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# EXECUTIVE SUMMARY AND FOREWORD

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Many proponents of private school choice—both the voucher and tax credit scholarship versions—take for granted that schools won’t participate (or shouldn’t participate) if government asks too much of them, regulates their practices, requires them to reveal closely held information and—above all—demands that they be publicly accountable for student achievement. A recent Friedman Foundation report, for example, bemoaned testing requirements that “may force all participating schools to move in the direction of a single, monopolistic curriculum and pedagogy...”<sup>1</sup> And analysts at the Cato Institute went so far as to send letters to Indiana private schools urging them not to participate in the state’s new voucher program, which it called a “strategic defeat” for school reform, in part because of its testing and transparency requirements.<sup>2</sup>

But is this assumption justified? It’s surely plausible on paper. Part of what’s distinctive and valuable—and often educationally effective—about private schools is their autonomy, their freedom to be different, their escape from the heavy regulatory regime that characterizes most of public education. Insofar as they cherish that autonomy, over-regulation by government might well deter them from participating in taxpayer-supported choice programs and thereby block children from benefiting from the education those private schools offer.

Were such school refusals to be widespread, the programs themselves could not serve many kids. Voucher and tax credit programs obviously cannot do much good if their putative beneficiaries—typically girls and boys from disadvantaged backgrounds and/or dreadful public schools—are unable to gain access to privately operated schools. If those schools shun the programs, there isn’t much point in creating or expanding such opportunities, at least not in relation to the current supply of private schools. (A separate issue, not addressed here, is whether additional pupil demand made possible by such programs will cause a “supply response,” namely the creation of new private schools.)

Private schools deciding whether to participate in a voucher or tax credit scholarship program must weigh

multiple factors: Do they have room for more pupils? Is their education program suited to the needs (and, often, the deficits) that voucher- and scholarship-bearing youngsters are apt to bring with them? Is the amount of the voucher or scholarship sufficient to offset the marginal cost of enrolling such a student? How will the school handle transportation? And what about political considerations that may be important to schools, including the responses of current pupils (and parents), of alumni/ae and donors, and of influential folks in their communities?

Yes, there’s much for school leaders to ponder in addition to whatever concern they may have with government rules and red tape. And policy makers shaping education-choice programs involving private schools must obviously do their best to anticipate the schools’ likely responses. Well-designed programs will naturally strive for sufficient school participation so that they can have the opportunity to accomplish their purpose.

But policy makers must also be responsible stewards of taxpayer dollars and do their best to ensure that such programs advance the public’s interest in securing a quality education for all children in safe, salubrious environments—all of which leads to some degree of regulation. And in the vast realm of regulation, perhaps the touchiest will turn out to be (or so we’ve been admonished by the critics and worry-warts mentioned above) the requirement that private schools administer state tests and be held publicly accountable for student achievement as measured by such tests.

Policy makers contemplating the creation, revision, or expansion of school-choice programs must therefore balance the impulse to regulate on behalf of the public interest against the need for enough private schools to participate so that the children for whom the programs are intended can, in reality, benefit from them.

But how to fix that balance? Is there some tipping point beyond which private schools will surely eschew the program? Are some regulations absolutely intolerable, others mildly repugnant, others bearable—even benign? Where is reality?

Fortunately, enough voucher and scholarship programs exist today that it's possible to answer these questions empirically—that is, to gauge the extent to which regulations (and other factors) actually deter private schools from participating. Mindful that regulations come in many forms and flavors, it's also possible to examine which *kinds* of regulation (if any) are particularly vexing to private schools and to investigate whether specific regulations are more troublesome to some segments of the diverse private school universe than to others. The results of such an analysis allow us to reality-test the broad cautions voiced by the Friedman Foundation, the Cato Institute, and others—in particular their warning that holding schools to account for student achievement (especially via conventional state testing programs) will surely cause them to turn their backs on such programs and thus leave needy children without good educational options at all.

We at the Thomas B. Fordham Institute have a long-standing interest in advancing quality school choices for kids who need them and a parallel interest in boosting educational achievement with the help of rigorous standards, assessments, and accountability systems. As an authorizer of charter schools in Ohio, we deal directly with the intersection of those twin policy goals. But we believe in private school choice, too—indeed, we believe in every kind of school choice that works for kids—and have previously mapped the touchy territory of accountability for “voucher schools” and advised policy makers on how to deal with these challenging trade-offs and balancing acts.<sup>3</sup>

So it was clearly time to probe more deeply into the realities of today's voucher (and tax credit scholarship) programs and determine how the private schools themselves view these issues of government regulation.

To conduct that investigation, we turned once again to Dr. David Stuit of Basis Policy Research who had previously done a fine piece of work for us (*Are Bad Schools Immortal?*, 2010). His analytic skills are superb, and his energy and diligence are unmatched. With financial assistance from the Walton Family Foundation, The Lynde and Harry Bradley Foundation, the Lovett and Ruth Peters Foundation, the Randolph Foundation, and the Thomas B. Fordham Foundation (our sister organization), we asked David and his colleague Sy Doan to examine closely thirteen extant voucher and tax credit scholarship programs (six of the former, seven of the latter) across eleven states. We asked them to describe the nature,

extent, and burdensomeness of their regulations and to determine how many private schools participate in them—and how many do not. We asked them also to survey private schools in communities served by four of the country's most prominent voucher programs (city-specific programs in Milwaukee and Cleveland, statewide programs in Ohio and Indiana) to ascertain how both participating and non-participating schools view those programs and their regulations and how heavily they weigh program requirements (and other constraints) when deciding whether to sign up for and accept the programs' students.<sup>4</sup>

In particular, we asked David and Sy to investigate this quartet of questions:

- › Do regulations and accountability requirements deter private schools from participating in choice programs?
- › How important are regulations and accountability requirements to private school participation compared to other factors, such as voucher amounts, etc.?
- › Are certain types of regulations and accountability requirements stronger deterrents than others?
- › Do certain types of private schools shy away from stronger regulations and accountability more than others?

## ❖ KEY FINDINGS

- 1) There is enormous variation in the nature and extent of the regulations associated with these thirteen programs. Stuit's “burden scores” (calculated on a scale from zero for “least regulated” to one hundred for “most regulated”) range from eight for Arizona's “individual” tax credit scholarship program to seventy-six for the current iteration of Milwaukee's long-running voucher program (like a ship burdened with barnacles, the Milwaukee program has accumulated more rules as it has grown older and larger).
- 2) As expected, there is a moderately negative correlation between regulatory burden and private school participation in choice programs. In other words, the more regulations, the less likely schools are to sign up for them. Participation rates in voucher programs ranged from 29 percent for the newly expanded Louisi-

ana Student Scholarships program to 94 percent for Cleveland’s Scholarship program.<sup>5</sup>

Analysts estimate that if a program were to change from being the least to the most regulated, private school participation rates would drop nine percentage points.

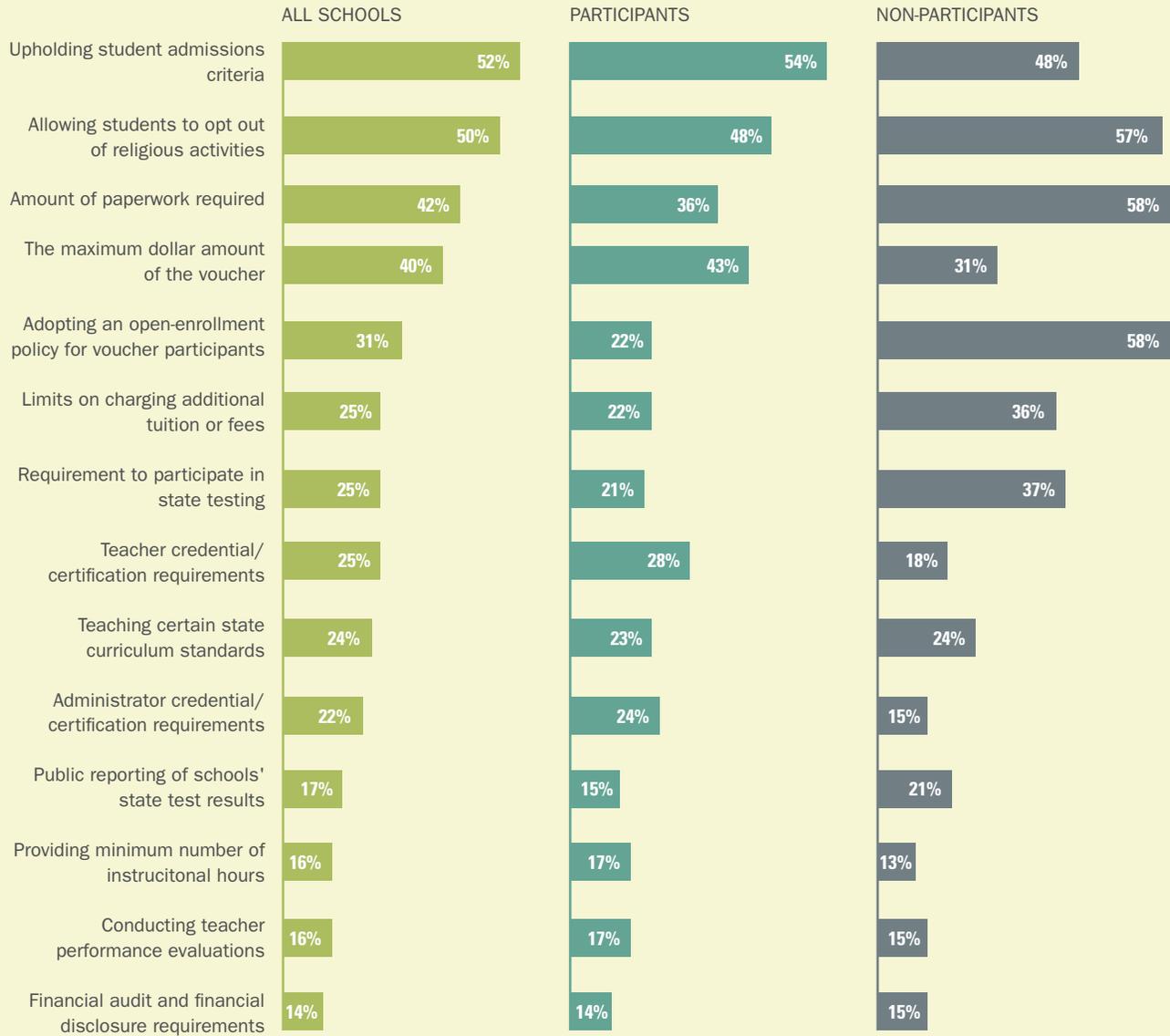
- 3) Yet “regulations” per se aren’t the schools’ foremost concern. Indeed, “not willing to comply” with program rules was cited by just 3 percent of non-participating schools as their single most important reason for avoiding the program. Instead, the most-cited reason was a lack of voucher-eligible families in the region.<sup>6</sup>
- 4) Within the sphere of program regulations, and contrary to the anti-testing assertions of Friedman and others, curricular constraints and testing issues ranked among the less-important considerations for private school leaders (see figure ES-1). Just a quarter of them listed the “requirement to participate in state testing” as “very” or “extremely” important to their decision (and only 17 percent said that about “public reporting of state test results”) versus half or more who were concerned about admissions (“upholding student admissions criteria”) and “allowing students to opt out of religious activities” (a rule found only in Milwaukee).
- 5) Catholic schools are least likely to have their decisions affected by regulation. Non-sectarian schools are more likely to forego participation when burdened with increased regulations—as are *small* schools, possibly because they have less space and administrative capacity to handle the paperwork associated with participation. (They may also be located in thinly-populated areas with few voucher-eligible children.)
- 6) Tax credit scholarship programs—because they are an indirect way of subsidizing private school attendance, using “taxpayer dollars” that never actually pass through the state treasury—are significantly less subject to additional regulations than voucher programs.
- 7) The reasons that most school principals gave *for* participating in the voucher program were the following: to expand their mission in the community (87 percent), “to help voucher eligible families already enrolled in their schools” (75 percent) and “to help needy children in the community” (72 percent).

## ❖ POLICY TAKEAWAYS

- Choice advocates and policy makers should bear in mind that in order to exist and operate in many states—and particularly to be “accredited” or “chartered” by those states (and thus perhaps become eligible for other forms of public aid)—private schools must already comply with various rules and regulations, which sometimes include testing requirements. That is to say, participation in a choice program will not be the first time that many schools’ freedoms of action are constrained by government demands.
- That does not, however, mean that policy makers should burden private schools (or anyone else, for that matter) with unnecessary regulation. They must seek the bare minimum that enables them to look taxpayers (and choice opponents) in the eye and say, “This program is in the public interest.” The kinds of regulation they should be wariest of are those that bear on student admissions and schools’ religious (and religious-education) practices. These types are significantly more likely to deter schools from taking part in the programs than are requirements pertaining to academic standards, testing, and public disclosure of achievement results.<sup>7</sup> Reasonable folks, of course, can disagree about what constitutes “good” and “bad” regulation, but any that results in copious compliance-checking can deter would-be participants: nearly 60 percent of non-participating schools cited “amount of paperwork required” as key to their opt-out decision.
- Perhaps especially as “Common Core” standards take effect in states and new, improved assessments (aligned with those standards) come on line—and more so if colleges and employers begin taking those standards and test results seriously—private schools may become even more accepting of the obligation to embrace those academic standards (for core subjects) and the assessments that accompany them.
- In any case, regulation by government is not the greatest deterrent to private school participation in voucher and tax credit scholarship programs. More consequential concerns involve the design of the program itself: how many and which sorts of youngsters and families are eligible for it, how many of them live within striking distance of a given private school, how well is the program

**Figure ES-1.** Importance of different program requirements to schools' decisions regarding participation in voucher programs

Percent of schools indicating factor was "Very Important" or "Extremely Important" to their participation decision



Source: Survey results.

Note: The results in Figure ES-1 are based on responses from 241 private schools (179 participants and 62 non-participants). Figure ES-1 reports the percentage of respondents who indicate that each factor was either "very important" or "extremely important" to their decision. Separate figures are presented for all private schools (n=241), participants (n=179), and non-participants (n=62). The survey question was, "Below are some specific factors that might influence a school's decision to participate in a voucher program. To what extent were these factors important when your school was deciding whether or not to participate?"

publicized, how burdensome is it for families to qualify and apply, and how close to “adequacy” is the level of financial assistance that it makes available to students and the schools they attend?

- › Those considerations apply to tax credit scholarship programs as well as voucher programs, yet a clear takeaway from this research is that, to minimize regulatory burden and maximize school participation (not to mention sidestep “Blaine Amendment” type barriers in state constitutions), policy-makers ought to opt for the tax-credit approach. They should do so, however, mindful that in minimizing burden and maximizing participation they will also lose a measure of accountability. As Table 2 and Figure 4 make clear (pgs 12 and 15), tax-credit programs enjoy higher private-school participation rates—but almost all of them abjure testing mandates and public-reporting of student performance. (Florida’s tax-credit program and one of Arizona’s two programs are partial exceptions to that statement.)

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