



Vouchers and School Choice

Background

The term “vouchers” usually refers to a program that provides public funds to students to attend private or parochial (religious) schools. Vouchers are actually a subset of a larger political movement referred to as “school choice.” State and federal laws already give Texas students choices among public schools to meet their unique interests and needs. Students in Texas may choose to attend a public school outside of their attendance zone by:

- exercising inter- and intra-district transfer options,
- attending a magnet school or program, or
- enrolling in a charter school.

The Texas Association of School Boards (TASB) supports school choice within the public school system but opposes vouchers, tuition tax credits, and similar programs that siphon tax dollars to private schools.

School Choice Options Currently Available in Texas

Intra-district transfers: Texas school boards may adopt intra-district transfer policies that allow students to transfer between schools within the same district.¹ Nearly all of the approximately **475 multi-campus** districts in Texas have adopted intra-district transfer policies. Many multi-campus districts by policy or practice also provide an “open enrollment” period during the school year when students may enroll in any school within their resident district on a “space available” basis.

Inter-district transfers: Additionally, approximately **1000 districts** have adopted inter-district transfers. A student who was the victim of “bullying²,” a violent crime³, or a sexual assault is allowed to transfer from a school in one district to a school in another district.⁴

Mandatory: Another student⁵ has the right to transfer to another class or school. Additionally, a student who resides in the same household as a special education student who has been assigned to another campus for special education services has the right to transfer to the campus of the special education student.⁶

Public Education Grants: Students attending a “low-performing” school are eligible to attend a higher performing school in the same district or in another district under the Public Education Grant (PEG)

¹ Texas Education Code (TEC) section 25.031

² TEC section 25.0341;

³ No Child Left Behind Act (NCLB), PL 107-110, Title IX, section 9532

⁴ TEC section 25.035.

⁵ TEC section 25.0341

⁶ TEC section 25.0343.

program.⁷ A district is not required to accept a PEG transfer student, but may not discriminate against PEG applicants for impermissible reasons.⁸ TASB's Legal Division advises districts that accept inter-district transfers to also accept PEG students. The Legislature has provided several financial incentives to encourage districts to accept PEG transfers.⁹ However, PEG transfers have not been used widely because the districts to which PEG students typically apply are already at their enrollment limits and transportation under the PEG grant is limited to the student's assigned campus.¹⁰ Parents are responsible for transportation beyond that point.

The federal **No Child Left Behind Act (NCLB)** allows a student in a school that does not achieve Adequate Yearly Progress (AYP) for two consecutive years to transfer to a higher performing school in the same district or in another district.¹¹ The school district of origin must provide or pay for the transportation of NCLB transfer students. Students who attend a "persistently dangerous" school are also entitled to transfer under NCLB.¹²

Magnet schools are another available choice authorized by the State Board of Education.¹³ Magnet schools generally have a particular pedagogical focus like art, technology, or a different structural organization, such as a Montessori magnet school. Magnet schools enroll students from throughout a school district through an application process.

Charter Schools: These are publicly funded schools that are subject to fewer state regulations than traditional public and magnet schools. In 1995, the Texas Legislature authorized the formation of school district and open-enrollment charter schools.

School District Charter Schools: Texas school boards must adopt a policy for granting a charter to a group of parents or teachers who want to operate a campus or program if the majority of parents and teachers at the school sign a petition in support of the charter.¹⁴ The charter is a contract between the school board and the charter applicants. It specifies things like the campus' educational program, the governing structure, and the conditions under which the charter may be revoked.¹⁵ Campus charter schools and programs are free from many state regulations,¹⁶ including teacher certification, academic and instructional requirements. The school board remains legally liable for the performance of the chartered campus or program.¹⁷ To date, campus charters exist in eight Texas school districts.¹⁸ Houston Independent School District has authorized 28 campus charters.

Open-Enrollment Charter Schools: Similarly, state law authorizes the State Board of Education (SBOE) to grant an open-enrollment charter to a public or private institution of higher education, a non-profit organization, or a governmental entity.¹⁹ Initially, the number of open enrollment charter schools was limited to 20, but the Legislature increased the cap to 100 in 1997 and to 215 in 2001.²⁰ A charter

⁷ TEC section 29.201-29.202.

⁸ TEC section 29.203(d)

⁹ TEC section 29.203(b)

¹⁰ TEC section 29.203(f)

¹¹ Title I, section 1116(b)(E)

¹² Title IX, section 9532

¹³ 19 TAC 74.27

¹⁴ TEC section 12.052, 12.058

¹⁵ TEC section 12.059

¹⁶ TEC section 12.056-12.057

¹⁷ TEC section 12.057-12.059

¹⁸ Clear Creek ISD, Colorado ISD, Corpus Christi ISD, Dallas ISD, Houston ISD, Nacogdoches ISD, San Antonio ISD, and Spring Branch ISD

¹⁹ TEC section 12.101

²⁰ TEC section 12.101

granted to a university or college will not be considered for the purpose of the cap on the number of open enrollment charters.²¹ Since 1995, the SBOE has awarded 260 open enrollment charters, and rescinded 55 charters. There are currently 190 operational open-enrollment charter schools in Texas.²² Open enrollment charter schools may enroll students from any school district, cannot charge tuition but may charge fees, and must provide transportation to the same extent as school districts.²³ Over time, the Legislature has increased state regulation of the open enrollment charters to address performance problems and financial mismanagement evident in some early charters.²⁴

Vouchers

Vouchers: Publicly funded vouchers that would allow students to attend private schools at taxpayer expense are currently not available in Texas. However, legislation attempting to create a voucher program in Texas has been introduced and defeated during the past several legislative sessions. Students in the Milwaukee school district have been eligible for private school vouchers since the 1991-1992 school year. In subsequent years, vouchers became available to students in the Cleveland school district and to special education students in Florida statewide. Both the effectiveness and the legality of the existing voucher programs have been vigorously debated. In 2002, the U.S. Supreme Court ruled that the Cleveland voucher program did not violate the establishment clause of the First Amendment, even though it allowed vouchers to go to religious schools.²⁵ Whether other voucher programs would pass constitutional scrutiny is uncertain. Many state constitutions, including Texas', have provisions prohibiting state aid to religious institutions that are more stringent than the First Amendment.²⁶

Tax Credits: These are often deemed “back door vouchers” and create a tax credit for private school tuition. Tax credits failed to pass during several previous legislative sessions. Tax credits for private school tuition are available in Arizona, Iowa, Minnesota, and Puerto Rico. Each of these states and Puerto Rico have a state income tax and allows the tax credit to be applied towards that tax.

Private Scholarships: Voucher advocates often refer to privately-funded scholarships to private schools as vouchers. These scholarships are distinct from vouchers because they are funded with private monies as opposed to public tax dollars. In 1998, a pro-voucher organization, the Children’s Educational Opportunity (CEO) Foundation, initiated a scholarship program to allow students enrolled in the Edgewood school district to attend private schools.

Conclusion

TASB supports public school choice and respects the existence of private schools and private school scholarship programs. However, TASB opposes taxpayer-funded school voucher programs for the following reasons:

Adequacy: Texas public schools count on taxpayer dollars. Vouchers would siphon off already scarce funds that public schools need and rely on.

Equity: Vouchers would benefit a few students at the expense of the majority of students. Vouchers are funded with tax dollars that would otherwise be available to school districts. Vouchers would benefit a small group of students who transfer to private schools at the expense of the majority of students who would remain in the public schools.

²¹ TEC section 12.156

²² Texas Education Agency, Summary of Charter Awards and Closures, 6/6/2005

²³ TEC 12.108-12.1101

²⁴ TEC 12.115-12.1163

²⁵ *Zelman v Simmons-Harris*, 122 S Ct 2460 (2002)

²⁶ Art. 1, Section 7, precludes appropriations “for the benefit of any sect, or religious society, theological, or religious seminary”; Article VII, Section 5 prohibits use of the permanent and available school fund “for the support of any sectarian school.”

Accountability: Public schools are subject to intense public scrutiny while private schools are permitted to operate largely “in the dark.” Public schools must provide detailed personnel, academic and financial reports to the public and the State. Private schools are not required to report their student test scores or financial information. Thus, the public would have no way to monitor how private schools that accept vouchers are spending our tax dollars.

Additional Charter School Resources:

Texas Education Agency Site on Charter Schools – www.tea.state.tx.us/charter/

Texas Center for Educational Research (Independent Organization) – www.tcer.org/tcer/schools/

Learn More About and Evaluate School Choice at SchoolMatters –
http://www.schoolmatters.com/pdf/charter_schools_schoolmatters.pdf