KEY INFORMATION COLUMN

*Idaho legislators may wish to expand the Empowering Parents Program to begin seeing the benefits of education choice sooner rather than later.*

Florida district opined, “Across America, next year’s legislative sessions are just around the corner, and school choice opponents know choice has the momentum. They will double down on misinformation in an effort to stem the tide. But the facts on the ground show choice is a plus, including for rural areas.” In Tuck’s rural district, private school enrollment rose from 4.7 to 7.3 percent over the same period. She argues school choice has strengthened their rural communities and that rural families value their options.<sup>48</sup>

### ESA benefits to in-state college and trade school enrollment

The state’s education goals do not match the priorities of Idaho families, particularly rural families. Only 37 percent of high school seniors pursue postsecondary education, while the state’s goal is 60 percent.<sup>49</sup> Rural students, in particular, want more access and support for trade schools.<sup>50</sup>

One possible way to accomplish higher post-secondary enrollment in colleges and trade schools, and keep students in state, is to permit ESA balances to carry forward from year to year, allowing high school graduates to use the balance on a trade school or in-state college. Twelve years of ESA fund balances could add up to a generous post-secondary scholarship. Students that move out of state, or high school graduates that do not enroll in a trade school or college within a designated time would have those balances revert to the state education fund.

Designed properly, ESAs can create incredible incentives to keep high school graduates in state, get them enrolled in an Idaho college or trade school, and become permanent, productive Idahoans.

### Advancing Education Choice to Improve Outcomes in Idaho

#### *Expanding the Empowering Parents Program for Low-Income Students*

The groundwork for ESAs has already been laid in Idaho. For practical reasons, Idaho legislators may wish to expand the Empowering Parents Program to begin seeing the benefits of education choice sooner rather than later. The program offers grants of \$1,000 per student, up to \$3,000 per family, to fund curriculum, tutoring, therapies, and other education programs through an approved online marketplace, prioritizing

#### STEP 1

Expand the  
Empowering  
Parents Program

<sup>48</sup> Tuck, K. “[We’re not the Florida they put on postcards, but school choice works for us too.](#)” 6 Jan. 2022.

<sup>49</sup> Richert, K. “[Sitting it out: Idaho’s college go-on rate falls once again.](#)” IDEdNews.org. 1 Feb. 2022. Web. 10 Oct. 2022.

<sup>50</sup> Kuipers, A. “[Idaho Students want more trade programs.](#)” The Spokesman-Review. 12 Oct. 2022. Web. 10 Nov. 2022.



**KEY INFORMATION  
COLUMN**

*Legislators could also create an ESA program for special needs students, requiring the student to have an identified disability and an existing Individualized Education Program (IEP) to qualify.*

low-income families. Rather than allowing the program to die on the vine when the Coronavirus funds run out, legislators should expand the program by offering low-income students state-funded grants of at least \$3,000 per child, but ideally closer to 90 percent of the per-pupil state funding portion. The remaining 10 percent would be allocated to the public school district, which would support funding among remaining public school students. Federal and local funds would remain with the district. This would relieve operational and capital budget pressures on local school districts. Legislators should allow families to carryover any ESA balance from year-to-year to be used for approved K-12 education expenses in future years, or in an approved Idaho trade school or college upon graduation. Families that leave Idaho would have their account balances returned to the state education budget.

*ESAs for Special Needs Students*

Legislators could also create an ESA program for special needs students, requiring the student to have an identified disability and an existing Individualized Education Program (IEP) to qualify. To make the program meaningful for families of students with disabilities, the annual per pupil grant to families should be significantly more than the universal, low-income ESA program, enabling families to purchase the special tutoring and therapies needed for these students to thrive.

**STEP 2**

Offer ESA's for special needs students

*Toward a Universal Program*

Because ESAs will experience significant push-back from opponents and key elected officials, it is unlikely that a universal ESA or scholarship program would pass initially. ESAs may need time to prove their value to Idaho families, which is why implementing them in stages may be the most practical way to advance school choice. A truly student-centered system that offers opportunities for all should be universal. The end goal of a student-centered, outcome-based education system should be a universal ESA program open to all Idaho students.

**STEP 3**

Prove success and popularity, expand to a universal program

**KEY INFORMATION  
COLUMN**

*ESAs will likely experience significant push-back from opponents and key elected officials. It is unlikely that a universal ESA or scholarship program would pass initially.*

**Nothing here shall be construed as an attempt to aid or hinder the passage of any legislation.**

**Conclusion**

When a parent is free to enroll and withdraw a student at will, the school becomes accountable and responsive to parents and students. While it is impossible to predict the specific kinds of innovations that will occur in the wake of greater school choice, we can expect new schools and learning methods tailored to the needs of specific students to explode onto Idaho’s education scene. School choice detractors like to argue that because private schools are accountable to parents, they are not accountable; however, schools that must attract and retain students voluntarily are far more likely to generate positive results than schools that have a captive audience. It is also questionable policy to force parents to submit their children to an education that may not be best for them, unless they are wealthy enough to opt out.

Education choice levels the playing field between schools and allows parents to act as a check on a system that is otherwise disposed to monopolistic pitfalls. The 21<sup>st</sup> century has opened the door to new education possibilities and methods that can bring more freedom, prosperity, and success to Idaho families. It is time to overhaul and modernize the state’s education system by centering policy and funding around the needs of individual students, for a brighter future and quality of life for all Idahoans.

# ABOUT THE AUTHOR

Amber Gunn is the Senior Policy Analyst at Mountain States Policy Center and a homeschooling mom of five.

She is the former Director of Economic Policy for the Washington-based Freedom Foundation. She has served as a voting member on the American Legislative Exchange Council's (ALEC) Tax and Fiscal Policy Task Force and has been a resource to media outlets and legislative staff for issue briefs and policy analysis. During her time with ALEC, Amber co-authored the organization's influential State Budget Reform Toolkit, which provided budget and procurement best practices to guide state policymakers in all 50 states as they worked to solve budget shortfalls.

Her work has been featured in the Seattle Times, Investor's Business Daily, Seattle Business, The Street, The Olympian, The Tacoma News Tribune, The Spokesman Review, and many other news outlets. Her research and analysis has been cited and used by King 5 Investigators, KOMO 4 News, KIRO 7 News, Northwest Public Radio, and various talk radio shows and radio news outlets.

Prior to joining the Freedom Foundation, Amber was a Charles G. Koch Fellow in partnership with the State Policy Network and the Institute for Humane Studies.

