

FEBRUARY 2025



WILL FLANDERS, PHD

THE HIGH COST OF OVERREGULATION:

**How Excessive Government Control
Threatens School Choice in Wisconsin**



**Will Flanders, Ph.D.**

RESEARCH DIRECTOR

✉ Flanders@will-law.org

Executive Summary

School choice has been a prominent topic in Wisconsin since the early 1990s, with the Milwaukee Parental Choice Program being the nation's first school voucher program. Critics of school choice often raise concerns about the lack of accountability in private schools and the publicly funded voucher programs, while proponents argue that access to school choice increases accountability to families. Over time, Wisconsin's voucher programs (Milwaukee, Racine, and Wisconsin) have been subject to increasing state regulation, which has influenced the scope and nature of private school participation. In this paper, we explore the potential harm of overregulation, and caution policymakers from further adding to the regulatory burden.

Participation is not universal outside Milwaukee.

While most private schools in Milwaukee and Racine participate in school choice programs, only about 37% of private schools across the rest of the state have opted to join the Wisconsin Parental Choice Program.

The existing regulatory burden discourages private school participation. While critics of school choice in Wisconsin argue that private schools lack accountability, schools participating

in choice programs are subject to substantial regulation and state mandates. This regulatory burden may deter high-performing schools from opting into the programs.

School leaders speak on the challenges of regulation. We spoke with school leaders both within and outside the parental choice programs. Both groups highlighted the challenges posed by regulatory burdens, which significantly influence their decisions to participate in or opt out of these programs.

The regulatory burden and proposed regulations are increasing. Our analysis from 2009 to 2024 shows there has been a significant increase in the number of regulations affecting private school choice each session. Many of these additional state mandates and regulations do not include an analysis as to why such mandates are necessary. Instead, mandates are often included on the choice programs because public schools have them.

While Wisconsin's school choice programs have been successful in providing diverse educational options, increasing regulation could limit their effectiveness and growth. This report calls for a careful balance between ensuring accountability and maintaining the flexibility of choice programs that allow schools to innovate and meet students' needs.

INTRODUCTION

For as long as school choice has existed, opponents have made claims about a lack of accountability within these programs. Their arguments often stem from taxpayer dollars being sent to private entities, which naturally operate with greater independence from government oversight than traditional public schools. School choice proponents argue that the choice program provides a higher level of accountability by empowering families who directly rely on the schools.

Wisconsin has a long history of supporting school choice—including being home to the nation's oldest school voucher program (started in Milwaukee in 1990) as well as several other school choice options that have been added over interceding decades. This long history has allowed school choice in Wisconsin to be among the most studied choice programs, and has provided other states with a model for both effective and ineffective reforms.

This extensive history has also allowed for another phenomenon: the layering of state regulations over time by policymakers, both those who support and those who oppose school choice.

PARTICIPATION OF SCHOOLS: THE CURRENT LANDSCAPE

The table below shows the percentage of private schools in each area that participate in school choice programs using a combination of data from EdChoice¹ on choice-participating school counts and NCES data on the number of private schools in each area.² Note that for programs like Milwaukee and Racine, identifying the boundaries of participation can be a challenge, as schools located outside of the districts can participate. Note also that, while the most recent data available was used, there is sometimes a one- or two- year gap in when the data in each independent dataset was collected. Consequently, these numbers represent an estimate of the percentage of school participation in choice.

Table 1. School Participation Rates in Private School Choice Programs

Ranking	Program	Participation
1	Racine Parental Choice	100.00%
2	Milwaukee Parental Choice	100.00%
3	Vermont Town Tuition	100.00%
4	North Carolina Opportunity Scholarship	77.71%
16	Ohio: Cleveland Scholarship	55.90%
5	New Hampshire Town Tuition	42.11%
6	Indiana Choice Program Scholarship	41.83%
7	Ohio Income-Based Scholarship	37.85%
8	Wisconsin Parental Choice	37.08%
9	Louisiana Student Scholarships for Ed Excellence	36.39%
10	Ohio Education Scholarship	34.22%
11	Puerto Rico Free School Selection	34.21%
12	Arkansas Succeed Scholarship	34.00%
13	Maine Town Tuition	29.23%
14	Maryland BOOST	22.65%
15	DC: Opportunity Scholarships	6.50%

While Milwaukee and Racine enjoy extremely high participation levels—approaching almost all the schools in the city—the statewide program has far lower participation. Only about 37% of private schools statewide are participating in choice. While this could simply indicate a desire to stay fully private, it could also be indicative of a hesitancy to participate based on the regulations participation would bring about.

ROADBLOCKS TO PARTICIPATION

There has been extensive research over the past decade regarding the impact challenging regulatory environments have on the number and type of schools that participate in school choice programs. A 2019 study by Corey DeAngelis examined participation of schools across seven choice programs. He found that certain regulations have a significant impact on the decision of schools to enter the program.³ Most important among them were regulations that eliminate admission discretion, requirements to participate in the state exam, and requiring the voucher amount to be taken as the full cost of admission. While there may be logic in retaining some of these requirements, it is important to note choice schools in Wisconsin are subject to all of them.

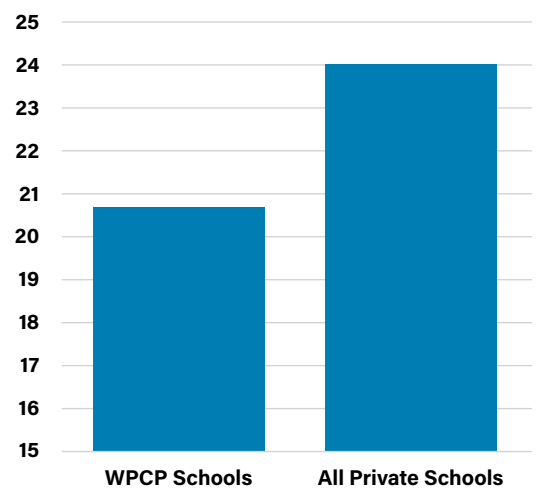
Another DeAngelis study with Burke and Wolf polled private school leaders in New York and California on whether certain regulations would change their likelihood of participating in a hypothetical new school choice program.⁴ They found that requirements like eliminating admission discretion or requiring compliance with state tests reduced participation in a hypothetical choice program by as much as 19 percentage points.

THE REGULATORY ENVIRONMENT IN WISCONSIN

Despite the claims of some school choice opponents that choice schools in Wisconsin are “unaccountable,” Wisconsin’s school choice programs are subject to extensive regulation.

There is some evidence that private schools not participating in school choice may—on average—have higher academic outcomes than those schools that do participate, though some caveats will follow. The Figure below shows ACT composite scores for schools participating in the WPCP⁵ versus all private schools in the state⁶ (choice schools included). The scores for all schools are approximately 3.3 points higher, suggesting that some high-quality schools may be selecting out of participation in school choice.

Figure 1. ACT Scores-WPCP



Of course, a deeper dive into the data would be important before making any large claims based on this data. Control variables would have to be included for demographic factors such as income, disability status, and participation rates on the exam. However, such data is not widely available for non-participating schools leaving us with this surface-level comparison.

CURRENT CHOICE REGULATIONS

In 2014, the Milwaukee Parental Choice Program was named the “most regulated in the country” by the Friedman Foundation (now EdChoice).⁷ Yet in the years since, the regulatory burden on choice schools has only increased further. In this section, we describe some of the most important and time-consuming regulations.

- Schools can be denied entry into the program for failing to fill out forms, budgets, or completing training to DPI's satisfaction.
- Schools must pay for an independent auditor to review both the school's use of *every* choice dollar as well as compliance with the programs. This includes a review of student files and choice applications, teacher and administrator compliance including background checks and educational background, among other requirements.
- For a new private school to join the program, the school must go through a “new schools” process with DPI⁸ to demonstrate that they can participate in the program by meeting fiscal requirements, training by staff, and several documents.
- School must comply with the Wisconsin “Right to Read Act.”
- Must comply with the Wisconsin Civics Graduation Requirement that mandates high schoolers pass a 100 question civics test.
- Choice students must participate in the Forward Exam unless parents opt out.
- Must maintain accreditation from a state-approved list of accreditors.

On top of the state mandates, the DPI often goes further through administrative rules and guidance documentations, which adds additional requirements for schools. These include:

- Extensive requirements for private auditors when reviewing the choice school's student enrollment audits, fiscal and internal control practices, and the financial audits.⁹
- Specific ways that families must use to prove residency and income when applying to the programs.



INTERVIEW WITH:

KIM FELLER

FOUNDER, FELLER SCHOOL

The Feller school is a private school that currently does not participate in school choice that is focused on serving students with dyslexia.

Introduction: My name is Kim Feller, and I'm a veteran teacher. I graduated from UW Madison in 1988 and taught in Wisconsin, then moved out of state to teach first grade. After getting my Master's in Curriculum and Instruction, I returned to Wisconsin. I received my reading certification and worked as a reading specialist in a large public school district. I became frustrated because, despite positive feedback, students' reading scores weren't improving, so I started tutoring. A book called *Uncovering the Logic of English* ignited my passion to change my approach to teaching reading. I eventually started a grassroots nonprofit school to help kids, particularly those with dyslexia.

Approach to Dyslexia: The sad truth is that all schools should be teaching the way we do. The "science of reading" is a big topic, but Wisconsin is far behind. If schools applied these methods, they could identify dyslexia early, which would prevent reading failure. Unfortunately, many schools are not doing this.

Reasons for Not Participating in School Choice Programs: We've avoided participation in school choice programs mainly because we can't afford it. With fewer than 20 students, paying \$30,000–\$50,000 for audits is simply not feasible. Plus, the time commitment for

paperwork—around 60 hours just to prepare for the first year—would be too much for our small school. In addition, we would be required to accept any student who had a voucher. We are a specialized school. We do not have the resources to teach any and all students. For example, we do not have the resources or training to teach students with an intellectual disability, Autism, or Emotional-Behavioral Disabilities.

Impact of Reduced Regulatory Burden: If the regulatory burden were reduced, it would definitely increase our likelihood of participating.

On Accountability: School choice schools are audited annually, which is more frequent than the audits public schools undergo (every four years). This shows that school choice schools are held accountable and claims that they avoid audits aren't accurate.

Regulation of School Choice: School choice schools must adhere to state testing, which is challenging for our dyslexic students. While accommodations like extra time are available, they require a formal diagnosis from an educational psychologist—something that's expensive for families and not required at our school. We value showing progress, but the cost of testing can be prohibitive for many families.



INTERVIEW WITH:

ANDREW NEUMANN

CEO, OPEN SKY EDUCATION

Open Sky Education's portfolio includes a network of six college preparatory schools in Milwaukee and Racine that participate in Wisconsin's private school choice programs.

Introduction: I'm Andrew Neumann, CEO of Open Sky Education, which runs HOPE Christian Schools in Milwaukee and Racine. We've been part of the Choice program for almost 20 years, serving about 3,000 students across six campuses. I've also been involved with School Choice Wisconsin and its action arm for 15 years.

Regulatory Burden Over Time: The regulatory burden has grown significantly over the years. While there have been some positive changes, overall, regulations have increased. From my early years, I was shocked by how hard it was to qualify families for the voucher program—simple errors like misspelled names could put funding at risk. Unfortunately, this issue persists today.

Resources Spent on Compliance: We spend a lot on auditing and staff to handle compliance. We have regional directors and managers at every school whose roles focus largely on these issues. In total, it probably costs over a million dollars annually to maintain compliance with the regulations. We'd much rather be spending these dollars in classrooms to support learning for our students.

Legislative Attitudes Toward Regulation: Legislators have proposed bills that would negatively impact private schools. It's important to understand that voucher schools are not the

same as charter schools. We are private religious schools that accept vouchers from parents to fund tuition. The extra regulations created for private and religious schools who accept vouchers, based on the assumption that they're similar to charter schools, are problematic.

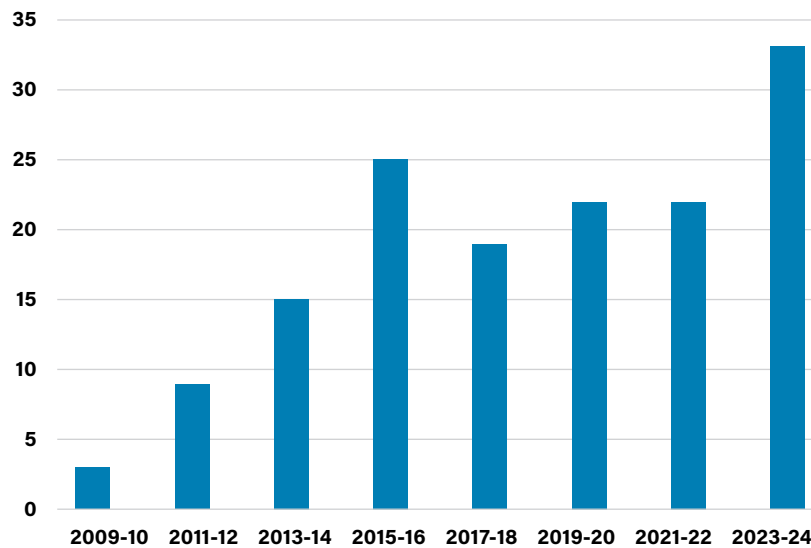
Dangers of Overregulation: A major strength of the private school choice program today is the flexibility for schools to adapt to meet the needs of every child and the flexibility of parents to choose the best educational option for their children from a wide variety of options. Too many regulations will reduce the diversity of educational options and limit flexibility. Schools will be forced into a smaller box, reducing the variety of educational models available to parents. The resources needed for compliance take away from what's best for kids, regressing the system toward a one-size-fits-all model.

On the Reading Bill: We support the science of reading, including phonics and grammar. However, we oppose bills that impose state control over curriculum, as they can interfere with the values we aim to teach and with the flexibility we have to adapt to best serve the children in our schools, especially in religious schools. We don't want the Department of Public Instruction deciding what content aligns with our faith-based mission.

REGULATION OVER TIME

In order to determine whether there has been, in fact, an increased interest in the regulation of school choice, we looked back at legislative sessions from 2009-10 onward. We searched the legislative record for the number of pieces of legislation referencing the key school choice-related statutes. A count of the number of such bills is found in Figure 2.

Figure 2. Count of Proposed Private Choice Legislation by Session



Since 2009, there has been a general increase in the number of choice-related regulations proposed. The 2023-24 legislative session saw a record high number of regulatory proposals for school choice over our time frame. The 33 bills proposed last session beat the previous high of 25 in 2015-16 by eight.

A wide variety of school choice-related bills were proposed this past session. Some of these bills had the goal of ending school choice—like AB 533/SB 499 that would have capped enrollment in Wisconsin’s parental choice programs at their current numbers, as well as phased out another school choice program—the Special Needs Scholarship Program.¹⁰ Others introduced new regulations that included private choice schools in new public school teaching requirements—like AB 937/SB 873 that would mandate the teaching of cursive writing in schools.¹¹ And still others were supported by school choice advocates—like AB 305/SB 330—passed and signed by the Governor—that increased per pupil payments for choice students.¹² But it is clear that additional requirements for school choice have been top-of-mind for legislators in recent terms, and this is potentially problematic for additional expansions of educational options in the state.

Conclusion



While Wisconsin's school choice programs have undeniably provided thousands of families with valuable educational options, the increasing regulatory burden threatens to stifle their growth and diversity.

The existing regulations already ensure accountability and prevent fraud, yet the push for further regulation could discourage high-performing private schools from participating, limiting the range of choices available to families. As highlighted by school leaders, the flexibility of these programs is a key strength, allowing schools to innovate and cater to the unique needs of their students. To maintain and expand school choice in Wisconsin, policymakers must strike a careful balance between ensuring accountability and preserving the flexibility that has made these programs successful. Without this balance, there is a risk of undermining the very principles that have allowed school choice to thrive, ultimately reducing the educational opportunities available to students across the state at a time they are needed more than ever.



Endnotes

- 1 "School Choice in America Dashboard (SCIA)." EdChoice, n.d. <https://www.edchoice.org/school-choice-in-america-dashboard-scia/>.
- 2 "Digest of Education Statistics, 2023." National Center for Education Statistics (NCES) Home Page, a part of the U.S. Department of Education, n.d. https://nces.ed.gov/programs/digest/d23/tables/dt23_205.80.asp?current=yes.
- 3 DeAngelis, Corey A. 2019. "Regulatory Compliance Costs and Private School Participation in Voucher Programs." *Journal of School Choice* 14 (1): 95–121. doi:10.1080/15582159.2019.1673954.
- 4 DeAngelis, Corey A., Lindsey M. Burke, and Patrick J. Wolf. 2020. "When Being Regulated Is a Choice: The Impact of Government Policies on Private School Participation in Voucher Programs." *Journal of School Choice* 15 (3): 417–40. doi:10.1080/15582159.2020.1783476.
- 5 "Parental Choice Program WSAS Results." Wisconsin Department of Public Instruction, n.d. <https://dpi.wi.gov/assessment/parental-choice-program/data>.
- 6 "Average Private School ACT Scores in Wisconsin." Private School Review - Established 2003, n.d. <https://www.privateschoolreview.com/act-score-stats/wisconsin>.
- 7 Healy, Brett. "Study Shows Milwaukee's Voucher Program Is Most Government-Regulated School Choice Program in America." *MacIver Institute*, June 3, 2014. <https://archive.maciverinstitute.com/2014/06/study-shows-milwaukeees-voucher-program-is-most-government-regulated-school-choice-program-in-america/>.
- 8 Underly, Jill K. "School Registration Checklist 2024-25 School Year." Wisconsin Department of Public Instruction, n.d. https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/school_registration/2024-25_School_Year/School_Registration_Checklist_Jan_10_2024-25_final.pdf.
- 9 PRIVATE SCHOOL CHOICE PROGRAMS AUDIT GUIDE FISCAL AND INTERNAL CONTROL PRACTICES REPORT TO THE WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, n.d. https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Financial_audit_reports/2021-22-Fiscal-Practices-Rpt.doc.
- 10 "Assembly Bill 533." 2023 Assembly Bill 533, n.d. <https://docs.legis.wisconsin.gov/2023/proposals/reg/asm/bill/ab533>.
- 11 "Assembly Bill 937." 2023 Assembly Bill 937, n.d. <https://docs.legis.wisconsin.gov/2023/proposals/reg/asm/bill/ab937>.
- 12 "Assembly Bill 305." 2023 Assembly Bill 305, n.d. <https://docs.legis.wisconsin.gov/2023/proposals/reg/asm/bill/ab305>.





330 East Kilbourn Ave. | Suite 725
Milwaukee, WI 53202

will-law.org
414-727-9455



@WILawLiberty