



CENTER *for* RURAL AFFAIRS

# School Choice in Nebraska

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## I. Introduction

From vouchers to education savings accounts and tax credits, school choice incentives come in many forms. After years of failed attempts, Nebraska passed its first “school choice” legislation in 2023. The Opportunity Scholarships Act (OSA) created a tax credit program for donors who give to qualified scholarship granting organizations, which, in turn, provide tuition scholarships for students to attend accredited or approved private schools in Nebraska.

The OSA includes language that allows the program to grow substantially three years after it is implemented. In other states where similar programs have been instituted, expansion has negatively affected funding for public schools.<sup>1</sup> In Wisconsin, Arizona, and Indiana, property taxes were raised to address public education budget shortfalls due to private school funding legislation.<sup>2</sup> In Nebraska, which is ranked 49th in the country in the percentage of education funding

that comes from state dollars,<sup>3</sup> this legislation could similarly lead to property tax increases or prevent relief in the future.

Public schools are cornerstones of rural communities, especially in Nebraska where 48 of 93 counties do not have a private school. Private schools receiving assistance from public funding will create competition for resources that are already scarce and affect funding the public schools in those counties receive from the state. Shifting state funding to private schools will likely undermine education outcomes elsewhere, as private schools are necessarily profit-driven and do not have the same accountability requirements as public schools.

This paper will provide a brief summary of the OSA and the differences between public and private primary and secondary schools.

## II. The Opportunity Scholarships Act

During the 2023 session, Nebraska lawmakers passed Legislative Bill 753, also known as the Opportunity Scholarships Act. The legislation

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1 Gramer, Rod. “Learning from the mistakes of other states.” Idaho Business for Education, [idahobe.org/learning-from-the-mistakes-of-other-states](http://idahobe.org/learning-from-the-mistakes-of-other-states). Accessed June 2023.

2 Ibid.

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3 “2021 Public Elementary-Secondary Education Finance Data.” U.S. Census Bureau, 2021, [census.gov/data/tables/2021/econ/school-finances/secondary-education-finance.html](https://census.gov/data/tables/2021/econ/school-finances/secondary-education-finance.html). Accessed June 2023.

creates a tax credit that incentivizes individuals and corporations to donate to nonprofit scholarship granting organizations. In the first three years, \$25 million is allocated to the OSA, and beginning in 2027, the fund will be allowed to increase up to 25% yearly, based on demand, with a cap of \$100 million.<sup>4</sup> Donors can claim a one-to-one credit for up to 50% of their income tax liability, with a cap of \$100,000 for individuals and corporations and \$1 million for estates or trusts.

Many people and corporations donate to charitable organizations to advance the causes they believe in. Laws are in place to allow those who donate to receive tax breaks that help reduce their income tax liability for philanthropic giving. The OSA creates a much more lucrative tax credit for donors than the charitable contribution tax deduction. For example, if someone who owes \$100,000 in income taxes donates \$50,000 to a scholarship granting organization and claims the OSA tax credit, their tax liability will decrease to \$50,000. If that same donation of \$50,000 is made to a different charitable organization (such as a public school foundation, food bank, or cancer research organization), and a tax deduction is claimed, the income tax liability would decrease by \$3,320, to \$96,680.

Private schools already offer tuition assistance programs for students who are unable to afford the full costs of tuition. Before this legislation, donations to private schools' scholarship programs had the same tax treatment as charitable contributions to organizations such as foster care providers, homeless shelters, or legal aid services. No other charitable cause receives this generous one-to-one credit. This preferential treatment is likely to reduce donations to other charitable organizations and foundations that do not produce the same generous financial returns.<sup>5</sup>

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4 "Opportunity Scholarships Act. Legislative Bill 753." Nebraska Legislature, May 30, 2023. [nebraska.legislature.gov/FloorDocs/108/PDF/Slip/LB753.pdf](https://legislature.gov/FloorDocs/108/PDF/Slip/LB753.pdf). Accessed June 2023.

5 Samwick, Andrew A. "Donating the voucher: an alternative tax treatment of private school enrollment." May 6, 2014, [cato.org/research-briefs-economic-policy/donating-voucher-alternative-tax-treatment-private-school](https://cato.org/research-briefs-economic-policy/donating-voucher-alternative-tax-treatment-private-school). Accessed June 2023.

### III. School choice in rural Nebraska

Public schools are an integral part of communities, especially in rural areas. They provide employment and entertainment through sports, theater productions, and fundraising events. In small schools that have faced consolidation, program cuts, and difficulty hiring and retaining teachers due to funding, losing even a few students to private schools could destabilize the equalization aid the district receives from the state.

Losing students or funding frequently causes school districts to shrink or eliminate programs that build critical life skills for students. When this happens, sports teams without enough players are forced to form sports cooperatives with adjacent school districts; cooperatives already in place require participating students to travel up to 80 additional minutes to and from practice every day.<sup>6</sup> Likewise, programs that offer college credit courses that lose enrollment due to students transferring to private schools would result in students taking courses online only instead of having in-person classroom lessons.

During the 2021-22 school year, 237 public school districts in rural Nebraska served 299,228 students from kindergarten through 12th grade.<sup>7</sup> As stated above, only 45 of Nebraska's 93 counties have private schools, providing education for 11,208 rural students.<sup>8</sup> Moving west through the state, those numbers are even smaller, with just 7 of the 38 counties west of Kearney County having private schools available.<sup>9</sup>

About 10% of private school students live in rural areas, and those students make up about 3% of

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6 "In Nebraska, shrinking populations are forcing rival schools into co-ops." The Denver Post, Oct. 16, 2009, [denverpost.com/2009/10/16/in-nebraska-shrinking-populations-are-forcing-rival-schools-into-co-ops](https://denverpost.com/2009/10/16/in-nebraska-shrinking-populations-are-forcing-rival-schools-into-co-ops). Accessed July 2023.

7 "CCD public school data 2021-2022 school year." National Center for Education Statistics, [nces.ed.gov/ccd/elsi](https://nces.ed.gov/ccd/elsi). Accessed June 2023.

8 "Search for Private Schools. Private School Universe Survey." National Center for Education Statistics, [nces.ed.gov/surveys/pss/privateschoolsearch](https://nces.ed.gov/surveys/pss/privateschoolsearch). Accessed June 2023.

9 Ibid.

all rural students statewide.<sup>10</sup> While the legislation specifies that donations cannot go to a specific student, it does not clarify that donations cannot go to a specific school.<sup>11</sup> Most of Nebraska's private school students and schools are concentrated in Lincoln and the Omaha metro. Because tax credits will be distributed based on the order they are received, it is presumptive that those dollars will be claimed more quickly for urban schools than rural schools.

Of the counties with private schools, few of them offer education through high school. Outside of Douglas, Lancaster, and Sarpy, just 18 counties with private schools offer a kindergarten through 12th grade education. Additionally, while Nebraska offers private schools the resources to transport students via bus, they are only offered if a student lives in a school district providing the transportation and if their home is not too far off the regular bus route.<sup>12</sup>

#### IV. Tax credits will divert public funds without the same accountability requirements

OSA will make public funds available to private schools that do not have the same accountability standards, requirements, and regulations of public schools. This lack of guidance allows private schools to focus more on profit and less on student outcomes. Because of this, studies have begun to emerge that private schools do not per-

form any better than public schools.<sup>13,14</sup> Without the same accountability and transparency standards as public schools, private institutions can raise tuition to take advantage of the additional scholarship funding or refuse to admit students with individual learning plans or special needs that may cost more to serve than the institution is willing to pay.

Moreover, the OSA restricts the state from placing additional requirements on private schools with scholarship students enrolled.<sup>15</sup> For example, a public school district's board members are publicly elected by constituents.<sup>16</sup> District school boards must comply with the Open Meetings Act, which requires them to publish advance notice of upcoming meetings with an agenda and make notes from previous meetings accessible to the public.<sup>17</sup> While private schools often have a board of directors, they are not publicly elected, nor are their meetings open to the public. The board's meeting minutes are also not publicly available. This makes it difficult for parents and the community to address issues or challenges that may arise.

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10 Friesen, Curt. "Opportunity scholarship bill won't do much for rural Nebraska children." *Nebraska Examiner*, Feb. 22, 2023, [nebraskalexaminer.com/2023/02/22/opportunity-scholarship-bill-wont-do-much-for-rural-nebraska-children](https://nebraskalexaminer.com/2023/02/22/opportunity-scholarship-bill-wont-do-much-for-rural-nebraska-children). Accessed June 2023.

11 "Opportunity Scholarships Act. Legislative Bill 753." Nebraska Legislature, May 30, 2023, [nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB753.pdf](https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB753.pdf). Accessed June 2023.

12 "Pupils; public or private schools; transportation; buses; conditions; purchase; use; State Department of Education; duties. Nebraska Revised Statute 79-601." Nebraska Legislature, [nebraskalegislature.gov/laws/statutes.php?statute=79-601](https://nebraskalegislature.gov/laws/statutes.php?statute=79-601). Accessed June 2023.

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13 Murray, Patty. "Real choice vs false choice: The repercussions of privatization programs for students, parents, and public schools." U.S. Senate, Office of Sen. Patty Murray, March 22, 2017, [help.senate.gov/imo/media/doc/Murray\\_Privatization%20Caucus%20Memo.pdf](https://help.senate.gov/imo/media/doc/Murray_Privatization%20Caucus%20Memo.pdf). Accessed June 2023.

14 "New study finds low-income students do not benefit from private schooling." University of Virginia, July 11, 2018, [news.virginia.edu/content/new-study-finds-low-income-students-do-not-benefit-private-schooling](https://news.virginia.edu/content/new-study-finds-low-income-students-do-not-benefit-private-schooling). Accessed June 2023.

15 "Opportunity Scholarships Act. Legislative Bill 753." Nebraska Legislature, May 30, 2023, [nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB753.pdf](https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB753.pdf). Accessed June 2023.

16 "Election Act. Nebraska Revised Statute 32-543 to 32-545." Nebraska Legislature, [nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=32-543&end\\_section=32-545](https://nebraskalegislature.gov/laws/display_html.php?begin_section=32-543&end_section=32-545). Accessed June 2023.

17 "Open Meetings Act. Nebraska Revised Statute 84-1407 to 84-1414." Nebraska Legislature, [nebraskalegislature.gov/laws/display\\_html.php?begin\\_section=84-1407&end\\_section=84-1414](https://nebraskalegislature.gov/laws/display_html.php?begin_section=84-1407&end_section=84-1414). Accessed June 2023.

Because these institutions are profit-driven, many of the private school tax credit programs in place today have had minimal impact on those they were designed to help. Instead, they benefit students who were previously enrolled in private schools before the programs were available.<sup>18</sup> The scholarships granted are not required to cover the full cost of tuition, so low-income families would still have to pay the difference, in addition to fees, uniforms, transportation, and supplies. The remaining barriers prevent broad participation.

## V. Conclusion

The OSA opens the door for the expansion of private school funding measures. By creating a tax credit of up to \$100,000 for individuals and corporations and \$1 million for estates and trusts, this legislation has established a large tax break. The OSA is designed for growth and is permitted to grow to at least \$100 million, or about one-tenth of the state’s budget for public education, in the future. Nationwide, taxpayers are questioning this investment—evidence shows that in many cases private school students are negatively impacted by attending these institutions.<sup>19</sup>

Despite ranking 49th in the nation in the percentage of state funding for public education, Nebraska’s schools rank ninth in the quality of public education.<sup>20</sup> The strength of public education must be protected. Public education receives funding to address various student needs and provides services that private schools may not have the ability, or are required, to offer. With 9

18 Hinh, Iris. “State policymakers should reject K-12 school voucher plans.” Center on Budget and Policy Priorities, March 21, 2023, [cbpp.org/research/state-budget-and-tax/state-policymakers-should-reject-k-12-school-voucher-plans](https://cbpp.org/research/state-budget-and-tax/state-policymakers-should-reject-k-12-school-voucher-plans). Accessed June 2023.

19 Murray, Patty. “Real choice vs false choice: The repercussions of privatization programs for students, parents, and public schools.” U.S. Senate, Office of Sen. Patty Murray, March 22, 2017, [help.senate.gov/imo/media/doc/Murray\\_Privatization%20Caucus%20Memo.pdf](https://help.senate.gov/imo/media/doc/Murray_Privatization%20Caucus%20Memo.pdf). Accessed June 2023.

20 McCann, Adam. “States with the best & worst school systems.” WalletHub, July 25, 2022, [wallethub.com/edu/e/states-with-the-best-schools/5335](https://www.wallethub.com/edu/e/states-with-the-best-schools/5335). Accessed June 2023.

out of 10 children receiving their education from a public school,<sup>21</sup> Nebraska should not be shifting toward privatization. Instead, we should be making sustained investments in public education.

## About the Center for Rural Affairs

Established in 1973, the Center for Rural Affairs is a private, nonprofit organization with a mission to establish strong rural communities, social and economic justice, environmental stewardship, and genuine opportunity for all while engaging people in decisions that affect the quality of their lives and the future of their communities. This institution is an equal opportunity provider and employer.

21 “Legislature passes LB 753 despite strong opposition from most Nebraskans.” Stand for Schools, May 24, 2023, [standforschools.org/post/legislature-passes-lb-753-despite-strong-opposition-from-most-nebraskans](https://standforschools.org/post/legislature-passes-lb-753-despite-strong-opposition-from-most-nebraskans). Accessed June 2023.

