

PRIVATE SCHOOL VOUCHERS AND THE FAILED PROMISE OF OSMOSIS

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INTRODUCTION

Trends come and go. This is true of trends in many categories, including education reform. Over the years, advocates for reform have championed a range of strategies including accountability through high-

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stakes testing,¹ incentives for students,² teachers,³ small class sizes,⁴ parental involvement,⁵ school uniforms,⁶ technology in classrooms,⁷ extending the school year,⁸ curricular change, and so on.

However, one recurring and consistent argument for school improvement and student achievement has been that students of lesser means do better in mixed settings or when grouped with students of higher means. This idea, that the rising tide lifts all boats, has been at the core, or at least figured as a central argument, in several social movements in education reform: racial integration during the civil rights movement,⁹ mainstreaming efforts for children with disabilities,¹⁰ efforts to counteract social economic segregation,¹¹ and in blended-ability learning and anti-tracking¹² classrooms.

1. See generally National Research Council, *INCENTIVES AND TEST-BASED ACCOUNTABILITY IN EDUCATION* (Michael Hout & Stuart W. Elliott eds., 2011).

2. See generally Bradley M. Allan & Roland G. Fryer, Jr., *The Power and Pitfalls of Education Incentives*, THE HAMILTON PROJECT (Sept. 27, 2011), http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/092011_incentives_fryer_allen_paper2.pdf; SUSAN H. FURMAN & JENNIFER A. O'DAY eds., *REWARDS AND REFORM: CREATING EDUCATIONAL INCENTIVES THAT WORK* (1996).

3. See generally Dara Shifrer, Ruth Lopez & Turley Holly Heard, *Do Teacher Financial Awards Improve Teacher Retention and Student Achievement in an Urban Disadvantaged School District?*, 54 AM. EDUC. RES. J. 1117 (2017).

4. See generally Joseph Berger, *Education: Is There an Optimum Class Size for Teaching?* N.Y. TIMES (April 6, 1988), <http://www.nytimes.com/1988/04/06/us/education-is-there-an-optimum-class-size-for-teaching.html>.

5. See generally Hollyce C. Giles, *Parent Engagement as a School Reform Strategy*, ERIC (1998), <https://files.eric.ed.gov/fulltext/ED419031.pdf>.

6. See generally Elisabetta Gentile & Scott A. Imberman, *Dressed for Success? The Effect of School Uniforms on Student Achievement and Behavior*, 71 J. URB. ECON. 1 (2012); David L. Brunsma & Kerry A. Rockquemore, *Effects of Student Uniforms on Attendance, Behavior Problems, Substance Use, and Academic Achievement*, 92 J. EDUC. RES. 53 (1998).

7. See generally Binbin Zheng et al., *Learning in One-to-One Laptop Environments: A Meta-Analysis and Research Synthesis*, 86 REV. EDUC. RES. 1052 (2016).

8. See generally Simon Leefatt, *The Key to Equality: Why We Must Prioritize Summer Learning to Narrow the Socioeconomic Achievement Gap*, 2015 B.Y.U. EDUC. & L.J. 549 (2015).

9. See generally, LESSONS IN INTEGRATION: REALIZING THE PROMISE OF RACIAL DIVERSITY IN AMERICAN SCHOOLS (Erica Frankenberg & Gary Orfield eds., 2007).

10. *Mainstreaming in the Public Schools*, ENOTES.COM, <http://www.enotes.com/research-starters/mainstreaming-public-schools#research-starter-research-starter> (last visited Nov. 1, 2017) (“Mainstreaming is a term used in public schools to describe ways in which educational strategies are utilized to provide appropriate special education services to disabled students assuring the least amount of disruption in routine, while maximizing relationships and contact with general education peers.”).

11. Kimberly Quick, *How to Achieve Socioeconomic Integration in Schools*, THE CENTURY FOUND. (Apr. 15, 2016), <https://tcf.org/content/facts/achieve-socioeconomic-integration-schools>; Andrew J. Rotherham, *Does Income-Based School Integration Work?*, TIME (Oct. 28, 2010), <http://content.time.com/time/nation/article/0,8599,2027858,00.html>.

12. Valerie Strauss, *The Bottom Line on Student Tracking*, WASH. POST (June 10, 2013), <https://www.washingtonpost.com/news/answer-sheet/wp/2013/06/10/the-bottom-line->

In this Article, I examine this idea—one I call educational osmosis—in the context of private school vouchers. I define educational osmosis as the idea that academic achievement will result from proximity. The proximity argument assumes underprivileged students will succeed at higher rates when seated in the same schools and in the same classrooms with privileged students. This sort of educational reform through osmosis is usually one-directional with the benefits flowing from the more privileged group to the underprivileged group.¹³ Rarely is this sort of integration of students viewed as having academic benefits for the students in the privileged position or in the high-performing school. More often than not, the underprivileged child is deemed the beneficiary. If the child in the more privileged school benefits at all, it is not in terms of academic achievement but rather in the development of “soft” skills. The privileged child may learn empathy for others, exposure to other cultures or points of view,¹⁴ or better preparation to engage in a diverse work force.¹⁵

The most recent controversy in the debate over in K-12 educational reform is school vouchers.¹⁶ Vouchers are government-sponsored programs that provide funds to families to cover some or all costs of private school attendance.¹⁷ Each voucher program has its own rules and structures. Some voucher programs are open to students already attending private schools and some are open only to students in a certain geographic area. Under most programs, families can send their children to a school of their choice—usually private or parochial school—which is what placed “vouchers” broadly under the category of “school choice” reforms. Federal or state governments typically supply vouchers to students who are from low-income families, attend an underperforming public school, or have a special learning need.

At its core, the school voucher movement is a form of educational osmosis. Vouchers may be at the center of the most recent debate, but it is

on-student-tracking/?utm_term=.eb9cb614e523 (arguing against student grouping by ability levels between classrooms).

13. *But see* Anya Kamenetz, *The Evidence that White Children Benefit from Integrated Schools*, NPR ED (Oct. 19, 2015, 6:04 AM), <http://www.npr.org/sections/ed/2015/10/19/446085513/the-evidence-that-white-children-benefit-from-integrated-schools>.

14. Meera E. Deo, *Empirically Derived Compelling State Interests In Affirmative Action Jurisprudence*, 64 HASTINGS L.J. 661, 687-88 (2014) (noting that benefits of diversity in education “include improved learning for all students through an opportunity to hear and learn from people with viewpoints that may differ from their own”).

15. *Id.* at 688 (noting one argument in favor of educational diversity is that students experience “significant benefits to their future careers”).

16. *See* Alexandra Kisielewski, *Are Private School Voucher Programs an Effective School Choice Option?*, THE CENTURY FOUND. (May 11, 2017), <https://tcf.org/content/commentary/private-school-voucher-programs-effective-school-choice-option>; *see also* Scott Sargrad, *Don’t Gamble on Vouchers*, U.S. NEWS & WORLD REP. (June 21, 2017, 12:00 PM), <https://www.usnews.com/opinion/knowledge-bank/articles/2017-06-21/dont-gamble-on-private-school-vouchers-invest-in-public-education>.

17. Denise C. Morgan, *The Devil is in the Details: Or, Why I Haven’t Yet Learned to Stop Worrying and Love Vouchers*, 59 N.Y.U. ANN. SURV. AM. L. 477, 477 n. 1 (2003).

emerging as more than a trend. Prior to 2002, there were five voucher programs in five states: Vermont, Maine, Wisconsin, Ohio, and Florida.¹⁸ After 2002, once the Supreme Court upheld a controversial voucher system in *Zelman v. Simmons-Harris*¹⁹ that permitted religious schools to enroll voucher students, voucher programs exploded. Today there are twenty-five voucher programs in fourteen states plus Washington, D.C.²⁰ The last fifteen years have seen a steady increase in the voucher movement in the United States. Voucher programs have received a great deal of attention and will likely continue to be popular given the Trump Administration's strong enthusiasm for them. Of course, it is easy to credit President Trump and his voucher-supporting Secretary of Education Betsy DeVos for the growing enthusiasm surrounding vouchers. However, the popularity of vouchers is also due to the belief by parents and the public in general that private schools hold the answer to student academic performance and success.

This Article will explore the osmosis theory of student performance by examining vouchers in private schools. It will consider this question by examining two different accounts of the impact of private school immersion on underprivileged children. I will take into account the historical and often anecdotal accounts of underprivileged, often minority, students who achieve significant successes after desegregating elite private schools, and contrast those accounts with underprivileged students who have fewer successes after transferring to private schools using vouchers. I proceed in four Parts.

In Part I, I consider the allure of private school education and explain why ultimately private schools cannot provide a solution to ailing public school systems. In Part II, I acknowledge the popularity of vouchers and consider the studies that show their questionable merit. I conclude that given the political need to take vouchers seriously despite the weak evidence to date on their success, it is imperative to begin a dialogue about "what works" for underprivileged students in the private school context. Part III considers the differences among private schools and begins to provide cautious advice to parents armed with vouchers who seek a better solution for their children. In Part IV, I conclude that when no suitable options exist that will make a real difference for their children, parents would be better served in rejecting a voucher. This Article is a modest attempt to begin the conversation that will assist underprivileged families in being better consumers in this new educational marketplace.

18. Patrick J. Wolf, *School Voucher Programs: What The Research Says About Parental School Choice*, 2008 B.Y.U. L. REV. 415, 418-19 (2008).

19. 536 U.S. 639 (2002).

20. See Micah Ann Wixom, *50-State Comparison: Vouchers*, EDUC. COMMISSION OF THE STATES (Mar. 6, 2017), <https://www.ecs.org/50-state-comparison-vouchers>.

I. THE LURE OF PRIVATE SCHOOLS

A recent New York Times Magazine article, “The Way to Survive It Was to Make A’s”²¹ chronicles the lives of seven African-American boys in the late 1960s and their experiences in an elite all-white southern private boarding school.²² Unlike the Virginia public schools that were ordered to desegregate after the Supreme Court 1954 mandate in *Brown v. Board of Education*,²³ the private Virginia Episcopal School (VES) admitted these boys of their own accord, though not without internal disagreement. The young black students were enrolled, not through publicly funded vouchers, but through the largesse of a private foundation. Prior to the admission of the first two boys in 1967, no black children had ever enrolled in a private boarding school²⁴ in Virginia.²⁵ Indeed, between 1950 and 1970, all-white private schools, known widely as segregation academies, grew in number as a response to public school desegregation.²⁶

The admission of young black boys to VES was a grand experiment, funded by the private Stouffer Foundation with two apparent goals.²⁷ Primarily, and somewhat unabashedly, the black boys were present to enrich the life experiences of their white classmates. The white boys who attended such schools came from elite southern families and needed to be prepared for the newly integrated and presumably more tolerant America.²⁸ The second goal of the program was to provide the black boys with access to an education and set of life experiences enjoyed only by the most privileged whites at that time.²⁹

The integration of public schools—replete with protest and violence, and often forced by means of court order, consent decrees, and busing—is a story with which many of us are familiar.

On the other hand, the integration of elite private institutions presents different sets of challenges and a slightly different history. This integration effort has garnered insufficient attention and study.³⁰

The Stouffer experiment was not the only one of its kind. For instance, in the 1960s an organization called A Better Chance (ABC) provided fifty-five poor African-American boys with a similar opportunity

21. Mosi Secret, *The Way to Survive It Was to Make A’s*, N.Y. TIMES (Sept. 7, 2017), https://www.nytimes.com/2017/09/07/magazine/the-way-to-survive-it-was-to-make-as.html?_r=1.

22. *Id.*

23. 347 U.S. 483 (1954).

24. Secret, *supra* note 21.

25. *Id.*

26. See Sarah Carr, *In Southern Towns, ‘Segregation Academies’ Are Still Going Strong*, THE ATLANTIC (Dec. 13, 2012), <https://www.theatlantic.com/national/archive/2012/12/in-southern-towns-segregation-academies-are-still-going-strong/266207>.

27. Secret, *supra* note 21.

28. *Id.*

29. *Id.*

30. *Id.*

to attend one of the country's sixteen most elite private prep schools.³¹ Today, ABC has more than 14,000 alumni, places approximately 500 scholars annually, and collaborates with nearly 300 private schools.³² Its mission is to “increase substantially the number of well-educated young people of color who are capable of assuming positions of responsibility and leadership in American society.”³³ The organization helps the ABC Scholars obtain access to a quality and life-changing experience. These students excel academically at far higher rates than their counterparts who do not attend such schools. For instance, “96 percent of graduates of [ABC] programs enroll in college, compared to 24 percent of students of color nationwide.”³⁴ The ABC website reveals that these graduates have included national legislators and politicians, (Governor Deval Patrick is one example), corporate executives, professors, judges, and renowned artists.³⁵ One scholar, in describing his path from projects in Chicago's south side, to St. Georges School, to Harvard, to a position at Newsweek, explained how ABC changed his life trajectory.³⁶ “My world opened up,” he says. “I never looked at the world the same way, again.”³⁷

These sentiments should sound familiar. Consider again the Magnificent Seven, as they liked to call themselves. These were the seven black students who received private scholarships (or vouchers) from a foundation to attend an elite private school in Virginia.³⁸ During the nine-year period from 1967-1976, these seven boys left their poor (or, in some cases, middle-class) and segregated schools. Although they faced incredible challenges, from isolation to violence, they not only succeeded, but thrived academically.³⁹ Marvin and Bill, the first two boys to attend under the Stouffer scholarship, placed first and second in their classes each of the four years they attended the school.⁴⁰ The subsequent students constituting the Magnificent Seven—two more boys in the next two years and one boy the following year—also received top grades.⁴¹ They supported one another and

31. Shereen Meraji, *Fifty Years Later, 'A Better Chance' Trains Young Scholars*, CODE SWITCH (June 8, 2013, 5:55 AM), <http://www.npr.org/sections/codeswitch/2013/06/09/184798293/fifty-years-later-a-better-chance-trains-young-scholars>.

32. Sandra E. Timmons, *Welcome to a Better Chance*, A BETTER CHANCE, <http://abetterchance.org/index.aspx> (last visited Nov. 2, 2017).

33. *Id.*

34. Mia Hall, *'A Better Chance' is Changing the Landscape of Leadership*, NBC NEWS (June 3, 2016, 12:24 AM), <https://www.nbcnews.com/news/nbcblk/better-chance-changing-landscape-leadership-america-n585301>.

35. *Success Stories*, A BETTER CHANCE, <http://www.abetterchance.org/abetterchance.aspx?pgID=949> (last visited Nov. 2, 2017).

36. Meraji, *supra* note 31.

37. *Id.*

38. Secret, *supra* note 21.

39. *Id.*

40. *Id.*

41. *Id.*

received encouragement from school administrators.⁴² In spite of their academic successes, life was difficult for the boys attending VES and the scores of other Stouffer-funded students who were sent to other schools around the South. The Stouffer Foundation ultimately sponsored nearly 140 students including girls, Latinos, and Native Americans.⁴³

But not all the students made it through the grueling process of desegregating their schools.

The Stouffer students spoke of hazing, racial slurs and clandestine beatings.⁴⁴ However, for the most part the experiment was a success. In retrospect, many of the Stouffer scholars were pleased with their professional and career success. For example, the VES boys went on to attend schools like Harvard, Stanford, Howard, and Princeton.⁴⁵ They became lawyers, doctors, legislators, preachers, and businessmen.⁴⁶ Only those students who lived the experience and suffered the cost that earned them these opportunities can say for sure whether it was worth it. One of the students who felt most aggrieved and abused during his time at VES, and who refused to engage with the school and his former classmates once all seven boys had graduated, was later interviewed about his impressions of the program.

Without a doubt, VES changed not just my life but also the lives of my children and my grandchildren. I know the high schools I would have attended, and I know the high school I did attend. . . . I don't know that it's for everyone, . . . but for me, I think it was a great experience and changed everything. . . . I wouldn't trade the experience at all. It propelled me into a new place in life.⁴⁷

Not much has changed for the modern versions of the Magnificent Seven. A recent article in *The Atlantic* described difficulties faced by minority students when they attend elite private schools.⁴⁸ The article chronicled the travails of two African-American families who decided to send their sons to Dalton, one of the most prestigious prep schools in New York's Upper East Side.⁴⁹ African-American parents continue to send their children to elite schools despite the social and emotional costs because they view attendance at such good schools as a path to upward mobility. Indeed,

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Judith Ohikuare, *When Minority Students Attend Elite Private Schools*, THE ATLANTIC (Dec. 17, 2013), <https://www.theatlantic.com/education/archive/2013/12/when-minority-students-attend-elite-private-schools/282416/>.

49. *Id.*

nearly one-third of the students graduating from Dalton matriculated into Ivy League universities or their equivalents.⁵⁰

Parents of color (and likely white parents too) seem to link a private school education to upward mobility for their children. This helps explain an important reality: Black parents support vouchers, and according to some surveys this support reaches an astounding rate of 60%.⁵¹ Despite growing evidence to the contrary in cities all over the United States, these parents seem to remain convinced that there is a link between private school education and enhanced upward mobility for their children. This conviction continues to vex and confound strong opponents of private school vouchers, who may believe vouchers will weaken already crippling public education system, which in their view is the true key to upward mobility for the underprivileged. Yet many parents who do believe that private schools may be the ticket to academic achievement and upward mobility for their children also realize they cannot afford the high costs of private school tuition. For those parents, vouchers are a common sense and accessible solution.

A. The Improbable Private School Solution: You Do the Math

The singular most notable refrain emerging from the Trump Administration and his Secretary of Education, Betsy DeVos, has been a strong support for school choice, and vouchers in particular. Let us get one thing perfectly clear: public vouchers will not solve what many identify as the most significant problems in the American educational system. For reasons set out in this Part, they simply cannot be the basis of any far-reaching reform.

Desperate families—many poor, minority and in underperforming schools—turn to private schools as a potential solution to academic achievement. But it is highly improbable, if not impossible, that private schools could offer a solution to more than just a handful of students. Even if the average private schools were superior to the average public schools—which is a critical and unproven assumption—the numbers would not work. Simply put, elite and semi-elite private or parochial schools are too few to absorb the number of students, regardless of race or ethnicity, who find themselves being underserved by public schools. In other words, private schools will not provide an answer to systemic education reform.

In most instances, vouchers provide a mechanism for a limited number of students in underperforming public schools to transfer to

50. *Id.*

51. See *New Survey Shows Black Voters Strongly Support Parental Choice for Educational Options in Their Communities*, BLACK ALLIANCE FOR EDUC. OPTIONS, http://www.baeo.org/?ns_ref=11&id=7335 (last visited Nov. 2, 2017) (describing a four-state survey finding 60% for vouchers among African-Americans); see also Michael L. Owens, *Why Blacks Support Vouchers: Political Failure Made a Desperate Remedy Attractive*, N.Y. TIMES (Feb. 26, 2002), at A25.

supposedly higher performing private or parochial schools. Vouchers are currently the most debated education reform proposal. Most voucher systems, and at least the ones lauded by Secretary DeVos, use government funds to pay for students to attend independent or parochial private schools. These vouchers are part of the trendy conversation at the moment for several reasons. Indeed, President Donald Trump and his appointed Secretary of Education Betsy DeVos continue to stress that school vouchers are a central element of their education reform plan despite critics and recent studies negating their effectiveness.⁵²

The idea behind vouchers is ostensibly to give children and their families a choice between a public school (and possibly a private school) they would otherwise attend and a private or public school willing to admit them with a government-paid voucher coupon. The voucher-carrying student is not entitled to attend a private school but rather enabled to do so at lower personal cost. The private school, on the other hand, benefits from a larger pool of students who can pay tuition or at least the face value of the voucher. The schools therefore are the ones with the enhanced “choice” to select among a wider range of students who can pay.

Notwithstanding, the real problem is that there aren’t nearly enough spaces in private schools to absorb the number of public school students who might want to enroll in high-performing private schools. Approximately 85% of American children are enrolled in public schools.⁵³ Approximately 14% are enrolled in private or parochial schools.⁵⁴ Even if the voucher amount were so compelling as to entice private schools to fill their seats with voucher holders—or even double or triple their enrollment—the vast majority of students would remain in the public school system.

In other words, a plan to reform public education by using vouchers is like a plan to eradicate poverty with the lottery system. For every winner there would be millions of losers. And no number of public interest stories featuring a few winners could make up for that massive deficiency or the resulting disparity. Even the staunchest advocates of vouchers must come to terms with the reality that the numbers alone foreclose a possibility vouchers will serve as a source of hope for more than a small handful of students. This is the real tragedy of the voucher issue on both sides of the debate: it is a huge distraction from the search for more impactful reform.

That said, a serious conversation is one worth having for two primary reasons. First, in this political climate where vouchers are the primary reform on the table, it makes sense to examine them critically. Second, the fact that a policy initiative might not help everyone does not mean that it should not

52. Leah Askarinam, *What a New Study on Vouchers Means for Trump’s Agenda*, THE ATLANTIC (Apr. 28, 2017), <https://www.theatlantic.com/education/archive/2017/04/do-vouchers-actually-work/524676>.

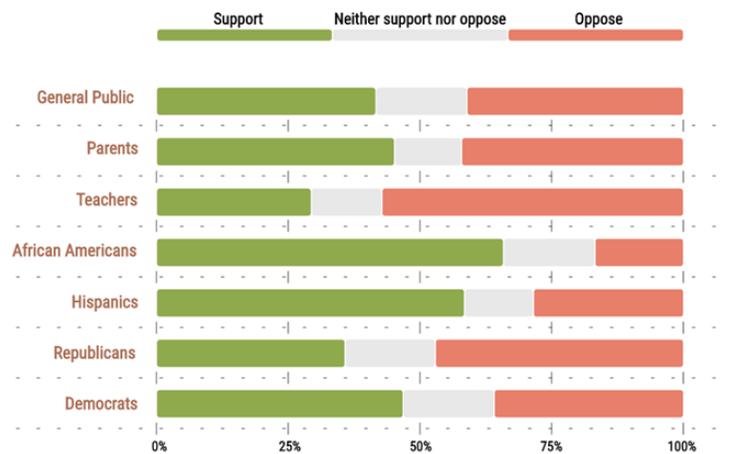
53. *Results from the 2015 Education Next Poll*, EDUCATIONNEXT, <http://educationnext.org/2015-ednext-poll-interactive> (last visited Jan. 28, 2018).

54. *Id.*

be made available to help the few it can, all else being equal.⁵⁵ We can hardly blame desperate parents—many of whom are poor, black, Latino and otherwise underprivileged—to eschew options that might change the course of their children’s lives. If vouchers can affect academic achievement, growth, and social mobility of disadvantaged students, then they are worth discussing.

We must take the voucher question seriously. According to *Education Next*, a publication sponsored by Stanford’s Hoover Institution and Harvard’s Kennedy School, polls show that 42% of Americans favor targeted vouchers that give low-income families funds that subsidize a private school education (see chart below).⁵⁶ Contrary to what might be popular belief, Democrats favor vouchers at increased rates⁵⁷ while Republican support is decreasing.⁵⁸ Sixty-six percent of African-Americans and 58% of Latinos favor vouchers for low-income students.⁵⁹

FIGURE 1



B. The Support for Vouchers to Private Schools Remains

The strong support for vouchers in many circles—particularly among the families that are most likely to be the beneficiaries of voucher

55. Note that this does not take into account the often-made argument that vouchers harm the children left behind in the underperforming public schools. This is a crucial point, but not one that I address in this Article. This Article addresses voucher programs on the narrower claim that vouchers will help students who use them.

56. *Results from the 2015 Education Next Poll*, EDUCATIONNEXT, <http://educationnext.org/2015-ednext-poll-interactive> (last visited Nov. 2, 2017).

57. *Id.*

58. *Id.*

59. *Id.*

programs—suggest that even if they cannot help everyone, they should at least be one component of an educational reform plan— *if they work*.

This brings me to my second point. Assuming that vouchers could affect a larger number of students in need, recent studies call into serious question whether they work at all.

Critics of the voucher system have argued for their abolition, citing studies showing that student improvement is marginal or flat for students who use vouchers to transfer to other schools.⁶⁰ Recent studies have gone much further to show that many student scores actually drop when they move, using vouchers, to supposedly academically advanced private schools.⁶¹ In other words, their counterparts who remain in their local public schools do better. These new studies call into question the theory of student academic improvement by osmosis.

That said, it is becoming increasingly important to understand how underrepresented minorities and low-income children fare when placed in private school settings. Taking President Trump’s budgetary blueprint as a guide, there will be few government resources allocated to educational reform in the next several years.⁶² The criticisms of vouchers are many. Voucher reforms are said to defund public schools, contribute to the brain drain from public schools, blame teachers and teacher unions for student performance problems outside of their control, and lead to reliance on high stakes testing in assessing school quality, among other things.

However, the most damning challenge to vouchers of all has to be the claim that they do not improve academic performance for the students who utilize them. In the next Part of this Article, I will consider the evidence regarding education vouchers, particularly in the context of underrepresented minorities who transfer to private majority white schools. I look at the evidence regarding vouchers with an eye toward answering the following puzzle: Why wouldn’t vouchers work to propel students—often urban, minority, poor or first-generation students—into academic achievement and future success? If similarly situated students who transfer to elite private schools through programs like A Better Chance or The Stouffer Foundation can experience transformative change, why don’t vouchers into private schools have the same effect?

We must ask why is it that for some students, the private school opportunity “propels them into a new place in life” while others are harmed (or unaffected) academically by the move? Before venturing an analysis of

60. Kevin Carey, *Dismal Voucher Results Surprise Researchers as DeVos Era Begins*, N.Y. TIMES (Feb. 23, 2017), <https://www.nytimes.com/2017/02/23/upshot/dismal-results-from-vouchers-surprise-researchers-as-devos-era-begins.html>.

61. *Id.*

62. OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, *America First: A Budget Blueprint to Make America Great Again* 17-18, 50 (2017), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf (last visited Nov. 3, 2017).

this question, let us consider the studies on vouchers to determine what can be learned about their successes and failures from the wide range of voucher programs and the various ways in which they operate.

II. VARIATIONS ON VOUCHERS

President Trump has been consistent with regard to educational reform. He made one notable campaign promise in the realm of education: to support and advocate for school choice as a means of educational reform.⁶³ It soon became clear that for Trump, “choice” meant “vouchers” and “vouchers” really meant subsidization of private or parochial school tuition. In one of his earliest acts as president, he nominated Betsy DeVos as Secretary of Education, a well-known advocate for school vouchers.⁶⁴ If DeVos’ appointment and ultimate confirmation was not sufficient evidence of President Trump’s commitment to private school vouchers, his first budget plan subsequently confirmed his orientation.⁶⁵ In President Trump’s “America First” budget plan, he proposes to shrink the Department of Education by \$9.2 billion.⁶⁶ One of the few new expenditures in the education plan is a \$1.4 billion program to expand vouchers.⁶⁷ Most of the new budget’s voucher funds will go to public school students who choose to transfer to private schools.

Why is this important? First, although the current proposals fall under the broad umbrella of “school choice,” the reality is that the only choice provided to families in underperforming schools is the choice of vouchers. Second, among the many types of vouchers that could be supported, it is also clear that the Department of Education’s current proposals prioritize private vouchers over others.

It is fair to say that Secretary DeVos has not championed public schools as one of the choices in the school choice movement. As she tellingly explained:

I am in favor of increased choice, but I’m not in favor of any one form of choice over another. . . . Similarly, there is no one delivery mechanism of education choice: Open enrollment, tax credits, homeschools, magnets, charters,

63. Emma Brown, *Trump Picks Billionaire Betsy DeVos, School Voucher Advocate, as Education Secretary*, WASH. POST (Nov. 23, 2016), https://www.washingtonpost.com/local/education/trump-picks-billionaire-betsy-devos-school-voucher-advocate-as-education-secretary/2016/11/23/c3d66b94-af96-11e6-840f-e3ebab6bcd3_story.html?utm_term=.032e2531d540.

64. *U.S. Secretary of Education Betsy DeVos’ Prepared Remarks to the Brookings Institution*, DEPT. OF EDU.: PRESS OFFICE (Mar. 29, 2017), <https://www.ed.gov/news/speeches/us-secretary-education-betsy-devos-prepared-remarks-brookings-institution>.

65. *See* OFFICE OF MGMT. AND BUDGET, *supra* note 62.

66. *Id.* at 50.

67. *Id.* at 17.

virtual schools, education savings accounts and choices not yet developed all have their place.⁶⁸

Carefully omitted from this list of choices a child in a failing public school might make is to attend another, more successful public school. This is not surprising since President Trump has compared the public school system to a monopoly business that should be broken up, and arguably disempowered.⁶⁹ Voucher systems that worked in public schools would not succeed in doing that.

But there are political reasons why voucher proposals tend not to include public vouchers. Many of the strongest public schools lie outside of the urban and rural areas where the schools are more likely to suffer from the challenges and lack of resources that plague inner cities or abandoned rural enclaves. Indeed, the suburban schools are in many instances the *raison d'être* for the suburbs. A voucher system that would encourage mostly urban public-school students to transfer to mostly suburban public schools would be a political hot button. Moreover, even if it were politically feasible, in many instances vouchers involving long commutes to the suburbs would be impractical.

Yet interestingly, a public voucher system just might provide a better chance of reforming public-school education overall than private school vouchers. Evidence shows that well-structured public school choice programs can produce significant benefits for the students who enroll in them.⁷⁰ As one scholar put it, “although private and parochial school vouchers may improve our education system in marginal ways, the truly revolutionary potential of vouchers lies in public school voucher plans that open predominately middle-class suburban public schools to urban children of color.”⁷¹ These wise admonitions are simply not a reality in the current political and social climate. We would be better served to consider what happens to students who use vouchers to gain admission to private and parochial schools because a federal system for public school vouchers is not likely to emerge any time soon.

A. Survey of Private School Voucher Studies

State voucher programs expanded significantly over the last five to ten years.⁷² The early results of the impact of vouchers are starting to take

68. DEPT. OF EDU.: PRESS OFFICE, *supra* note 64.

69. Brown, *supra* note 63.

70. Harold Wenglinsky, *Are Private High Schools Better Academically Than Public High Schools?*, CTR. ON EDUC. POL'Y 2 (Oct. 10, 2007), <https://www.cep-dc.org/display/Document.cfm?DocumentID=121> (showing that students who attend private schools enjoy no greater short term or long term academic success than students in public schools).

71. Morgan, *supra* note 17, at 480.

72. Approximately half of the states, plus the District of Columbia, have a system that subsidizes private school attendance through public funds. Will Weissert, *School Vouchers*,

shape as academics and social scientists consider the veracity of the claims touted by voucher supporters and opponents. The primary argument in favor of vouchers has been the potential for students and their families to improve academic performance by moving from low performing public schools to private or parochial schools. These programs typically use state or private scholarship funds to sponsor public school students in paying private school tuition. Programs emerged in Wisconsin, Ohio, New York, Florida, Washington D.C., among others.⁷³ Overall, the results have been troubling in assessing academic achievement.

In Washington D.C., the Opportunity Scholarship Program (“OSP”) provided tuition scholarship vouchers to 995 students who were selected by lottery.⁷⁴ The students were compared to 776 other students who had applied for the vouchers but did not receive them and therefore remained in public schools.⁷⁵ Comparing student performance between these two groups in reading and math studies revealed that the voucher students had significantly lower math test scores one year later than their counterparts who remained in public school.⁷⁶ The reading scores for the OSP students were also lower, but not statistically significant overall.⁷⁷

In a New York study, findings revealed that the voucher had a slightly negative but statistically negligible impact on student performance in math.⁷⁸ This study did reveal, however, that there was a moderately large and positive impact on the achievement scores for the African-American students in the group that received vouchers.⁷⁹

Rising in Many GOP States, Founder in Texas, U.S. NEWS & WORLD REP. (Apr. 30, 2017, 11:01 am), <https://www.usnews.com/news/best-states/texas/articles/2017-04-30/school-vouchers-rising-in-many-gop-states-founder-in-texas>.

73. *School Voucher Laws: State-By-State Comparison*, NAT’L CTR. ST. LEGISLATURES (Feb. 14, 2018 8:55 PM), <http://www.ncsl.org/research/education/voucher-law-comparison.aspx>; *School Choice: Wisconsin*, EDCHOICE (Feb. 14, 2018 8:11 PM), <https://www.edchoice.org/school-choice/programs/wisconsin-parental-choice-program-statewide/>; *School Choice: Ohio*, EDCHOICE (Feb. 14, 2018 8:17 PM), <https://www.edchoice.org/school-choice/programs/ohio-educational-choice-scholarship-program/>; Dobbie, W., Fryer Jr., R., *Getting Beneath the Veil of Effective Schools: Evidence from New York City*, 5 AMERICAN ECON. J.: APPLIED ECONS. 28 (2013); *School Choice: Florida*, EDCHOICE (Feb. 14, 2018 8:34 PM), <https://www.edchoice.org/school-choice/programs/florida-tax-credit-scholarship-program/>; *School Choice: Washington D.C.*, EDCHOICE (Feb. 14, 2018 8:40 PM), <https://www.edchoice.org/school-choice/programs/district-of-columbia-opportunity-scholarship-program/>.

74. Mark Dynarski, et al., *Evaluation of the DC Opportunity Scholarship Programs: Impacts After One Year*, NAT’L CTR. FOR EDUC. EVALUATION AND REGIONAL ASSISTANCE: INST. OF EDUC. SCIENCE 4 (June 2017), <https://ies.ed.gov/ncee/pubs/20174022/pdf/20174022.pdf>

75. *Id.*

76. *Id.* at xiii.

77. *Id.*

78. Marianne P. Bitler, et al., *Distributional Analysis in Educational Evaluation: A Case Study from the New York City Voucher Program*, 8 J. OF RES. ON EDUC. EFFECTIVENESS 419, 438 (2015).

79. *Id.* at 444.

The Milwaukee voucher experiment also showed a clear positive impact.⁸⁰ Students participating in Milwaukee's parental choice program who enrolled in the private schools scored 1.5 to 2.3 more percentile points per year in math compared to students who did not participate in the voucher program.⁸¹ Reading scores showed mixed results. A second Milwaukee study provided longitudinal results for students who had participated in the choice program. Those students were more likely to have graduated from high school, more likely to graduate on time, and more likely to have enrolled in a four-year college.⁸²

A study of the educational choice scholarship program in Ohio revealed both positive and negative results.⁸³ The Ohio study was interesting because it enabled students from high-performing public schools to use vouchers to enter private schools and enabled students from lower performing schools to use the vouchers.⁸⁴ The vouchers were not allocated randomly but were often awarded to relatively high scoring and comparatively advantaged students. Results showed that the students coming from high-performing schools fared considerably worse than they would have performed had they remained in their public schools.⁸⁵ Overall student performance for a voucher eligible student was not negative, but either zero or slightly positive.⁸⁶

By contrast, the Louisiana scholarship voucher program was limited to poor students attending underperforming public schools.⁸⁷ When the voucher students were compared to their control group counterparts, studies revealed that the differences between the two groups are not statistically significant. In other words, after two years of attending private schools subsidized by the Louisiana scholarship voucher, there was no difference in

80. Cecilia Elena Rouse, *Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program*, 113 Q. J. OF ECON. 553, 557 (1998).

81. *Id.* at 558.

82. Joshua M. Cowen, et, al. *Student Attainment and the Milwaukee Parental Choice Program: Final Follow-up Analysis*, DEP'T EDUC. REFORM, UNIV. OF ARK. 6, 11, 16, (Feb. 2012), <http://www.uaedreform.org/downloads/2012/02/report-30-student-attainment-and-the-milwaukee-parental-choice-program-final-follow-up-analysis.pdf>.

83. David Figlio & Krzysztof Karbownik, *Evaluation of Ohio's EdChoice Scholarship Program: Selection, Competition, and Performance Effects*, THOMAS B. FORDHAM INST. ADVANCING EDUC. EXCELLENCE 6, 7 (July 2016), https://edex.s3-us-west-2.amazonaws.com/publication/pdfs/FORDHAM%20Ed%20Choice%20Evaluation%20Report_online%20edition.pdf.

84. *Id.* at 6.

85. *Id.* at 7.

86. *Id.* at 25.

87. Jonathan N. Mills & Patrick J. Wolf, *The Effects of the Louisiana Scholarship Program on Student Achievement After Two Years*, EDUC. RES. ALLIANCE FOR NEW ORLEANS: SCH. CHOICE DEMONSTRATION PROJECT 3 (Feb. 22, 2016), <http://www.uaedreform.org/downloads/2016/02/report-1-the-effects-of-the-louisiana-scholarship-program-on-student-achievement-after-two-years.pdf>.

academic skills.⁸⁸ Moreover, within the first two years of the attendance program, negatively impacted test scores revealed that voucher students suffered academically, especially in math.⁸⁹ Another study in Louisiana evaluating the same voucher system noted that the private schools who enrolled the voucher students tended to be those that had experienced rapid enrollment declines in the recent past.⁹⁰ This suggests that they may not have been the most successful private schools and this could help explain the poor test results for the voucher students who had enrolled in the schools.

In Charlotte, North Carolina, the voucher program offered partial scholarships to low income children to defray private school tuition by \$1,700.⁹¹ Families who took advantage of this program, according to one study, show the average score is 5.9 percentile points higher in math for their children⁹² compared to the children who remained in public school. Voucher students scored 6.5 percentile points higher in reading than their public school counterparts.⁹³ These results are significant and overwhelmingly positive. However, the small scholarship amount suggests that families who took advantage of the vouchers were not among the poorest families and that the voucher served more as an incentive than a complete subsidy.

The Indiana voucher system has received a great deal of attention.⁹⁴ Not only is it one of the largest voucher programs in the country, enrolling tens of thousands of students, but it also grew under then-governor and now Vice President Mike Pence's administration.⁹⁵ Researchers found that the voucher students who transferred to private schools in Indiana show no improvement in reading and significant erosion in their math skills.⁹⁶

Overall, the studies are overwhelmingly discouraging for voucher proponents. Notably, conservative organizations and scholars who were advocates of school choice and vouchers conducted several of the studies finding the negative impact of vouchers on academic performance.⁹⁷ Opponents of vouchers find vindication in these results, arguing that vouchers do not improve academic advancement, and indeed can be

88. *Id.* at 3-4; Atila Abdulkadiroglu, et. al, *School Vouchers and Students Achievement: First-Year Evidence from the Louisiana Scholarship Program*, SCH. EFFECTIVENESS & INEQ. INITIATIVE 8 (Dec. 2015), <https://seii.mit.edu/wp-content/uploads/2016/01/SEII-Discussion-Paper-2015.06-Abdulkadiro%20C4%20Flu-Pathak-Walters.pdf>.

89. Mills & Wolf, *supra* note 87, at 4.

90. *Id.* at 37-38; *See also* Abdulkadiroglu et al., *supra* note 88, at 4.

91. Jay P. Green, *Vouchers in Charlotte: Vouchers and the Test-Score Gap*, 1 EDUC. MATTERS 55, 59 (2001).

92. *Id.* at 57.

93. *Id.*

94. Kayleigh Colombo, *Notre Dame Study: Voucher Students Experienced Math Achievement Losses*, IND. BUS. J. (June 26, 2017), <https://www.ibj.com/articles/print/64371-notre-dame-study-voucher-students-experienced-math-achievement-losses>.

95. *Id.*

96. *Id.*

97. *See, e.g.,* Sargrad, *supra* note 16.

harmful.⁹⁸ Advocates either question the results increasingly in the face of the range and number of studies showing harm, or at least no academic benefit.⁹⁹ Advocates argue that non-academic benefits, such as parental satisfaction, or school safety, validate the use of vouchers.

I will leave the intricacies of these voucher debates to others. Instead, here I argue that it is worth trying to understand the apparent inconsistencies between the minimal academic advancement attained by voucher recipients and the transformative impact that some elite private school attendance continues to have in many instances. More than fifty years ago, James Coleman and his fellow researchers concluded that the “social composition of the student body is more highly related to achievement, independent of the student’s own social background, than is any school factor.”¹⁰⁰ Why is that statement true in some contexts and not others? In the next Part, I consider the factors that may impact learning differently in different private school settings.

III. BEYOND OSMOSIS IN EDUCATION

“Osmosis: a process of absorption or diffusion . . . suggestive of the flow of osmotic action; *especially*: a usually effortless often unconscious assimilation.”¹⁰¹

It is both correct and incorrect that elite private school education will help propel otherwise disadvantaged students to academic success and intergenerational upward mobility. To unpack the various assumptions of this claim we need to better understand what is meant by elite, private, academic success, and upward mobility. One thing is clear: it is simply insufficient to place children in a private school setting and expect, like osmosis, that they will absorb the benefits and privileges enjoyed by their new peers.

98. Mark Gooden, Huriya Jabbar & Mario Torres, Jr., *Race and School Vouchers: Legal, Historical, and Political Contexts*, 91 PEABODY J. EDUC. (2016); Rudy Crew, *The Case Against Vouchers*, FRONTLINE (Feb. 15, 2018 8:20 PM), <https://www.pbs.org/wgbh/pages/frontline/shows/vouchers/choice/convouchers.html>; Kevin Carey, *Dismal Voucher Results Surprise Researchers as DeVos Era Begins*, N.Y. TIMES (Feb. 18 12:05 PM), <https://www.nytimes.com/2017/02/23/upshot/dismal-results-from-vouchers-surprise-researchers-as-devos-era-begins.html?mtref=www.google.com&gwh=3290D4CA55E8A09DF784F691414CCD16&gwt=pay>.

99. Tawnell Hobbs, *Do School Vouchers Work? Milwaukee’s Experiment Suggests an Answer*, N.Y. TIMES (Feb. 15, 2018 8:55 PM), <https://www.wsj.com/articles/do-school-vouchers-work-milwaukees-experiment-suggests-an-answer-1517162799>; Arianna Prothero, *Ohio Vouchers Have Mixed Impact on Student Performance, Study Finds*, EDUC. WEEK (Feb. 17, 2018 11:50 PM), http://blogs.edweek.org/edweek/charterschoice/2016/07/ohio_vouchers_have_mixed_impact_on_student_performance_study_finds.html; Dennis Epple, Richard F. Romano, Miguel Urquiola, *School Vouchers: A Survey of the Economics Literature*, NAT’L BUREAU ECON. RES. (2015), <http://www.nber.org/papers/w21523.pdf>.

100. JAMES S. COLEMAN ET AL., U.S. DEPT. OF HEALTH, EDUC., AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 325 (1966).

101. *Osmosis*, MERRIAM-WEBSTER.COM (last visited Dec. 20, 2017), <https://www.merriam-webster.com/dictionary/osmosis>.

Unfortunately, this point is not quite as obvious as it may seem. Many educational reforms rely on what we might call the proximity principle:¹⁰² placing students with some disadvantage with more privileged students will automatically improve the lots of the disadvantaged students. Too often, reform proposals do not move beyond proximity to take seriously actions to be performed by the schools or other actors after the groups have been mixed. Nor is there sufficient consideration regarding what the proximity might be a proxy for; instead, it is as if the mixing is the solution itself. Consider school desegregation and *Brown v. Board of Education*,¹⁰³ where it was presumed that black students would benefit socially and emotionally, and therefore academically as well, if permitted to sit side-by-side in the same classrooms and attend the same schools as white children.¹⁰⁴ This proximity and its resulting impact on the black children's "hearts and minds" was as important as the equal distribution of resources.¹⁰⁵ Or put another way, separate could never be equal even if the resources were otherwise the same.¹⁰⁶ Similarly, it is the student with the disability who is presumed to benefit from mainstreaming. School voucher advocates assume that moving underprivileged children from low-performing public schools to higher-performing private ones will reap sure rewards for the children previously trapped in the poorly-performing school. If this raises skepticism, it should.

Most school voucher programs allow children to gain proximity to higher-performing schools, but this transition does not consistently translate into better learning outcomes. Yet some students who attend high-performing schools reap significant benefits in both learning outcomes and long-term upward mobility. Why? An examination of various and examples can help begin to unpack which factors are relevant in making a difference.

A. Private Schools: Not Created Equal

According to the National Center for Education Statistics, approximately 10% of K-12 students in the U.S. were enrolled in private schools in 2015.¹⁰⁷ This percentage, representing 5.3 million students, has been slowly declining over the last fifteen years.¹⁰⁸ In contrast, public schools enroll 50.3 million students, a 28% increase over the last fifteen years.¹⁰⁹ Just

102. I use this term to mean that proximity alone, similar to osmosis, will lead to positive results.

103. 347 U.S. 483, 494–95 (1954).

104. *Id.*

105. *Id.* at 494.

106. *Id.*

107. *Private School Enrollment*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/coe/indicator_cgc.asp#info (last updated Mar. 2017).

108. *Id.*

109. *Elementary and Secondary Enrollment*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/coe/indicator_cga.asp (last updated May 2017).

as there is great variation among public schools, there is significant variation among private schools. Understanding these differences can help understand the varying results of voucher studies.

1. Religious Schools

Approximately 79% of private schools are religiously-affiliated, and Roman Catholic schools account for nearly half.¹¹⁰ From the mid-1960s to the mid-1980s, the balance within the parochial school category changed dramatically.¹¹¹ Catholic schools suffered a 29% decline in the number of schools whereas other Evangelical schools enjoyed a tremendous increase of 627%.¹¹² Although Catholic school enrollment is on the decline, Catholic schools continue to enroll approximately 740,000 students as of the 2013-14 academic year.¹¹³ The Supreme Court's decision in *Zelman v. Simmons-Harris*,¹¹⁴ holding that government funds for vouchers to parochial schools did not violate the Establishment Clause, potentially strengthened parochial school enrollment.

2. Tuition

Tuition varies significantly among private schools, with Catholic schools tending to have the lower tuitions than other religious schools or non-religious schools.¹¹⁵ The average private school tuition is \$11,000, but is closer to \$7,000 for catholic schools and \$21,000 for non-religious private schools.¹¹⁶ Of course, the priciest non-sectarian schools like New York City's Dalton, mentioned above, are closer to \$46,000.¹¹⁷ Note that VES school, where the Magnificent Seven attended, has a tuition of around \$51,000 (which, granted, includes the boarding fees).¹¹⁸ In general, however, non-

110. *Facts and Studies*, COUNCIL FOR AMERICAN PRIV. EDUC. (CAPE), <http://www.capenet.org/facts.html> (last visited Nov. 2, 2017) (citing Stephen P. Broughman & Nancy L. Swaim, *Characteristics of Private Schools in the United States: Results From the 2011-12 Private School Universe Survey: Table 2*, U.S. DEPT. OF EDUC., NAT'L CTR. FOR EDUC. STAT. 7 (July 2013), <https://nces.ed.gov/pubs2013/2013316.pdf>).

111. Peter W. Cookson, Jr., *New Kid on the Block? A Closer Look at America's Private Schools*, BROOKINGS (Dec. 1, 1997), <https://www.brookings.edu/articles/new-kid-on-the-block-a-closer-look-at-americas-private-schools>.

112. *Id.*

113. *Private School Enrollment*, NAT'L CTR. FOR EDUC. STAT. (Feb. 15, 2018, 9:39 PM.), https://nces.ed.gov/programs/coe/indicator_cgc.asp

114. 536 U.S. 639, 643-44 (2002).

115. *Facts and Studies*, *supra* note 110 (citing *Table 205.50*, NAT'L CTR. FOR EDUC. STAT.: DIGEST OF EDUC. STAT. (Dec. 2015)).

116. *Id.*

117. *Tuition*, DALTON SCH. (Feb. 15, 2018 10:13 PM), <https://www.dalton.org/page/admissions/tuition-and-financial-aid/tuition>.

118. *Tuition 2017-18*, VIRGINIA EPISCOPAL SCH. (Feb. 16, 2018 9:56 PM), <https://www.ves.org/page/list-detail?pk=82179/>.

religious private schools, largely non-for profit independent schools, charge tuitions that are approximately twice the average tuition charged by private schools. Elite private schools have tuitions nearly four times that of the average private school.¹¹⁹

TABLE 1

Average Private School Tuition: 2011-12¹²¹

	All Levels	Elementary	Secondary	K-12 Schools
All Schools	\$10,740	\$7,770	\$13,030	\$13,640
Catholic	\$6,890	\$5,330	\$9,790	\$10,230
Other Religious	\$8,690	\$7,960	\$16,520	\$8,160
Non-Sectarian	\$21,510	\$18,170	\$25,180	\$22,440

3. Tuition and Vouchers

Students with vouchers are far more likely to attend the less expensive private schools. The average voucher ranges from \$2,000 to \$5,000, depending on the state.¹²⁰ This amount leaves most private school rates outside of reach of poor and working-class families.

Because parochial schools represent the lion's share of private schools, and are considerably less expensive than other private schools, they also enroll the lion's share of minority and first-generation students, who tend to have lower financial means. In addition, Catholic schools in particular, are more likely to be in urban centers or in geographic locations that are more accessible to these communities.

B. Academic Success in Private Schools

How do private schools compare to one another and to public schools in terms of academic achievement of its students? Researchers vary on this question. According to the Council for American Private Education, a significantly higher percentage of students in grades four, eight, and twelve outperform their public-school counterparts in national tests.¹²¹ But these conclusions have been widely contested. There are greater distinctions between private schools in high versus low socio-economic student

119. *Facts and Studies*, *supra* note 110 (citing *Table 205.50*, NAT'L CTR. FOR EDUC. STAT.: DIGEST OF EDUC. STAT. (Dec. 2015)).

120. Becky Vevea, *What is a School Voucher?*, GREAT! SCHOOLS (Mar. 7, 2016), <https://www.greatschools.org/gk/articles/school-vouchers>.

121. *Facts and Studies*, *supra* note 110.

populations than there are between to public schools or two private schools with similar socio-economic compositions.¹²²

After considering large-scale studies on student achievement in both public and private schools, some researchers noted:

The picture that emerges suggests that public schools do remarkably well in comparison to private schools when student background is considered. This comprehensive evidence indicates that public schools are on average at least as effective, and in some cases more effective, as private schools when measured by student achievement outcomes.¹²³

This division is actually consistent with the variations we see in the voucher results on student outcome. If there is variation in public school versus private school outcomes, it is less surprising that there would be variation between private school outcomes. Lubienski and Weitzel suggest that the results are highly dependent on student background.¹²⁴ We know that private schools are not all the same and that (just as public schools do) they vary in their missions, locations, compositions, tuitions and student backgrounds.

It is helpful to remember that private schools vary greatly. Whether private schools are academically superior to public schools depends, then, on which private and which public schools we are discussing.¹²⁵ However, becoming mired in that old debate does not really answer the question that poor and underprivileged families in underperforming schools need to consider when faced with a voucher scholarship. Nor should we be spending a lot of time focusing on “whether” law and policy makers should support private academies with public funds to provide an academically superior “choice” to kids in failing schools. As long as families support vouchers, politicians will likely support them too. The real question is, given the apparent support for vouchers at this time, what are the factors that make a difference for families who are given such a “choice?”

IV. CONCLUSION: ADVICE TO PARENTAL CONSUMERS REGARDING VOUCHERS

Most parents already know what some of the voucher studies make plain: school mobility is socially and academically costly to children. The

122. LUIS BENVENISTE ET AL., ALL ELSE EQUAL: ARE PUBLIC AND PRIVATE SCHOOLS DIFFERENT? 190 (2003).

123. Christopher Lubienski & Peter Weitzel, *The Effects of Vouchers and Private Schools in Improving Academic Achievement: A Critique of Advocacy Research*, 2008 BYU L. Rev. 447, 448 (2008).

124. *Id.*

125. *Id.*

costs of moving a student from one school to another can erode modest benefits in curricular offerings or programs, and the lag time to see any benefits can be significant. In several of the studies, children's academic achievements worsened. This suggests that vouchers may not be beneficial to a student who only has one year in the new environment and may not be worth it if the new school is only slightly "better."

When it comes to the education of their children, the simple rule of thumb that parents tend to follow is, "If it ain't broke, don't fix it." Because switching schools is highly disruptive to students—educationally and socially—and requires a significant investment of time and energy by parents, few parents will seek additional schooling options for their child unless they are convinced that the student is underperforming in their current school and that a switch to a different school is likely to make a difference.¹²⁶

Families with vouchers would also be wise to consider the socio-economic status ("SES") of the schools into which their students would be transferring, in addition to the SES status of the school they were departing from. The average socio-economic status of the school is important to student success. This is far more important than whether the school is a public or private school. As Rumberger and Palardy demonstrate, the larger the delta between the SES of the individual student and the average SES of the school, the greater the likelihood of academic success.¹²⁷ When poor students, whether black or white, were placed in poor schools, they performed badly in terms of achievement growth.¹²⁸ This is not surprising. What is surprising is that when these students were in middle-class SES schools, their learning did not improve by much.¹²⁹ This slight impact is consistent with the voucher results. Students who move from very poor public schools to the middle-SES parochial school a few miles away, may not experience an improvement. When such a transition is compounded by the costs of mobility, it may actually cause academic net harm. The same was true of middle-class students who were in low or middle-SES schools.¹³⁰ Once again, the differences in performance were slight.

126. Patrick J. Wolf, *School Voucher Programs: What the Research Says About Parental School Choice*, 2008 BYU L. REV. 415, 422 (2008).

127. Russell W. Rumberger & Gregory Palardy, *Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement on High School*, 107 TEACHERS C. REC. 2018-20 (2005).

128. *Id.* at 2001.

129. *Id.* at 2019.

130. *Id.* at 2020.

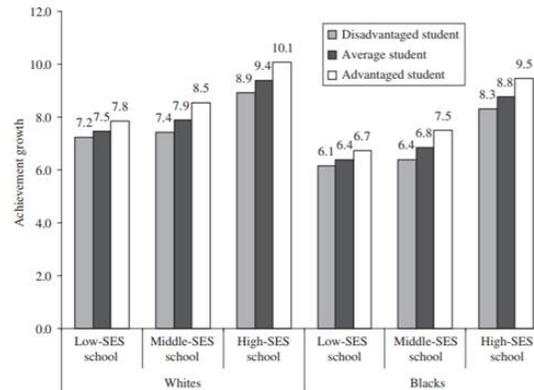
FIGURE 2¹³¹*The Impact of Student Composition on Academic Achievement in High School*

Figure 4. Estimated achievement growth during 4 years of high school for disadvantaged, average, and advantaged White and Black students in low-, middle-, and high-SES high schools.

However, when a low or middle-class student attended an affluent or elite school, the gains in academic achievement were significant—in most cases they were the equivalent of one academic year.¹³² Again, this helps explain why a move to a school like VES or Dalton can in fact be life-changing for poor, middle and high SES students. This finding was true for students at all SES backgrounds, and especially true for black students.¹³³ It gives credence to the promise of scholarship programs sponsored by groups like A Better Chance or the Stouffer Foundation. It also means that school selection, with an eye toward SES of the school should be a key factor for families wielding vouchers. Not every school—simply because it fits under the category of “private”—will enhance learning growth. Rumberger and Palardy found that the average SES composition of the school was more important than individual SES of a student or the racial composition of the school.¹³⁴ It was more important than the size of the school or its classification as public or private.

131. *Id.* at 2019.

132. *Id.* (“[M]uch greater impact would occur by moving students to high-SES, or affluent, schools. For example, the achievement of an average Black student would increase by 2 points, or about 1 full year of learning. Whites would also experience substantial improvements, but less than Blacks (1.5 points for an average White student vs. 2 points for an average Black student.”).

133. *Id.*

134. *Id.* at 2018-20 (citing Borman, G. D., Hewes, G. M., Overman, L. T., & Brown, S., *Comprehensive School Reform and Achievement: A Meta-Analysis*, 73 REV. EDUC. RES. 125–230 (2003)); Caldas, S. J., & Bankston III, C., *The Inequality of Separation: Racial Composition of Schools and Academic Achievement*, 34 EDUC. ADMIN. Q., 533–57 (1998); Rumberger, R. W., & Willms, J. D., *The Impact of Racial and Ethnic Segregation on the Achievement Gap in California High Schools*, EDUC. EVALUATION POL’Y ANALYSIS 14, 377–

A. When Choice is an Option: What to Look For

Not every student can attend a so-called exclusive school. Matriculants at some of these schools—especially those students with a mismatch in their SES to that of the school—can suffer social and psychological harm. Moreover, there are important civic benefits from attending a school that more closely resembles the overall population. Finally, there are not enough vacancies in these schools to accommodate all voucher carriers. Given that, and given the Rumberger and Palardy findings, how can desperate parents make difficult decisions about whether and how to use vouchers if they are eligible for them? As discussed previously, there are not enough truly affluent or elite schools to help solve the problem of poor, underperforming schools.

However, Rumberger and Palardy identify four characteristics that set high-SES schools apart: the teacher's expectations of their students, the quantity of homework assigned, the rigor of the curriculum and the student's feelings of their safety.¹³⁵ If a parent cannot find an accessible school that is significantly (not just marginally) superior, she can at the very least identify as many of these characteristics as possible in choosing a new school or reforming the old one.

When "choice" is an option, we can expect families who want the best education for their children to seek the best schools they can afford. Parents assume, often wrongly, that you get what you pay for. And like other consumers, they follow trends. In this Article, I argue that parents should learn which factors are truly relevant to excellence in education and not merely popular trends. Scholars and educators can help empower parents in making these important distinctions rather than criticizing parents for flocking toward vouchers and seeking additional educational options.

In explaining why, according to non-partisan surveys, 68% of black Americans favored vouchers while 69% of black politicians did not, one commentator noted:

My generation knows that vouchers have serious limitations. We recognize that no voucher program can save a failing public system. Poorly funded vouchers don't offer much of a chance for poor children to enroll in expensive alternative schools. Vouchers can't ensure parental involvement in education. And vouchers can't end the resistance of many suburban schools to black enrollment.

96 (1992); Newmann, F. M., Rutter, R. A., & Smith, M. S., *Organizational Factors That Affect School Sense of Efficacy, Community, and Expectations*, 62 SOC. EDUC. 221–38 (1989).

135. *Id.* at 1999.

But they offer the only hope available to many poor students trapped in the nation's worst schools. For a limited number of children, they may make a crucial difference. That possibility is enough for black parents to take a chance.¹³⁶

More nuanced information about school choices will help ensure that parents who decide to “take a chance” do not rely on luck but rather look for well-informed indicators of success.

136. Michael L. Owens, *Why Blacks Support Vouchers*, N.Y. TIMES (Feb. 26, 2002), <http://www.nytimes.com/2002/02/26/opinion/why-blacks-support-vouchers.html>.

