THE NETWORK FOR PUBLIC EDUCATION

Schott 25 years Foundation for Public Education

GRADING THE STATES

A Report Card on Our Nation's Commitment to Public Schools

JUNE 2018

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About The Network for Public Education

The Network for Public Education (NPE) is an advocacy group whose mission is to preserve, promote, improve and strengthen public schools for both current and future generations of students. The goal of NPE is to connect all those who are passionate about our schools – students, parents, teachers and citizens. We share information and research on vital issues that concern the future of public education at a time when it is under attack.

About The Schott Foundation for Public Education

The Schott Foundation is a national public fund serving as a bridge between philanthropic partners and advocates to build movements to provide all students an opportunity to learn. Schott's core belief is that well-resourced, grassroots-led campaigns are central to creating systemic change to address the disparities faced by children of color and low-income children. This conviction drives our strategy as both a funder and an advocacy partner: providing philanthropic support and broad resources to the Opportunity to Learn Network; creating cross-sector collaborations to move toward healthy living and learning communities; and, focusing a positive public narrative on the importance and contributions of public education—to our children, our communities and our democracy.

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INTRODUCTION

Benefits of Public Education

The ability for every child, regardless of race, income, disability, religion, gender, ethnicity, sexual orientation or other immutable characteristic, to obtain a free quality public education is a foundational principle in American society. This principle is based on the belief that everyone should be given the opportunity to learn to allow an equal chance for achievement and success. When former Chief Justice Earl Warren wrote the majority opinion in the 1954 U.S. Supreme Court case of *Brown v. Board of Education*, he observed that education "is perhaps the most important function of state and local governments."[1] Furthermore, as civil rights activist Hodding Carter III wrote, "The greatest single innovation of this democratic republic has been the idea of the public school."[2]

While most will not dispute the value of education, some challenge the value of public education. They contend that only through competition will public schools improve, and that private, taxpayer funded options such as religious schools, private schools, and charter schools run by non-profit and for-profit corporations are systemically better than community public schools run by locally elected school boards.

We disagree. Although the public school system is not perfect and has continual room for improvement, it is still the cornerstone of community empowerment and advancement in American society. In fact, the overwhelming majority of students in this country continue to attend public schools with total public school enrollment in prekindergarten through grade 12 projected to increase by 3 percent from 50.3 million to 51.7 million students.[3] This compares with a 6% enrollment in charter schools,[4] and a 10.2% enrollment in private schools, with the majority (75%) of private school students attending religious private schools.[5]

As America becomes more diverse, so have its public schools. In 2017, the percentage of White students enrolled in public elementary and secondary schools decreased to less than 50 percent (49.5 percent) for the first time since data has been reported.[6] On the other hand, the percentage of Hispanic students has risen from 19 to 25 percent, and the proportion of Asian/Pacific Islander students increased from 4 to 5 percent.[7] While the percentage of students who were Black decreased from 17 to 16 percent and the percentage of American Indian/Alaska Native students remained around 1 percent, students of color now make up the majority of students in the public school system.

Even as the proportion of students of color in our public schools increases, schools are facing a retreat from the mid-1980's when elementary and second-

ary schools were at their peak of integration. The privatization of our schools has played a role. We are deeply troubled that charter and private schools are further exacerbating this re-segregation.[8]

Why does all of the above matter? Why is it critical that we support our public schools? The required inclusivity of the public school setting provides more opportunity for students to learn in culturally, racially, and socioeconomically integrated classrooms and schools, and that promotes a variety of social-emotional and civic benefits for students. At a time when there seems to be more emphasis on community divisions in our social and political settings, attending a public school can provide students with more opportunities to encourage relationships and friendships across group lines, thus eliminating false barriers of separation.

And yet our nation has embarked on a troubling course that steers us toward school privatization, exclusivity and division. The present Department of Education under the leadership of Secretary of Education Betsy DeVos, promotes privatized programs and choice, and has a decidedly hostile view towards the support of students attending public schools. This is occurring even though the Department of Education she oversees was created, *"to strengthen the Federal commitment to ensuring access to equal educational opportunity for every individual"* and to make sure states afford every student equity of opportunity to a quality education, as declared by Congress in 1979.[9] Indeed, the original Elementary and Secondary Education Act (ESEA) was signed into law in 1965 by President Lyndon Baines Johnson, who believed that "full educational opportunity" should be "our first national goal."

The attack on public education is also an attack on equal opportunity and civil rights. Although privatization advocates claim that private schools advance the quality of education, this is a tenuous argument to make in the face of the reality that too often there is little to no public accountability, fiscal transparency or maintenance of civil rights protections for students in privatized programs. History is replete with battles fought and sacrifices made to protect the civil rights and ensure the equality of opportunity for all students regardless of race, ethnicity, religion, gender, disability or other immutable characteristics. The proliferation of privatization programs in the states and the redirecting of public resources for the benefit of a small percentage of the student population belies this principle of equality of opportunity for all students. Privatization in public schools weakens our democracy and often sacrifices the rights and opportunities of the majority for the presumed advantage of a small percentage of students.

Purpose of this Report Card

This report examines our nation's commitment to democracy by assessing the privatization programs in the 50 states and the District of Columbia with the goal of not only highlighting the benefits of a public school education, but comparing the accountability, transparency and civil rights protections offered students in the public school setting versus the private school setting. States are rated on the extent to which they have instituted policies and practices that lead toward fewer democratic opportunities and more privatization, as well as the guardrails they have (or have not) put into place to protect the rights of students, communities and taxpayers. This is not an assessment of the overall quality of the public education system in the state — rather it is an analysis of the laws that support privatized alternatives to public schools.

This report card, therefore, provides a vital accounting of each state's democratic commitment to their public school students and their public schools, by holding it accountable for abandoning civil rights protections, transparency, accountability and adequate funding in a quest for "private" alternatives. It is designed to give citizens insight into the extent of privatization and its intended and unintended consequences for our students and our nation.

EXECUTIVE SUMMARY

Public schools remain a source of pride and hope, helping to level the playing field for children from incredibly diverse racial, ethnic, religious and socio-economic groups.[10] Even amid concerns and often unsubstantiated criticism, Americans continue to view public schools as a defining hub for their communities. In the spring of 2001, a national poll found that Americans ranked public schools as "the most important public institution in the community" by at least a five-to-one margin over hospitals, churches and other institutions.[11] Nonetheless, within the past two decades, there has been a fervent push by those interested in privatization who seek to de-prioritize the importance of public schools and effectively undermine their functionality. Ignoring these attacks, most parents and citizens understand that public schools provide a critical service to American society by educating the majority of students with a base level of accountability while protecting their civil rights in the classroom. Moreover, a recent poll conducted in October of 2017 found that among all registered voters, only 40 percent supported vouchers while 55 percent are opposed. This number further decreases to 23 percent with opposition at 70 percent when voters were asked to consider support if it meant less money for public schools.[12]

With the ongoing debate on the relevance and benefit of public schools versus private schools, the historical context of this debate must be understood. The commitment to a free education for American children has its roots in the 17th century and has evolved along with the laws of the nation to include a free and appropriate public education (FAPE) for all children. Those of privilege have always understood that education is the cornerstone to success and inclusion in society. Yet the reality is that disadvantaged groups including African Americans, Latinos, Native Americans, women, the poor, those with disabilities and others have always had to fight for inclusion.[13] For many generations, structural racism inherent in American society maintained a segregated system for African Americans and people of color.[14] From passage of Massachusetts's first compulsory education law to present day, historically disenfranchised communities have fought for the right to receive a free education.[15]

Though the decision in *Brown v. Board of Education* ended legal segregation within schools, southern communities devised creative tactics such as vouchers to evade the Supreme Court's desegregation edict.[16] For instance, the Southern Manifesto, a compact amongst Southern states was developed to provide vouchers to White students to maintain an exclusive, White-only education system.[17] Southern legislators in Virginia passed tuition-grant laws permitting parents to use tax-funded vouchers to send their children to private, non-sectarian schools—otherwise known as "segregation academies"[46] or "white flight" academies.[18] Fortunately for our society, the Supreme Court eventually declared this practice unconstitutional in Griffin v. County School Board of Prince Edward County.[19] Despite the Court's rebuke of vouchers to evade integration efforts, the idea of using public dollars to support privatized education began to take shape.[20]

The public education system was developed to serve all children and can continue to do so with the appropriate support from the federal, state and local levels. Public schools offer a rich opportunity for all children to learn from their peers of other racial, ethnic, religious or other identities. Private schools, including charters, were not created to serve all children. Although parents always have a right to send their children to private schools at their own expense, they are not and never can be the model for educating of all this nation's children, nor should they be supported by public dollars.

The Network for Public Education and the Schott Foundation for Public Education support public schools that offer a full and rich curriculum for all children and are subject to democratic control by members of their community. Public schools should be resourced to meet the needs of their students,

with additional support for those students with the greatest needs. They should be managed by teachers, principals and superintendents with exacting standards of professionalism and expertise with support from parents and families and communities alike. Everyone pays taxes to support public schools whether or not they have children attending them. Public schools belong to the public. The purpose of public education is not simply to pass a test, but to enable every student achieve her or his full potential and to help them become responsible citizens of their community and society. In summary, public education is a pillar of our democratic society, that should be properly supported and should provide all students with a foundation for success throughout their lives.

Methodology

The following major categories, composed of multiple important components, were used to assess each state's resistance to the privatization of public education. These broad categories are:

1. **Types and Extent of Privatization**
2. **Civil Rights Protections**
3. **Accountability, Regulations and Oversight**
4. **Transparency**
5. **Other Factors (charter schools)**

Components within each category were assigned a numerical value as determined by the importance of the component. These components indicated either laws intended to support privatized school choice, the expansion of for-profit school governance, or policies that weakened transparency, accountability or civil rights protections. Certain charter school components were analyzed separately from other privatization programs because of their uniqueness to charter school programs and laws.

Using the existence of "no school privatization" laws as the baseline, each state is assigned a starting value of 100 points. Points were deducted based upon the existence of the components identified and a grade was assigned based on their overall score. Further information regarding the sources used and assumptions made during the grading process can be found in the Appendix following this report.

Major Findings

Overall grades were assigned based on the extent of privatized school choice in the form of vouchers, neo-vouchers and charter schools, as well as the quality of the state's laws that promoted accountability, oversight, transparency and civil rights. States earned an A+ rating for successfully putting all of their resources to supporting public schools and successfully resisting public funding for privatized alternatives. The states with the best overall grades for resisting school privatization are predominantly rural states with a strong commitment to community public schools and an aversion to public dollars leaving already cash-strapped rural schools. The states that received overall grades of A+ are Nebraska, North Dakota, and West Virginia. Kentucky and South Dakota received an A. However, rural state support for public education is not a universal pattern. Several rural states such as Oklahoma, Utah and Wisconsin earned grades of F. On the other hand, Kentucky's grade of A is likely to drop because it recently passed a charter school law but has not yet passed enacting legislation that we could rate. Charter schools were also not funded in Kentucky's 2018 budget.

There are 22 states with grades between a C and a B+. Six states and the District of Columbia received a grade of D or D+ and 17 received a grade of F.

In addition to giving each state an overall grade, we assigned grades for voucher and charter policies as well. There are 22 states that earned an A+ for resisting attempts to give public funds in the form of vouchers and/or neo-vouchers to their public schools.

The six states with an A+ for their charter laws are Montana, Nebraska, North Dakota, South Dakota, Vermont and West Virginia. However, there were also 37 states plus the District of Columbia that received a Grade of F based on their charter laws — states that embrace for-profit charter management, weak accountability and other factors that make their charter schools less accountable to the public.

The state with the overall best score (99.5) is Nebraska; the state with the worst score is Arizona (31.25). Next to worst and not far behind Arizona, is Florida.

Below find the states and the District of Columbia listed in rank order by overall, voucher and charter school scores.

Overall Rank (Score)	Rank by Voucher Policy	Rank by Charter Policy
1. Nebraska (99.5)	1. California	1. Nebraska
2. North Dakota (99.25)	2. Delaware	2. North Dakota
3. West Virginia (99)	3. Idaho	3. West Virginia
4. South Dakota (90.5)	4. Kentucky	4. South Dakota
5. Kentucky (89.5)	5. Michigan	5. Montana
6. Wyoming (86.75)	6. Missouri	6. Vermont
7. Washington (86)	7. Colorado	7. Virginia
8. Vermont (85.75)	8. Texas	8. Kansas
9. Montana (85)	9. Alaska	9. Kentucky
10. Connecticut (79)	10. Hawaii	10. Wyoming
11. Missouri (78.5)	11. Massachusetts	11. Maryland
12. Texas (77.5)	12. Minnesota	12. Washington
13. Delaware (76.75)	13. Nebraska	13. Alabama
14. Massachusetts (76.5)	14. New Mexico	14. Mississippi
15. New York (76.25)	15. Washington	15. Iowa
16. New Mexico (76)	16. North Dakota	16. Rhode Island
17. New Jersey (75.5)	17. Wyoming	17. Connecticut
18. Virginia (75.25)	18. Connecticut	18. Maine
19. Hawaii (75)	19. New Jersey	19. Missouri
20. Minnesota (75)	20. New York	20. Tennessee
21. Idaho (74.75)	21. Oregon	21. Dist. of Columbia
22. Kansas (74.5)	22. West Virginia	22. Texas
23. Maryland (73.75)	23. South Dakota	23. Oklahoma
24. Oregon (73.5)	24. Maryland	24. New York
25. Alaska (73.25)	25. Maine	25. Massachusetts
26. Colorado (71)	26. Vermont	26. Florida
27. Michigan (70.5)	27. Tennessee	27. Delaware
28. California (66.75)	28. Dist. of Columbia	28. New Mexico
29. Iowa (66)	29. Iowa	29. New Jersey
30. Maine (65.75)	30. Montana	30. Louisiana
31. Alabama (64.5)	31. Arkansas	31. Arkansas
32. Tennessee (63.75)	32. Virginia	32. Hawaii
33. Dist. of Columbia (63.5)	33. South Carolina	33. Minnesota
34. Rhode Island (63.5)	34. Kansas	34. Ohio
35. Arkansas (60.25)	35. Utah	35. New Hampshire
36. Utah (58)	36. Alabama	36. Pennsylvania
37. South Carolina (57.5)	37. Rhode Island	37. Idaho
38. Pennsylvania (56.5)	38. Wisconsin	38. Illinois
39. Ohio (55.25)	39. Pennsylvania	39. Oregon
40. Mississippi (54.5)	40. Ohio	40. Utah
41. Illinois (53.5)	41. Illinois	41. Alaska
42. New Hampshire (52.75)	42. New Hampshire	42. Indiana
43. Louisiana (47.75)	43. Mississippi	43. Nevada
44. Wisconsin (47.25)	44. Louisiana	44. South Carolina
45. Oklahoma (47)	45. Indiana	45. North Carolina
46. Indiana (45)	46. Oklahoma	46. Georgia
47. Nevada (42.5)	47. North Carolina	47. Colorado
48. North Carolina (42.25)	48. Nevada	48. Michigan
49. Georgia (39.25)	49. Georgia	49. Arizona
50. Florida (35.5)	50. Arizona	50. California
51. Arizona (31.25)	51. Florida	51. Wisconsin

Categorical findings:

FINDINGS REGARDING VOUCHERS AND NEO-VOUCHERS

Vouchers are grants of public school funds used to support tuition at private elementary and secondary schools. These grants are given to parents who deposit them with a private or religious-affiliated school. Neo-vouchers are voucher-like programs that exist to circumvent legal restrictions against giving public money to private or religious-affiliated schools. Our report examined two neo-voucher programs—Education Savings or Scholarship Accounts (ESAs) and Tuition Tax-Credit Programs.

Education Savings Accounts or Education Scholarship Accounts are set up differently depending on the state. These programs allow tax dollars (typically 90% of what the public school would have spent), to be used toward certain educational expenses including tuition and fees at private elementary and secondary schools, online programs, support and therapy services, homeschooling and college tuition. Typically, accounts are established in the name of the student and funds are deposited, often on a debit card, for use by the family.

Tuition Tax-Credit Scholarship Programs (TTCs) grant businesses and sometimes individual taxpayers credits against their state income taxes for contributions to School Tuition Organizations (STOs). STOs then award tuition grants to families for private schools. The portion of the tax credit varies from state to state, with some states awarding a 100% credit. In some cases, the person who makes the donation can also recommend who is to receive the scholarship.

What follows are significant findings in this category.

Traditional Voucher States

- There are 15 states and the District of Columbia with traditional voucher laws.
- Nine states plus the District of Columbia do not require students to take the same state tests, despite national mandates for public school students.
- Arkansas, Maine and North Carolina are the least accountable states for their traditional voucher programs.
- Florida, Oklahoma, Ohio and Utah also have particularly unaccountable programs. For instance, Florida does not require state testing, mandate teacher certification, or even school accreditation for their voucher schools.
- Especially troubling is the fact that 7 states — Arkansas, Georgia, Maine, Maryland, New Hampshire, North Carolina, and Oklahoma fail to require background checks for teachers and employees in voucher receiving schools.
- Despite claims that vouchers were not meant to support students already enrolled in private schools, 12 states and the District of Columbia do not prohibit state support of current private school students, and 6 of these same states even fail to include a requirement or give priority to students from families with low socioeconomic status.
- Thirteen (13) states and the District of Columbia have no public transparency required for the governance and meetings of schools receiving funds for these state-supported traditional voucher programs.

Neo-Voucher States

- Of the 6 states with Education Savings Account programs, all of them divert funding from students in the public school system where the overwhelming majority of students are enrolled.
- Particularly alarming is the fact that except for Florida and Nevada,[21] none of the states with ESA programs required state testing or prior public school enrollment.
- Of the 18 states with Tuition Tax-Credit Programs, 9 fail to require any accreditation of the schools that receive a benefit from such Tuition Tax-Credit Programs. Arizona has the worst accountability over their Tuition Tax-Credit Programs.
- South Dakota, Virginia and Illinois' Tuition Tax-Credit Programs have the worst level of public transparency, failing all 7 categories.

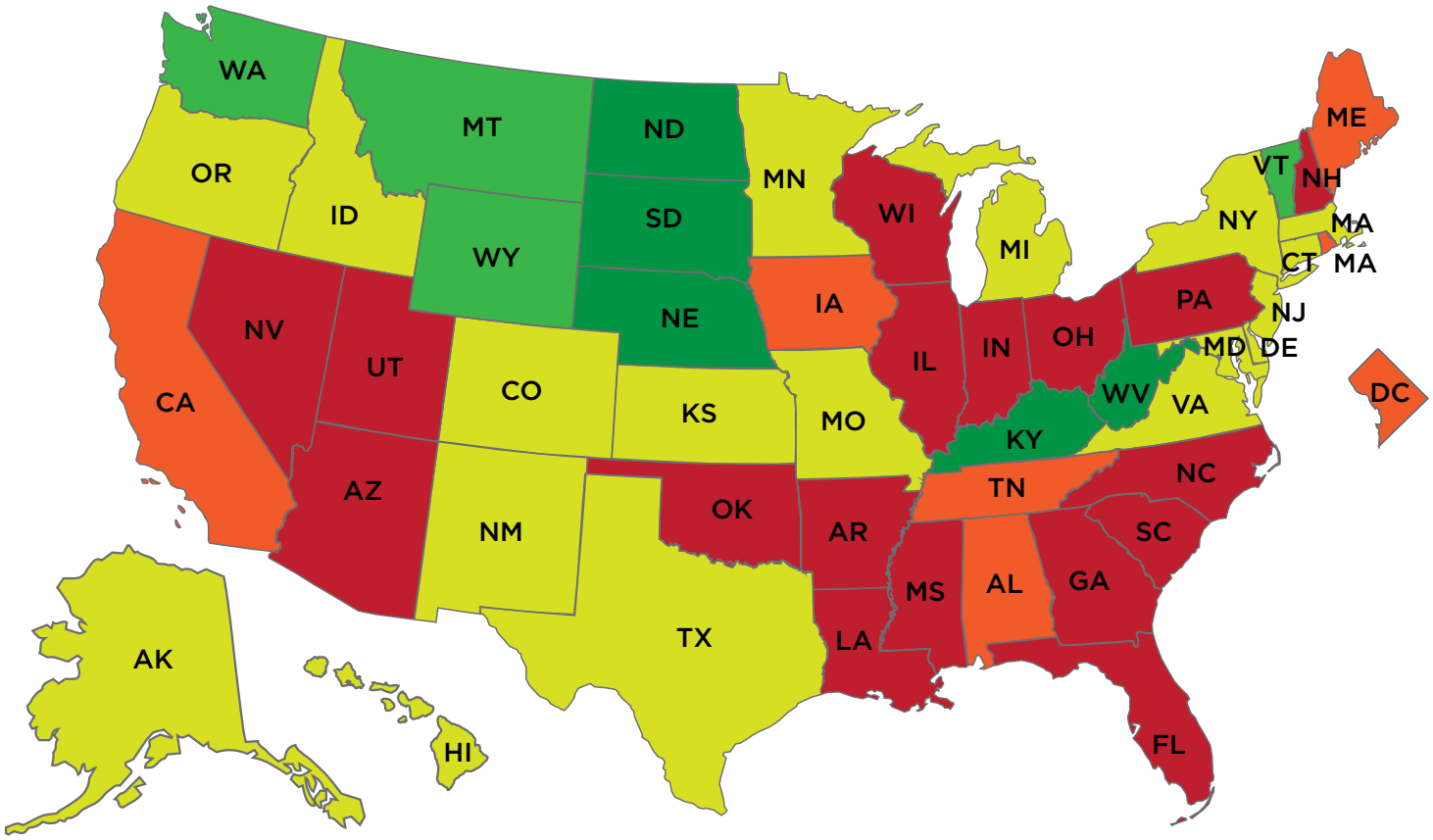
FINDINGS REGARDING CHARTER SCHOOLS

Charter schools are governed by private, incorporated boards that receive public funding to run the charter school. Depending on the state, charters may be non-profit, for profit, or a non-profit operated by a for-profit management company. Some charter schools are brick and mortar schools while others are online schools.

- Of the 44 states and District of Columbia with charter laws, 28 of these states and the District of Columbia fail to require the same teacher certification as traditional public schools and 27 states and the District of Columbia do not prioritize admissions for students from families with low SES status or other at-risk conditions while thirty states and the District of Columbia allow enrollment advantage for children of board members, employees, and/or other groups.
- Thirty-eight (38) of the states and the District of Columbia have no required transparency provisions regulating the spending and funding by the charter school's educational service providers (ESP).
- California had the largest number of students enrolled in charter schools (568,800, representing over 9 percent of all public school students in the state), and the District of Columbia had the highest percentage of public school students enrolled in charter schools (43 percent, representing 35,800 students).[22] However, both of these states received F's for their lack of accountability, transparency and failure to protect the civil rights of students. In contrast, eight states had less than 1 percent of their public school students enrolled in charter schools in fall 2015: Alabama, Iowa, Kansas, Maine, Mississippi, Virginia, Washington, and Wyoming.[23]
- Within the charter school context, only Alaska and Kansas fail to provide additional state and local protections for charter school students such as protections for LGBTQ students.
- Of the 44 states and the District of Columbia with charter school laws, students with disabilities are particularly disadvantaged in 39 states and the District of Columbia, which do not clearly establish the provision of services.
- Twenty-two (22) states do not require that the charter school return its taxpayer purchased assets and/or property back to the public if the charter school shuts down or fails.

Overall Civil Rights Protections

- Of the over three quarters (75%) of all states with privatization programs, 19 states fail to include additional state and local civil rights protections for students, for example, protections for LGBTQ students. We found only one state, Maryland, that mandates civil rights protections for LGBTQ students who attend private schools with a voucher. While southern states often take the brunt of ire from civil rights advocates, 10 states on this list are in the North, Northeast or Midwest of the country.
- Among the states with vouchers, ESAs and Tuition Tax-Credit programs, despite the existence of increasing percentages of English Language Learners in the classroom, only Iowa has a mandate that English language learners must receive instruction in English until they are fluent.[24]
- Twenty-three (23) states and the District of Columbia fail to specifically protect students in privatization programs against religious discrimination and all these same states fail to enable students who receive public support for tuition to opt out of the religious activities.
- Eighteen (18) states have programs that fail to mandate services for students with disabilities, including programs that are intended to serve that student population.



OVERALL GRADES

State	Grade
Alabama	D+
Alaska	C
Arizona	F
Arkansas	F
California	D+
Colorado	C
Connecticut	C+
Dist. of Columbia	D
Delaware	C+
Florida	F
Georgia	F
Hawaii	C+
Idaho	C+

State	Grade
Illinois	F
Indiana	F
Iowa	D+
Kansas	C+
Kentucky	A
Louisiana	F
Maine	D+
Maryland	C
Massachusetts	C+
Michigan	C
Minnesota	C+
Mississippi	F
Missouri	C+

State	Grade
Montana	B+
Nebraska	A+
Nevada	F
New Hampshire	F
New Jersey	C+
New Mexico	C+
New York	C+
North Carolina	F
North Dakota	A+
Ohio	F
Oklahoma	F
Oregon	C
Pennsylvania	F

State	Grade
Rhode Island	D
South Carolina	F
South Dakota	A
Tennessee	D
Texas	C+
Utah	F
Vermont	B+
Virginia	C+
Washington	B+
West Virginia	A+
Wisconsin	F
Wyoming	B+

ANALYSIS

Privatization Programs

This category measures the extent to which a state has encouraged private alternatives to its public school system. In the case of vouchers and neo-vouchers, states lost points for the establishment of programs, as well as the extent to which they encouraged participation. The existence of a voucher or neo-voucher program in a state does not automatically determine whether significant resources are being diverted or if the program is severely impacting public school students. For example, by law, the Tuition Tax-Credit Program in Montana allows for up to 100% of students in the state to participate; however, because the credit awarded is so insignificant (approximately $250), and the maximum tax credit so low ($150), the impact of the law is minimal.[25] South Dakota's awards and credits are similarly low. In both cases, fewer points were deducted.

On the other hand, Florida, has four distinct and expanding voucher/neo-voucher programs and the impact upon the funding of public school students is significant, and Nevada was a close second.[26] Arizona, Georgia and Oklahoma are not far behind with each losing 37 or more points because of total number of programs, as well as percentage of students eligible for vouchers and neo-vouchers.

States also lost points if they allow charter schools. Those states that permit only public school districts as the sole authorizing agency, lost fewer points. For example, Virginia is a state with only 9 charters, and all must be authorized by the public school district, assuring at least a minimal level of oversight and accountability. In addition, we took into account the extent to which charter schools have expanded. Those states in which charters serve less than 1% of the school population, gained 4 points back. States with 10% or more of its students attending charter schools lost the most points.

The states were reviewed using the categories below:

- **Presence of traditional voucher program and proportion of eligible students**
- **Presence of ESA program and the proportion of eligible students**
- **Presence of a Tuition Tax-Credit Program and the proportion of eligible students**
- **Presence of charter schools and authorization beyond the school district**
- **The proportion of students attending charter schools**

What We Found

There are 15 states and the District of Columbia with traditional voucher programs. Six (6) states have ESA programs and another 18 states have Tuition Tax-Credit Programs. In total, 28 states plus the District of Columbia have traditional voucher or neo-voucher programs. Forty-four (44) states and the District of Columbia have charter school laws.

Of the 15 states and the District of Columbia with traditional vouchers, 4 states allow at least 50% or more of their entire student population to participate, with Ohio and Wisconsin allowing up to 100% eligibility.[27] The six (6) states with ESA programs are less inclusive with only three (3) (Arizona, Florida, and Mississippi) allowing 11-25% of student eligibility, while the rest are lower.[28] For the states with Tuition Tax-Credit Programs, five (5) states (Arizona, Georgia, Illinois, Montana, Oklahoma) allow between 75-100% eligibility of the student population in the state, thus giving them even more potential to significantly undermine the resources available for public school students. In the states (including the District of Columbia) with charter school laws, it is notable that all of the laws, except those of Kansas, Maryland, Virginia, and Wyoming allow for charter school authorization and/or governance to expand beyond the local school district, often impacting the resource allocation in the surrounding public schools.

The state with the most K-12 school privatization was Florida, which lost 43 out of a possible 57 points. It was followed closely by Arizona, Georgia, Indiana, Louisiana, Oklahoma, Nevada and North Carolina, each of which lost at least 35 points.

Civil Rights Protections

Title VI of the Civil Rights Act and Title IX of the Education Amendments of 1972 are two major federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination is prohibited by Title IX of the Education Amendments of 1972. Both public schools and charter schools are prohibited from engaging in such discrimination. Additionally, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and various state laws provide protections for students with disabilities. Further, under the Individuals with Disabilities Education Act (IDEA) states and districts must make available to all students with disabilities a free appropriate public education (FAPE).

Blaine Amendments are state constitutional provisions that are intended to prevent state sponsorship of religious programs or institutions.[29] Some states have compelled support clauses as well, which forbid individuals from being forced to support religious institutions. [30]

In addition to protections against religious discrimination or the establishment of religion, other protections should exist to equally ensure the ability of all students to obtain a quality education and be free from discrimination in school enrollment and in the classroom. Such requirements such as random selection admissions policies protect against specific student discrimination based on claimed merit or other requirements, such as the refusal to accept LGBTQ students. English language learning programs and exemptions from participation in religious instruction should exist in any educational program funded by taxpayer dollars.

Unfortunately, private schools by their very nature are not subject to federal civil rights laws. Privatization advocates claim that programs tailored to students with disabilities are the exception, however this is not always true.[31] In fact, voucher proposals often contain language specifically intended to circumvent civil rights laws, and many proponents insist voucher funding does not flow to the school, but instead to the parent or student precisely to avoid any civil rights obligations. So, despite receiving public money, private schools that participate in voucher and neo-voucher programs are permitted to engage in various forms of discrimination, including religious, LGBTQ status, disability, language proficiency and even merit, which ultimately can also be a proxy for racial discrimination. Students using vouchers to attend private schools lose many rights granted by IDEA, including potentially the protection of an individualized education plan (IEP).[32]

For the most part, charter schools, are not permitted to violate federal civil rights laws and the charter outlines their compliance with such laws. However, charter schools are not required to protect and provide for all students in the same way as traditional public schools. For example, they do not always have to provide the necessary services to assist students with disabilities or those that are English-language learners. Often, the discrimination in which some charter schools engage is masked. Strict codes of discipline, lack of free or reduced lunch programs and free transportation, curriculum with a religious bent, and the overuse of grade retention, often result in high attrition rates and selective student bodies.

It is within this context that the following categories were used to assess the civil rights protections provided to students in states with privatization programs. States lost points based on the following:

Voucher, ESA and Tuition Tax-Credits:

- **Blaine Amendments—whether they existed and how broadly they were interpreted. States lost points for not having them or for having amendments that were largely ignored (vouchers and neo-vouchers)**

- No Compelled Support Clause restriction (vouchers and neo-vouchers)
- No mandate to comply with 42 USC 200d (race, color, national origin) (vouchers and neo-vouchers)
- No additional State/local civil rights protections (vouchers, neo-vouchers and charters)
- No mandate to provide ELL services (vouchers and neo-vouchers)
- No mandate to provide special education services (vouchers and neo-vouchers)
- Allows discrimination based on religion (vouchers and neo-vouchers)
- No random selection requirement (vouchers and neo-vouchers)
- No Opt Out of religious activities for students who receive vouchers (vouchers and neo-vouchers)
- Unclear on funding and service access for special education students (charters)
- Allows enrollment privilege for non-disadvantaged students (charters)

The existence of a Blaine Amendment alone does not guarantee that public money does not flow to religious private schools. Eight states with Blaine Amendments allow public funds to flow to religious schools via vouchers or neo-vouchers. The same is true regarding compelled support clauses—six states with compelled support clauses still allow money to flow to religious schools via their voucher or neo-voucher program. This is because Blaine Amendments can be either narrowly or broadly interpreted (which we included in our scoring) and because neo-vouchers are designed to be "work arounds."

On the other hand, some states such as West Virginia have no Blaine Amendment and yet do not have a voucher program. It still receives an overall grade of an A+ because it does not enable the proliferation of privatized programs at the expense of students in the public schools. Alarmingly, two (2) states (Nevada and Vermont) do not have mandates within their voucher statutes for compliance with federal civil rights protections against students based on their race, color or national origin. Further, almost half of all states with vouchers or neo-vouchers (19 states), fail to include additional state and local civil rights protections for students in either their voucher program, charter program or both.

Although Southern states often take the brunt of ire from civil rights advocates, 12 of the states in this list are in the North, Northeast or Midwest of the country.

Only one state, Iowa, with voucher or neo-voucher programs (TTC) requires private schools that receive public funds to provide ELL services. Sixteen (16) states did not require private schools getting vouchers to support special education students with mandated services. The argument made by privatization advocates that such programs will not cherry pick students is not viable given that 22 states and the District of Columbia with voucher or neo-voucher programs fail to guarantee a random selection process for students attempting to participate in their program.

Twenty-three (23) states and the District of Columbia fail to specifically protect students in voucher and neo-voucher programs against religious discrimination and all these same states, except Rhode Island, also fail to enable students to opt out of the religious activities.

Within the charter school context, the picture is somewhat better, with only Alaska and Kansas not providing additional state and local non-discrimination protections, such as protections for LGBTQ students. Unfortunately, students with disabilities are particularly disadvantaged in the charter school system with 39 states and the District of Columbia not clearly establishing clear provision of services. Moreover, 30 states and the District of Columbia do not require charter schools to prioritize disadvantaged students, instead allowing non-disadvantaged students, such as students with special talents or the children of board members, to have enrollment privileges into the charter school system.

Accountability, Regulations and Oversight

Privatization advocates claim that vouchers and charter programs are more accountable than public schools. They argue that parents will "vote with their feet" and that schools will thrive or fail based on their popularity with parents and student success. They also claim that such schools will improve the quality of education for minority students in underserved urban schools. While this may be the case for some percentage of students in certain areas of the country, research has proven this claim to be false.[33] In addition, state and federally sponsored privatization programs drain critical funds from public schools and as this report card shows, lack sufficient public accountability despite the use of shared taxpayer resources.

Vouchers and charters do not decrease education costs, but instead divert tax dollars ordinarily directed to public schools thus limiting the capacity of public schools to educate the remaining students. Such an example is Milwaukee, Wisconsin, which has been disproportionately burdened in a statewide voucher funding scheme. The city has raised property taxes several times to ensure adequate funding for the city's schools.[34]

Neo-voucher programs (ESAs and Tuition Tax-Credits) create even more challenges from an accountability and oversight perspective because they have little to no accountability at all, while further exacerbating the diversion of public funding. For example, the ESA program of Arizona, the largest in the country, expects no evidence or monitoring of student achievement, while placing 90% of the public school funding on a debit card for parents to find non-public education services. Since these neo-vouchers are generally sending taxpayer dollars to private schools on a larger scale than current state sponsored traditional voucher programs, the expansion of these programs may eventually compromise the ability of states with education clauses to support their public schools in a constitutional manner.[35]

Unlike public schools, privatized alternatives often do not have the same requirements for student testing, teacher certification, background checks of personnel, financial accountability, facility maintenance and more. Inadequate oversight such as this can enable the proliferation of disturbing conditions at such schools. Problems revealed in both the Milwaukee and Florida voucher programs included inappropriate student selection and unlawful admissions policies; hiring unqualified staff and staff with criminal records; misappropriation of public funds; failure to meet safety codes; unlawful discipline of students; and failure to provide adequate supplies for students and staff. [36]

News reports on the misappropriation of taxpayer funds by charter operators and vendors, as well as fraud, mismanagement and theft, occur on a regular basis.[37]

The following categories were used to assess the accountability of the privatization programs in the states.[38] Points were deducted if a state:

- Receives over 50% of per pupil funding spent on public school students (vouchers and neo-vouchers)
- Does not require prior public school enrollment (vouchers and neo-vouchers)
- Has no state testing requirements (vouchers and neo-vouchers)
- Fails to meet same requirements for teacher certification (vouchers, neo-vouchers and charters)
- No required background checks for teachers and employees (vouchers and neo-vouchers)
- No accreditation of private schools by the state (vouchers and neo-vouchers)
- Low SES/at risk not considered in admissions (vouchers, neo-vouchers and charters)
- More than 5% of public money used for administration of accounts (vouchers and neo-vouchers)
- No state oversight of the distribution of funds (vouchers and neo-vouchers)
- Fails to follow disciplinary state regulations (charters)
- Fiscally and legally independent boards (charters)

What We Found

Voucher Programs

Arkansas, Maine and North Carolina plummet to the bottom for the failed accountability of their voucher programs. For instance, none of these states required background checks for teachers and employees in voucher schools.

Of the 15 states and the District of Columbia with traditional voucher programs, 13 including the District of Columbia's voucher schools receive more than 50% of the per pupil funding that public schools get. In 9 states and the District of Columbia, private schools receiving public money are not required to have their voucher students take the state tests, even as they require (and often punish) public schools based on state test results. Despite claims that vouchers were not meant to support students already enrolled in private schools, 12 states and the District of Columbia do not insist that students be previously enrolled in public schools before being eligible for vouchers and 9 of the states fail to include a requirement of priority for students from families with low socioeconomic status.

Of the states with Education Savings Account programs, all of them divert funding from public school students by placing nearly all of the funding the public school would spend in an account or on a debit card. These funds are shifted to students in private schools, online schools, homeschools and even colleges.

Arizona is the worst state when it comes to accountability for its ESA programs with North Carolina, Nevada and Tennessee close behind. Arizona's ESA programs fail all the accountability requirements except the background check requirement, use of public money for administration of accounts, and state oversight of the distribution of funds. Nevada, North Carolina and Tennessee similarly fail all but 4 categories.

Tuition Tax-Credit Programs

Tuition Tax-Credit Programs can be especially egregious in maintaining accountability of the use of public taxpayer funds. Of the 18 Tuition Tax-Credit Programs, half of them fail to require any accreditation of the schools that receive a benefit from such Tuition Tax-Credit Programs.

Arizona leads the states for the worst accountability for its Tuition Tax-Credit Programs. Except for requiring background checks for teachers and employees, Arizona's Tuition Tax-Credit Programs fail all the reviewed accountability categories. Florida, Georgia, Illinois, Kansas, Nevada, Pennsylvania and Rhode Island are close seconds, failing all but three or four accountability categories.

Charter Schools

Although charter schools often claim to have appropriate and effective accountability, an analysis of the charter school laws surfaced significant loopholes. With the exception of 6 states – Montana, Nebraska, North Dakota, South Dakota, Vermont and West Virginia—all states have charter school laws. Twenty-eight of these states and the District of Columbia fail to require the same teacher certification requirements as traditional public schools, and 27 states and the District of Columbia do not prioritize or consider students from families with low SES status. Thirty-seven (37) states and the District of Columbia have boards that are fiscally and legally independent, which enables conflicts of interest, questionable fiscal arrangements and even fraud.

With the highlighting of suspension and expulsion rates by the release of the first Civil Rights Data Collection for the 2011-12 school year, it is important to note that students of color have been disproportionately impacted by school discipline and expulsion policies. Charter schools are supposed to report their suspension and expulsion rates as part of the CRDC collection process. Across the board, these rates are higher in charter schools. In part, this is because they are often exempt from the same regulations and appeals granted to students in public schools. Twenty-nine (29) states fail to follow the same disciplinary requirements as district public schools.

Transparency Protections for Taxpayers

As part of ensuring the accountability for the use of taxpayer funds, we also reviewed the transparency provisions of vouchers, neo-vouchers and charter schools. Public schools are overseen by school boards whose members are elected or appointed by elected officials. Moreover, these school boards must hold open meetings and provide an open pro-

cess for gaining public input and reaching decisions. Discipline codes must be available to parents, and suspension and expulsion rates reported and shared. Additionally, financial decisions and contracts are transparent and there are restrictions on nepotism and conflicts of interest for those on the Board.

This is not the case for private schools supported by voucher programs as well as for the charter schools in the majority of states. Private voucher-receiving schools and some charter school boards are not required to allow public input or have a governance body that operates democratically, nor must private schools or all charter schools make their full budget, spending and financial records transparent and available to parents and taxpayers.

Points were deducted from states for:

- No public transparency on student performance for private schools (vouchers, neo-vouchers and charters)
- No transparency on withdrawal of students (vouchers and neo-vouchers)
- No registration, accreditation, licensing or approval requirement of private schools (vouchers and neo-vouchers)
- No public transparency on discipline rates (vouchers and neo-vouchers)
- No public transparency on spending and funding (vouchers, neo-vouchers and charters)
- No public transparency on transactions, salaries or providers (vouchers and neo-vouchers)
- No public transparency on governance and meetings (vouchers and neo-vouchers)
- No state required transparency on charter authorization (charters)
- No conflict of interest requirement for Board and ESP (charters)

What We Found

Vouchers

Thirteen (13) states and the District of Columbia have no public transparency on the governance and meetings of schools receiving funds through state-supported voucher programs. Twelve (12) states and the District of Columbia also have no transparency on their financial transactions, salaries or providers. Of the 15 states and the District of Columbia with voucher programs, Mississippi fails all categories reviewed, except for the requirement that private schools utilizing state sponsored vouchers register or obtain accreditation, licensing or approval from the state.

Education Savings/Scholarship Accounts

Of the 6 states with ESA programs, Arizona fails all the transparency categories. Florida, Mississippi and North Carolina are next in line failing all categories except the accreditation, licensing or approval category. Because Nevada's program is on hold, we were unable to assess its transparency.

Overall, ESA programs tend to be structured in a way to avoid public transparency, instead relinquishing any accountability except to the extent that the ESA provider established to administer the ESA program must be financially accountable for the distribution of the scholarship accounts. However, there is a stark difference between the transparency of the ESA provider and that of the private school that is utilizing the ESA. With limited exceptions, ESA programs have even far less transparency than traditional voucher programs because they are specifically structured to avoid public accountability.

Tuition Tax-Credit Programs

Of the 18 states with Tuition Tax-Credit Programs, 17 of the states fail to provide any public transparency about the discipline rates for private schools or the transactions, salaries or providers for private schools. Sixteen (16) states fail to provide any public transparency on governance and meetings for private schools and 12 states fail to provide any public transparency on spending and funding for private schools.

Among the programs, Illinois and South Dakota's Tuition Tax-Credit Programs have the worst level of public transparency failing all 7 categories.

Charter Schools

For charter school states, of the 43 states plus the District of Columbia, 38 of the states and the District of Columbia have no required transparency provisions regulating the spending and funding by the charter school's educational service providers or charter management organization (ESP, EMO or CMO) even though in some cases they may receive substantial proportions of public dollars. Notably, 18 states also fail to require transparency in the authorization process of charters. This limits the ability of the public to have input into the proliferation of charters in their school district.

ADDITIONAL RATINGS FOR CHARTER SCHOOL PROGRAMS

Because many of the categories used to rate vouchers and neo-vouchers did not apply to charters, an additional category with unique components was added to more fully analyze the accountability, transparency and civil rights protections of the laws and regulations that govern charter schools in the states. One state, Kentucky, was not fully rated because Kentucky passed a charter school law but has not yet passed enacting regulations, nor has it funded its charter school program.

The following additional categories were analyzed. Points were deducted based on the following:

Type of Charter

Although nearly all states allow charter schools, some states have embraced more privatized models.

Points were deducted for:

- For-profit charters allowed
- For-profit charter management companies allowed
- Virtual charters allowed
- High performance by charters not required

Oversight

- Renewal period more than 5 years
- Insufficient growth caps
- No annual audits required
- No requirements for advertised and open board meetings
- If charter closes, property and assets are not returned to taxpayers

State/local requirements

- District must provide space
- Transportation not mandated by state

What We Found

Four (4) states (Arizona, California, Michigan and Wisconsin) allow for-profit charter schools funded by the taxpayer, however, nearly all of the other states allow for-profit management companies to govern and provide services to their charter schools, with many management companies receiving a majority or near majority of the taxpayer funds intended to fund the schools. Virtual charter schools are permitted in 25 states despite ample documentation on the ineffectiveness of virtual charter schools, whose graduation rates hover around 44%. Nearly all are run by for-profit management companies, and many have been shut down, or fined for fraudulent practices.

Although charter advocates often herald the flexibility of their schools, this can come at a cost. Since public funding is being utilized to support these schools, it follows that appropriate oversight should be exercised. Unfortunately, neither Alabama, Alaska, Kansas Louisiana, Maine, Maryland, Michigan, Mississippi, Texas, Vermont, Virginia, Wisconsin nor Wyoming require annual audits of their charter schools. Further Hawaii, Kansas, New Mexico, and Utah also fail to require transparency in their governing process with no requirements for advertised and open board meetings. Most startling of all, 21 states do not mandate that the property of the charter school be returned to the taxpayers if the charter school voluntarily closes or fails.

The idea that charters provide options to students, particularly those from low-income families, is undermined if charter school are not required to provide transportation to their schools. Twenty-seven states and the District of Columbia fail in this category. Of particular note in the states of California and New York, is the requirement that the district must provide charters with space. This requirement has resulted in the displacement of public school students in their own school buildings, and students attending schools in the same building with unequal resources due to the millions in donations that charter schools receive.

PRIVATIZATION BY VOUCHER PROGRAMS

State	Grade	State	Grade	State	Grade
Alabama	C	Kentucky	A+	North Dakota	A+
Alaska	A+	Louisiana	F	Ohio	D+
Arizona	F	Maine	C+	Oklahoma	F
Arkansas	C+	Maryland	B	Oregon	A+
California	A+	Massachusetts	A+	Pennsylvania	C
Colorado	A+	Michigan	A+	Rhode Island	C
Connecticut	A+	Minnesota	A+	South Carolina	C+
Dist. of Columbia	C+	Mississippi	F	South Dakota	B+
Delaware	A+	Missouri	A+	Tennessee	C+
Florida	F	Montana	C+	Texas	A+
Georgia	F	Nebraska	A+	Utah	C
Hawaii	A+	Nevada	F	Vermont	C+
Idaho	A+	New Hampshire	D+	Virginia	C+
Illinois	D+	New Jersey	A+	Washington	A+
Indiana	F	New Mexico	A+	West Virginia	A+
Iowa	C+	New York	A+	Wisconsin	C
Kansas	C	North Carolina	F	Wyoming	A+

PRIVATIZATION BY CHARTER PROGRAMS

State	Grade	State	Grade	State	Grade
Alabama	D	Kentucky	C+	North Dakota	A+
Alaska	F	Louisiana	F	Ohio	F
Arizona	F	Maine	F	Oklahoma	F
Arkansas	F	Maryland	C	Oregon	F
California	F	Massachusetts	F	Pennsylvania	F
Colorado	F	Michigan	F	Rhode Island	F
Connecticut	F	Minnesota	F	South Carolina	F
Dist. of Columbia	F	Mississippi	F	South Dakota	A+
Delaware	F	Missouri	F	Tennessee	F
Florida	F	Montana	A+	Texas	F
Georgia	F	Nebraska	A+	Utah	F
Hawaii	F	Nevada	F	Vermont	A+
Idaho	F	New Hampshire	F	Virginia	C+
Illinois	F	New Jersey	F	Washington	C
Indiana	F	New Mexico	F	West Virginia	A+
Iowa	F	New York	F	Wisconsin	F
Kansas	C+	North Carolina	F	Wyoming	C+

RECOMMENDATIONS AND CONCLUSIONS

Public education is intended to be America's great equalizer. Equitable access to quality opportunities in the classroom, experienced teachers, and to well-resourced schools should be of paramount importance to policy makers and legislators alike. The benefits provided in a public school setting are needed today more than ever. "It would be the ultimate irony of modern history," the Center on Education Policy has written, "if America should dissolve the unifying glue of public education and splinter along ethnic and religious lines just at the time that many of the world's emerging democracies are looking to the United States and its institutions as role models for building their nations."[39]

Privatization programs such as vouchers and neo-vouchers have been heralded as opportunities for advancement, particularly for low-income students and students of color, yet most fail basic criteria to effectively measure academic achievement, protect the civil rights of students in the classroom, and ensure teacher quality, fiscal accountability, transparency and oversight. Research in the past few years has converged: vouchers have negative effectives on student learning.

Charter school advocates highlight the flexibility and innovation within their programs and the "public choice" options provided to students attending low-performing neighborhood public schools. While some programs may benefit the students they serve, we must still consider the appropriateness of enabling the existence of charter laws that fail, like the voucher programs, to meet minimum criteria. In addition, in both the case of charter schools and voucher schools and programs, we must consider their fiscal impact on public schools as well as the associated increases in student segregation.

We strongly acknowledge that there continues to be much that this country **can and should** be doing to ensure the promise of a quality public education for all children. Every child is equally deserving of educational excellence in the classroom. However, undermining the ability to provide these opportunities for the majority of students across this country for the benefit of a few, does not accomplish this goal, and is not only short sighted, but ultimately cruel, ineffective and unfair.

What follows are recommendations to help advance this goal of achieving a quality public education for all students:

- **Taxpayer dollars should not flow from the public school system to support private school vouchers, ESAs, Tuition Tax-Credits or any future scheme to circumvent state prohibitions on the use of tax dollars for religious entities.**
- **There should be a moratorium on all voucher programs with an immediate phase out that does not displace children presently in the voucher system.**
- **Special tax credits for businesses and individuals should be eliminated with so-called scholarship programs receiving the same tax benefit (deductibility) of other charitable programs.** Businesses corporations and taxpayers should receive comparable benefits for supporting public schools.
- **Because we recognize that many families have come to depend on charter schools we do not call for their immediate closure.** We advocate instead for their absorption into the public school system. The state of Virginia is a fine example of a system in which the need for a charter is determined by a district, charter schools are accountable to the district, and are therefore governed by the taxpayers whom the district serves. We look forward to the day when all charter schools are governed not by private boards, but by those elected by the community, at the district, city or county level.
- **We support the NAACP moratorium on charter schools, and insist that all states pass laws and regulations ensuring that all students have equal opportunity and rights, that schools are fully transparent and accountable to the taxpayers who fund them, and the corruption associated with the sector is weeded out.** We advise states to use this report card for guidance.
- **Instead of diverting resources, we should invest in public schools to make them better for all students.** Evidenced-based and immediate actions steps include reducing class sizes, improving teacher training and recruitment, supporting pre-K education and increasing parental involvement.

This country should not continue to tolerate and subsidize unaccountable private and privately-managed charter schools. True, it is easier to transfer public funds to private entities than to undertake the challenging work of fixing our public schools. But it is fruitless and short-sighted to divert resources from the public schools that serve the vast majority of students in this nation. We believe that privatization is not only harmful to the public schools that enroll most children but has enabled policymakers to shirk their responsibility to fully support and improve our public schools and their teachers. Both partial and full privatization are ineffective substitutes for adequately funding public schools. We fear that the current political movement for privatization is leading toward the re-establishment of a dual school system. We recall Dr. Martin Luther King, Jr.'s insistence upon the "urgency of now." It is hypocritical to claim agreement on the goal of providing a quality public education for all children yet act in direct opposition to its fulfillment. Just as this nation was intentional about the establishment of the public education system, we must continue to be intentional about the urgent need to prioritize a quality public education for all students and not privatize the educational system for the benefit of just a few.

APPENDIX

Grading Criteria and Source Material

In every case, we sought the most recent information we could obtain from reliable sources. If there was an update to the law that was known to us, it was included.

Privatization Programs

Vouchers and Neo-Vouchers: States with a voucher or neo-voucher program lost 8 points for each type of program they had. Source documents were the *National Conference of State Legislatures* Interactive Guide to School Choice Laws and *EdChoice* School Choice in America Dashboard.

Additional points were deducted based on the percentage of students eligible to participate. The source consulted was *EdChoice* School Choice in America Dashboard. Points were deducted as follows:

- 11-25% of students in state eligible — 1 point deduction
- 26-50% of students in state eligible — 2 point deduction
- 51-75% of students in state eligible — 4 point deduction
- 76-100% of students in state eligible — 6 point deduction

Charter Schools: States with no charters lost no points. States with charter schools in which all authority was vested in the local district lost 4 points. States with multiple authorizers of charter schools lost 14 points. The sources consulted were the *National Conference of State Legislatures* Interactive Guide to School Choice Laws and the *National Alliance for Public Charter Schools* Charter Law Database.

Additional points were deducted based on the percentage of students attending charter schools. The source consulted was the enrollment figures provided by the *National Center for Education Statistics* Public Charter School Enrollment. Because the latest numbers given are for 2015, it is likely that the numbers are lower than they are at present. Points were deducted or awarded as follows:

- Less than 1% of all students — 4 point award, that is, points were added not subtracted
- 1%-4% of all students — .25 point deduction
- 5%-9% of all students — .5 point deduction
- 10% or more of all students — .75 point deduction

Civil Rights Protections

Blaine Amendments (Vouchers and Neo-Vouchers): States with no Blaine Amendment lost 1 point. States with a Blaine Amendment lost points based on how narrowly it is interpreted. The source consulted was the *Institute for Justice* Answers to Frequently Asked Questions About Blaine Amendments.

- A narrow interpretation that allows religious educational options — .5 point deduction
- A mixed interpretation that is unclear about religious educational options — .25 point deduction
- A broad interpretation that limits and/or restricts religious educational options — no deduction

No Compelled Support Clause Restriction (Vouchers and Neo-Vouchers): States with a Compelled Support Clause lost no points. States with no Compelled Support Clause lost .5 points. The source consulted was *EdChoice* School Choice: Constitutionality Database.

No Language that Mandates Compliance with 42 USC 200d (Race, Color, National Origin) Non-Discrimination (Vouchers and Neo-Vouchers): States with a voucher program that does not mandate compliance with Federal Civil Rights Protections lost .5 points. The source consulted was the *Peabody Jour-*

nal of Education Dollars to Discriminate: The (Un) intended Consequences of School Vouchers.

No Additional State/Local Civil Rights Protections (Vouchers, Neo-vouchers and Charters): States with a voucher, neo-voucher or charter program that does not require civil rights protections beyond federal protections for students attending private schools lost .5 points for every program that did not have additional protections. The sources consulted were the *Peabody Journal of Education* Dollars to Discriminate: The (Un)intended Consequences of School Vouchers, *US Department of Education, Office of Innovation and Improvement* State Regulation of Private and Home Schools, and the *National Alliance for Public Charter Schools* Charter Law Database.

No Mandate to Provide ELL Services or Special Education Services (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that does not mandate providing ELL services lost .5 points for each program without such a mandate. If the program does not mandate providing special education services another .5 points was deducted per program. The sources consulted were the *US Department of Education, Office of Innovation and Improvement* State Regulation of Private and Home Schools, *EdChoice* School Choice in America Dashboard, *American Federation for Children* School Choice in America: Interactive Map and the state statutes themselves when warranted.

Does Not Prohibit Discrimination Based on Religion (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that does not prohibit discrimination based on religion lost .05 points for each program that does not. The sources consulted were *EdChoice* School Choice in America Dashboard, *American Federation for Children* School Choice in America: Interactive Map and the state statutes themselves when warranted.

No Random Selection Requirement (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that ensures that all students are not selected by the school but rather are accepted if there is a spot did not lose any points. States lost .05 points for each program with no random selection requirement. The sources consulted were *EdChoice* School Choice in America Dashboard, *American Federation for Children* School Choice in America: Interactive Map, *American Federation for Children Growth Fund* 2015-2016 School Choice Yearbook and the state statutes themselves when warranted.

No Opt Out of Religious Activities (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that allows students to opt out of religious activities did not lose any points. States lost .5 points for each program that failed to ensure that students can opt out of religious activities at any private school that receives tax dollars. The sources consulted were *EdChoice* School Choice in America Dashboard, *American Federation for Children* School Choice in America: Interactive Map and the state statutes themselves when warranted.

Unclear on Funding and Service Access for Special Education Students (Charters): States with a charter program that doesn't have clear provisions that mandate the provision of full special education services lost .25 points. The source consulted was *National Alliance for Public Charter Schools* Charter Law Database: States.

Allows Enrollment Privilege for Non-Disadvantaged Students (Charters): States with a charter program that gives non-disadvantaged students enrollment privileges lost .25 points. Such privileges include advantage for the children of employees and board members. The source consulted was *National Alliance for Public Charter Schools* Charter Law Database: States.

Accountability, Regulation & Oversight

Receives Over 50% of Per Pupil Funding Spent on Public School Students (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that provides more than 50% of the per pupil allocation to voucher students that public school students receive lost .5 points for each program that receives over 50%. The source consulted was *EdChoice* School Choice in America Dashboard.

Does Not Require Prior Public School Enrollment (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that does not require students to be enrolled in public schools prior to receiving a voucher or tax credit lost .25 points for each program that does not have such a requirement. The source consulted was the *American Federation for Children Growth Fund* 2015-2016 School Choice Yearbook and *EdChoice* School Choice in America Dashboard.

No State Testing Requirements (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that does not require private schools receiving taxpayer dollars to administer the same state tests as public schools lost .5 points for each program that does not administer the state test. The source consulted was the *American Federation for Children Growth Fund* 2015-2016 School Choice Yearbook and *EdChoice* School Choice in America Dashboard.

Fails to Meet Same Requirements for Teacher Certification (Vouchers, Neo-Vouchers and Charters): States with a voucher or neo-voucher program that does not require teachers in private schools receiving taxpayer dollars to meet the same teacher certification requirements lost .25 points for each program that fails to meet the same requirements. States with a charter school program that does not require teachers in charter schools to meet the same teacher certification requirements lost .5 points. The sources consulted were *EdChoice* School Choice FAQs: Are Participating Private Schools Held Accountable? and *National Alliance for Public Charter Schools* Charter Law Database: States.

No Required Background Checks for Teachers and Employees (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that does not require teachers and employees in private schools receiving taxpayer dollars to submit to a background check lost .25 points for each program that does not have such a requirement. The sources consulted was the *US Department of Education, Office of Innovation and Improvement* State Regulation of Private and Home Schools.

No Accreditation of Private Schools by the State (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that does not require participating private schools to be accredited by the state lost .5 points for each program that does not require accreditation. The sources consulted were *EdChoice* School Choice in America Dashboard and *US Department of Education, Office of Innovation and Improvement* State Regulation of Private and Home Schools and National Conference of State Legislatures http://www.ncsl.org/research/education/voucher-law-comparison.aspx.

Low Socioeconomic Status/At-Risk Not Considered (Vouchers, Neo-Vouchers and Charters): States with a voucher, neo-voucher or charter program that does not consider a student's socioeconomic or at-risk status lost .5 points for each program that fails to do so. The source consulted was *EdChoice* School Choice in America Dashboard and *National Alliance for Public Charter Schools* Charter Law Database.

More than 5% of Public Money used for Administration of Accounts (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program that allowed more than 5% of the "scholarship" money to be used to administer accounts lost .25 points. The source considered was the *American Federation for Children Growth Fund* 2015-2016 School Choice Yearbook and *EdChoice* School Choice in America Dashboard.

No State Oversight of the Distribution of Funds (Vouchers and Neo-Vouchers): States that do not oversee the distribution of funds in voucher or neo-voucher programs lost .25 points. The source considered was the *American Federation for Children Growth Fund* 2015-2016 School Choice Yearbook.

Fails to Follow Disciplinary State Regulations (Charters): States with a charter program that does not follow the state's disciplinary regulations for public schools lost .25 points. The source consulted was the *US Department of Education* Compendium of School Discipline Laws and Regulations for the 50 States, District of Columbia and the U.S. Territories.

Fiscally and Legally Independent Boards (Charters): States that do not have sufficient oversight of the business conducted by charter boards lost

.5 points. The source consulted was the *National Alliance for Public Charter Schools* Charter Law Database.

Transparency

No Transparency on Withdrawal of Students (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program lost .25 points for each program that does not report student withdrawals. This category was analyzed based on reported enrollment requirements, other than initial certifications, i.e. quarterly or required reporting of student withdrawal within 10 days. The source consulted was *US Department of Education, Office of Innovation and Improvement* State Regulation of Private and Home Schools.

No Registration, Accreditation, Licensing or Approval Requirement of Private Schools (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program lost .25 points if private schools that receive taxpayer dollars are not required to be registered, accredited, licensed or approved by the state. States lost .25 points for each program that fails to do so. The source consulted was *US Department of Education, Office of Innovation and Improvement* State Regulation of Private and Home Schools and National Conference of State Legislatures http://www.ncsl.org/research/education/voucher-law-comparison.aspx

No Public Transparency on Discipline Rates (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program lost .25 points if private schools that receive tax dollars do not release discipline rates. States lost .25 points for each program that fails to do so. The source consulted was *US Department of Education, Office of Innovation and Improvement* State Regulation of Private and Home Schools and *EdChoice* School Choice in America Dashboard.

No Public Transparency on Spending and Funding (Vouchers, Neo-Vouchers and Charters): States with a voucher or neo-voucher program lost .25 points if private schools that receive taxpayer dollars are not transparent in their spending and funding. States lost .25 points for each program that is not transparent. States with a charter program that does require the spending and funding of Educational Service Providers to be transparent lost .25 points. The sources consulted were *EdChoice* School Choice in America Dashboard, *National Alliance for Public Charter Schools* Charter Law Database and reporting of transparency requirements.

No Public Transparency on Transactions, Salaries or Providers (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program lost .25 points if private schools that receive taxpayer dollars do not release data related to transactions, salaries and providers. States lost .25 points for each program that is not transparent. The sources consulted were *EdChoice* School Choice in America Dashboard and reporting of transparency requirements.

No Public Transparency on Governance and Meetings (Vouchers and Neo-Vouchers): States with a voucher or neo-voucher program lost .25 points if private schools that receive taxpayer dollars are not transparently governed and required to hold open public meetings. States lost .25 points for each program that is not transparent. The sources consulted were *EdChoice* School Choice in America Dashboard and reporting of transparency requirements. A comparable rating for charters can be found in *Additional Charter School Considerations*.

No State Required Transparency on Charter Authorization (Charters): States with a charter authorization process that is not transparent to the public lost .25 points. The source consulted was the transparency reporting definition provided by the *National Alliance for Public Charter Schools* Charter Law Database.

No Conflict of Interest Requirement for Board and Educational Service Providers (Charters): States with a charter program that does not require Board members and Educational Service Providers to disclose conflict of interest information lost .5 points. The source consulted was the transparency reporting definition provided by the *National Alliance for Public Charter Schools* Charter Law Database.

No State Required Transparency on Charter Renewal and Revocation (Charters): States with a charter program that does require transparency

on the renewal and revocation of charters lost .25 points. The source consulted was the transparency reporting definition according to *National Alliance for Public Charter Schools* Charter Law Database.

Additional Charter School Considerations

Type of Charter

For-Profit Charter Schools Allowed: States with a charter program that allows for-profit charter schools lost 4 points. The source consulted was the *National Alliance for Public Charter Schools* Charter Law Database.

For-profit Charter Management Companies Allowed: States with a charter program that allows for-profit management of not for profit charter schools lost 2 points. The source consulted was the *National Alliance for Public Charter Schools* Charter Law Database.

Virtual Charters Allowed: States with a charter program that allows virtual charter schools lost 3 points. The source consulted was the *Education Commission of the States* 50-State Comparison: Charter Schools — Does State Law Explicitly Allow Virtual Charter Schools?

High-Performance by Charters Not Required: States with a charter program that does not require high-performing charter schools lost 2 points. The source consulted was the *Education Commission of the States* 50-State Comparison: Charter Schools — Does the State Set a Threshold Beneath Which a Charter School Must Automatically Be Closed?

Oversight

Renewal Period Greater than 5 Years: States with a charter program that allows a renewal period of greater than five years lost .5 points. The source consulted was the *National Alliance for Public Charter Schools* Charter Law Database.

Insufficient Growth Caps: States with a charter program that has no cap on charter growth lost .5 points. The source consulted was the *National Alliance for Public Charter Schools* Charter Law Database.

No Annual Audits Required: States with a charter program that don't require annual financial audits lost .25 points. The source consulted was the *Education Commission of the States* 50 State Comparison: Charter Schools — Does the State Require Charter Schools to Submit Annual Reports.

Authorizer Shopping Allowed: Many states allow rejected charter school applications to re-submit to another authorizing body, to seek approval at a county or state level. Others states honor the decision of the first potential authorizing body, which often allows revision and resubmission. If the state allows rejected applications to move to a different authorizer or authorizing level with the rejected application they lost .5 points. The source consulted was the *Education Commission of the States* 50-State Comparison: Charter Schools.

No Requirements for Advertised and Open Board Meetings: States with a charter program that fail to require open public meetings lost .25 points. The source consulted was *Ballotpedia* State Open Meetings Laws and each state's Open Meetings Law.

If Charter Closes, Property and Assets Not Returned to Taxpayers: States with a charter program that fails to return property to taxpayers if a charter closes lost 2 points. The source consulted was each state's charter law.

State/Local Requirements

District Must Provide Space: States with a charter program that forces districts to provide space in existing public school buildings to charter schools lost 1 point. The source consulted was the *National Alliance for Public Charter Schools* Charter Law Database.

Transportation Not Mandated by State: States with a charter program that does not ensure that charter school students are provided transportation lost 1 point. The source consulted was the *Education Commission of the States* 50-State Comparison: Charter Schools — Does the State Specify Who Must Provide Transportation to Charter School Students?

ENDNOTES

1 Opinion of the court, *Brown v. Board of Education*, 347 U.S. 483 (1954), accessed at http://www.nationalcenter.org/brown.html.

2 Hodding Carter III, "Public Education: An American Idea—And Ideal," *The Miami Herald*, Oct. 23, 2002.

3 National Center for Education Statistics. (2017, May). *The Condition of Schools*. Retrieved April 3, 2018, from https://nces.ed.gov/programs/coe/indicator_cga.asp.

4 *Id.* Between fall 2000 and fall 2015, overall public charter school enrollment increased from 0.4 million to 2.8 million.

5 Nine out of ten school students attend public schools, approximately 5 million students were enrolled in private school education in the fall of 2013. For more information on private schools and students, visit (National Center for Education Statistics, Private School Universe Survey, 2017).

6 National Center for Education Statistics. (2017, May). *The Condition of Schools*. Retrieved April 3, 2018, from https://nces.ed.gov/programs/coe/indicator_cga.asp.

7 *Id.*

8 National trends show that charter schools are reinforcing segregation. According to a 2010 report by the UCLA Civil Rights Project, 70 percent of Black charter school students are enrolled in highly segregated schools, twice as many as their Black peers in traditional schools.

9 Public Law 96-88, Section 102.

10 People For the American Way. (2003). *The Voucher Veneer: The Deeper Agenda to Privatize Public Education*. Retrieved from https://files.eric.ed.gov/fulltext/ED478284.pdf

11 "Action for All: The Public's Responsibility for Public Education," a report of findings from a nationwide survey sponsored by the Public Education Network and *Education Week*, April 2001, p. 9.

12 "Poll: School Vouchers No Major Issue" Oct 2017, found at https://abcnews.go.com/Politics/story?id=122683&page=1.

13 Historical Timeline of Public Education in the US, (2018), https://www.raceforward.org/research/reports/historical-timeline-public-education-us (last visited Apr 3, 2018).

14 *Plessy v. Ferguson*, 163 U.S. 537.

15 During the Reconstruction Era, African Americans fought to rewrite state constitutions in the South to include a free education "The goal is to make sure that the children of poor immigrants get 'civilized' and learn obedience and restraint, so they make good workers and don't contribute to social upheaval." *See* Historical Timeline of Public Education in the US, (2018), https://www.raceforward.org/research/reports/historical-timeline-public-education-us (last visited Apr 3, 2018).

16 Voucher advocates often attempt to compare their cause to the *Brown* decision, but the NAACP's Supreme Court brief sums it up best: "This analogy is not merely manipulative and shallow; it is insulting to the thousands of courageous African-American parents and students who made this Court's *Brown* decision become a reality …"Brief of the NAACP Legal Defense and Educational Fund, Inc. and the National Association for the Advancement of Colored People as amici curiae in support of respondents, *Zelman v. Simmons-Harris*, pp. 7, 9.

17 *The Southern Manifesto of 1956*. (n.d.). Retrieved from http://history.house.gov/Historical-Highlights/1951-2000/The-Southern-Manifesto-of-1956/.

18 Welner, A. G., & Green, P. C. (2018). *Private School Vouchers: Legal Challenges and Civil Rights Protections*".

19 377 U.S. 218 (1964).

20 "Following the Jim Crow Era use of vouchers as a tool for maintaining segregation and the Supreme Court's rebuke of those policies in Griffin, two other rationales emerged. Milton Friedman's 1955 conceptualization, largely picked up by Chubb and Moe in 1990, embraced public subsidies of private schooling as a way to shift away from public governance and bureaucracy. This free-market justification for vouchers merged with an advocacy campaign that forcefully argued for systemic reform of public schools located in big cities and serving students of color. Vouchers thus became a free-market policy approach pitched to rescue

poor students and students of color from failing, urban public schools." *See* Welner, A. G., & Green, P. C. (2018). *Private School Vouchers: Legal Challenges and Civil Rights Protections*".

21 *Lopez v. Schwartz*, 132 Nev. Adv. Opn. No. 73. EN BANC Nos. 69611/70648.; Although the court ruled that Nevada's ESA is constitutional, it also ruled that the legislature did not adopt an "independent basis" to fund ESAs in addition to funding for public schools. Therefore, the ESA program "is without an appropriation to support its operation." The court affirmed in part and reversed in part the rulings of the lower courts and directed the lower courts to enter a final declaratory judgment and permanent injunction against Section 16 of the bill creating ESAs. Senate Bill 302. Section 16 contained enabling language for funding, but the court ruled there was no corresponding language in the bill appropriating funds for education. Taken from https://www.edchoice.org/school-choice/programs/nevada-education-savings-accounts/.

22 National Center for Education Statistics. (2017, May). *The Condition of Schools*. Retrieved April 3, 2018, from https://nces.ed.gov/programs/coe/indicator_cga.asp.

23 *Id.*

24 Stat on increased ELL students.

25 *See* https://www.edchoice.org/school-choice/programs/montana-tax-credits-for-contributions-to-student-scholarship-organizations/.

26 Florida loses 42 points, Nevada loses 40 points.

27 Maine, Mississippi, New Hampshire and Vermont have enrollment percentages of 10% or less.

28 Nevada's program is not currently active so although the law dictates the eligibility, there is no application of the program at this time. *See Endnote 22.*

29 "They get their name from James Blaine, a Congressman from Maine. In 1875, Blaine proposed a federal constitutional amendment that would have prohibited states from funding sectarian schools or institutions. Although Blaine's attempt failed to pass, individual states passed similar constitutional provisions." Welner, A. G., & Green, P. C. (2018). *Private School Vouchers: Legal Challenges and Civil Rights Protections.*

30 "So far, courts have generally not found these particular state religion clauses more restrictive than the U.S. Establishment Clause. However, existence of these compelled support clauses and Blaine Amendments still provides a potential avenue of protection for taxpayers and parents whose taxes are supporting public schools." Welner, A. G., & Green, P. C. (2018). *Private School Vouchers: Legal Challenges and Civil Rights Protections*".

31 Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities. GAO-18-94: Published: Nov 16, 2017. Publicly Released: Nov 30, 2017.

32 *Id.* Unfortunately, many parents and students are not even aware that they will lose rights and protections when they participate in a voucher or neo-voucher program.

33 https://www.epi.org/publication/school-vouchers-are-not-a-proven-strategy-for-improving-student-achievement/.

34 Borsuk, *"MPS Property Tax Levy Expected to Rise 14.9%," Milwaukee Journal Sentinel, July 4, 2008.;* Richards, *"MPS blames voucher program for tax levy increase," Milwaukee Journal Sentinel, October 31, 2012.*

35 Welner, A. G., & Green, P. C. (2018). *Private School Vouchers: Legal Challenges and Civil Rights Protections*".

36 People For the American Way. (2003). *The Voucher Veneer: The Deeper Agenda to Privatize Public Education*. Retrieved from https://files.eric.ed.gov/fulltext/ED478284.pdf.

37 *See* https://networkforpubliceducation.org/9734-2/.

38 Some of these categories are specific only to vouchers and neo-vouchers, not charters. Charters have additional categories that were reviewed as explained further in the report.

39 People For the American Way. (2003). *The Voucher Veneer: The Deeper Agenda to Privatize Public Education*. Retrieved from https://files.eric.ed.gov/fulltext/ED478284.pdf; "Public Schools and Citizenship by the Center on Education Policy," July 1998.

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