



SCHOOL DISTRICT BASED VOUCHERS

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KEY FINDINGS

On October 14, 1998, Judge Joseph Battle ruled the first school district-based education voucher program in Pennsylvania illegal. The Board of Directors of the Southeast Delco School District, located southwest of Philadelphia, had voted this past March to provide vouchers worth up to \$1000 to district students for use at the school of their (and their parents') choice. However, Battle declined to address whether Southeast Delco's plan is constitutional—meaning that this issue may have to be decided by Pennsylvania legislators or even by the higher courts. The following analyzes Southeast Delco's voucher plan, examines the arguments made by school choice opponents, presents constitutional and other evidence to counter those charges, and looks at the experiences of other choice programs in the United States and examines the results that they have achieved for students, parents and taxpayers.

- Student grant programs are well established at the college and graduate school level across the United States, as evidenced by the thousands of state, federal and private scholarships awarded each year. Local school districts should, under the principles already established, be able to do the same.
- In March of 1998, the Southeast Delco (PA) School District voted to institute a voucher program. Contrary to the claims of choice opponents, the Southeast Delco plan would save district taxpayers money by allowing for teaching staff reductions and/or avoiding the need for new facility construction. At the same time, it is likely that per pupil expenditures will rise as students take advantage of the \$500 and \$1000 vouchers.
- Over two and one-half decades of litigation, the United States Supreme Court has never found a general student aid program to be unconstitutional. This includes cases in which students were granted aid ultimately used at a public or non-public school.
- Many state constitutions have stricter provisions than does the United States Constitution regarding general student aid recipients. Challenges to choice programs that are based on statutory law (such as school codes) are rarer and more easily overcome. Nevertheless, the three main challenges that can be made by voucher opponents under the Pennsylvania Constitution are entirely defensible by proponents.
 - The Pennsylvania constitutional requirement that the state provide for a “thorough and efficient system of public education” is only a minimum requirement. Local school boards are not prohibited from doing other things as well.
 - While the Pennsylvania Constitution states that no money raised for the support of the public schools can be used for the support of sectarian schools, this provision is not applicable because vouchers are aid to students, not to schools. In addition, no money raised by Pennsylvania can be said to be *solely* for the support of the public schools.
 - Finally, the Pennsylvania Constitution forbids the appropriation of state funds to any “charitable or educational organization” that is not directly controlled by the Commonwealth. Once again, vouchers are aid to students, not schools, but even if the appropriation were to be made to such an organization, an exception can be made if approved by a two-thirds vote of the relevant public body. The Southeast Delco board voted 7-0 in favor with two abstentions—thus satisfying the two-thirds requirement.
- A number of Pennsylvania school districts already pay tuition to send students to both public and non-public schools. The states of Vermont and Maine have long-standing school choice programs of this type.

INTRODUCTION

On October 14, 1998, Judge Joseph Battle ruled the first school district-based education voucher program in Pennsylvania illegal. The Board of Directors of the Southeast Delco School District, located southwest of Philadelphia, had voted this past March to provide vouchers worth up to \$1000 to district students for use at the school of their (and their parents') choice. Battle ruled that because the Pennsylvania Public School Code does not contain language permitting school districts to take such action, Southeast Delco cannot implement its voucher plan. However, Battle declined to address whether Southeast Delco's plan is constitutional—meaning that this issue may have to be decided by Pennsylvania legislators or even by the higher courts.

The following analyzes Southeast Delco's voucher plan, examines the arguments made by school choice opponents, and presents constitutional and other evidence to counter the charges of those who find such a plan illegal. It also looks at the experiences of other choice programs in the United States and examines the results that they have achieved for students, parents and taxpayers.

SCHOOL CHOICE PROGRAMS: THE BASIC ISSUES

The procedures for establishing a student grant program are not complicated, as evidenced by the fact that there are literally thousands of them across the nation, ranging from preschool to graduate school. More than 3,000 colleges and universities each have one or more scholarship programs, as do the individual states, plus several made available by the federal government, and many others, both publicly and privately funded.

The basic considerations are the will, funding, political opposition, and constitutional questions. The details vary so widely that it is perhaps true that no two existing programs are identical. Even the common reference to "the" GI Bill is a misnomer, since Congress has established several different versions over the years.

For a local school district to inaugurate such a plan, the Board of Directors must decide to take such a step. This would seem obvious, but while a 5-4 vote is all that is legally necessary, time should be taken to have as many board members as possible in favor of the final action. This not only strengthens the argument for the program but reduces the chance that replacing just one board member at a subsequent election could undo all of the work up to that point. Agreement, of course, must include not just a general favorable sentiment but should concern the details of the program as well, such as the type of grant or grants, as well as the amount and source of the funding.

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Once this agreement has been arrived at (or even earlier, when it is apparent that an agreement will be forthcoming), it is necessary to determine whether there is sufficient support in the community, or whether such support can be developed, to overcome the political opposition that will inevitably appear. The opposition can be expected to include such groups as the teacher unions, People for the American Way (PAW) (which paid the plaintiffs' cost in the case against Southeast Delco), the American Civil Liberties Union (ACLU), the National Congress of Parents and Teachers (PTA), and Americans United for Separation of Church and State (AUSCS). All of these organizations oppose any student grant program that makes the constitutional right to school choice a reality.

Public support for school choice has been growing across the nation, especially in the decade of the 1990s. Its possibility of development varies from school district to school district, and, as such, must be determined locally. As will be seen, this was one of the advantages for the Southeast Delco School District in formulating its program.

Finally, the program must be properly drawn to meet the existing constitutional limitations. All must take into consideration the First Amendment of the U.S. Constitution, since the U.S. Supreme Court has ruled that direct funding of religious schools is a violation of the First Amendment. Contrary to the claims of school choice opponents, however, the Court has not ruled against any generally available student aid program, including those that are provided at the elementary and secondary level.

In addition to the First Amendment, there are the considerations to be found in individual state constitutions, limitations that are particularly severe in states such as Michigan and Washington state but that are minimal or nonexistent in some others, such as Vermont. In Michigan it is generally agreed that instituting a publicly funded grant program would require an amendment to the state constitution. That is not believed to be the case in many other states. In all instances, however, careful thought must be given to the details of the program because experience has shown that the odds are very high that a legal challenge will be made to any choice program.

SETTING AN EXAMPLE

On Wednesday evening, March 18, 1998, the Board of Directors of the Southeast Delco School District instituted the first district-funded local student grant program in Pennsylvania. It was designed to assist resident students attending any public or private school of their choice. The vote was 7-0 with 2 abstentions, but each of the latter board members expressed his/her support for choice. One abstained because he thought the resolution being adopted might be revised, while the second said that she supported school choice but thought it should be a state program rather than a local one.

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The program was to have taken effect in the 1998-99 school year. Even with the introduction of the expected court challenge, the program could still have begun if, as with Ohio's Cleveland Scholarship and Tuition Program, the courts had declined to issue an injunction and allowed the program to go forward while it was being litigated. The school board received free legal support from the Institute for Justice, in Washington, D.C., which is currently active in defending school choice programs in Milwaukee, Cleveland, Vermont and Maine. Their slogan: "If you have a school choice law, you have a school choice lawyer."

On April 16, opposing groups, including the Pennsylvania State Education Association, the Pennsylvania Federation of Teachers, The American Jewish Congress, and organizations listed earlier—the ACLU, AUSCS, PAW and PTA—filed a lawsuit seeking to stop the program on the behalf of several district residents. As noted, there are already such challenges in other states. Interestingly, the lawsuit stated objections based on Pennsylvania's state constitution and Public School Code, but did not cite the First Amendment of the U.S. Constitution.

Each of these groups has its own motivation for opposing school choice, but two seem to be at odds with their own expressed purposes for existing. One wonders at the logic of the PTA, which is supposedly interested in furthering parental rights, opposing the ability of parents to implement their constitutional right to have a controlling voice in the education of their children. Equally curious is how the ACLU, whose very name indicates its support for individual civil liberties, similarly opposes parents' ability to exercise what the U.S. Supreme Court, in the *Pierce* decision of 1925, unanimously decided was a constitutional civil right—the right to decide where their children would be educated.

The suit was filed in the Delaware County Court of Common Pleas. Anticipating that the Southeast Delco board will appeal Judge Joseph Battle's October 14, 1998 ruling against the program, the case can be expected to work its way up through several levels of Pennsylvania's state courts, but it is unlikely to go beyond that level because no federal objection was raised. This process is a civil action that may take several years to resolve. As an example, the Wisconsin voucher program in Milwaukee is seven years old and until this summer, the case was before that state's courts, as are the cases in Cleveland, Vermont and Maine.

Even had the U.S. Constitution been raised as an issue, it is likely that this will be resolved before the Southeast Delco legal battle is concluded within Pennsylvania's legal system. It is, in fact, possible that one of the other cases could reach the U.S. Supreme Court, and perhaps even be decided there sometime next year.

ONE WONDERS AT THE LOGIC OF THE PTA, WHICH IS SUPPOSEDLY INTERESTED IN FURTHERING PARENTAL RIGHTS, OPPOSING THE ABILITY OF PARENTS TO IMPLEMENT THEIR CONSTITUTIONAL RIGHT TO HAVE A CONTROLLING VOICE IN THE EDUCATION OF THEIR CHILDREN. EQUALLY CURIOUS IS HOW THE ACLU, WHOSE VERY NAME INDICATES ITS SUPPORT FOR INDIVIDUAL CIVIL LIBERTIES, SIMILARLY OPPOSES PARENTS' ABILITY TO EXERCISE WHAT THE U.S. SUPREME COURT... UNANIMOUSLY DECIDED WAS A CONSTITUTIONAL CIVIL RIGHT—THE RIGHT TO DECIDE WHERE THEIR CHILDREN WOULD BE EDUCATED.

One interesting aspect of introducing the appeal in the Delaware County Court of Common Pleas is that a senior judge of the Philadelphia Court of Common Pleas, Judge Armand Della Porta, has written frequently to the effect that such a program is constitutional. In the November 8, 1992 edition of the *Philadelphia Inquirer*, he wrote that a voucher system "does not qualify as direct aid to any school...Thus, there is no entanglement whatsoever between church and state. In fact, the voucher system not only would protect the non-establishment clause of the First Amendment, but actually would promote the free exercise of religion clause of that same amendment." While his legal colleague in Delaware County did not agree with his opinion, his views at least make it clear that a negative ruling is not a given. The legal questions will be explored further later in this paper.

Southeast Delco, as its name implies, is located in southeastern Delaware County, just southwest of Philadelphia. Serving Darby Township, plus Collingdale, Folcroft, and Sharon Hill Boroughs, the district has about 4,100 students and a \$32.6 million budget for the 1997-98 fiscal year. Nearly 1,900 more students who reside in the district attend nonpublic schools, not a minor factor in the Board's decision or ability to adopt this controversial plan.

Hundreds of citizens, many of whom had to stand, attended the March 18th meeting in the auditorium of Academy Park High School (which was well covered by print and broadcast media). The proposed plan was the only substantive item on the agenda and the board demonstrated its general solidarity on the issue by having members read aloud the resolution to be adopted, taking turns with each reading one paragraph until the entire text was completed.

Following this, the floor was opened to comments from those present, with two microphones available, and advance ground rules of a two-minute limitation for each speaker and an overall time limit of one hour. At the end of the hour there were about eight or ten persons still in line and the Board President said that she would extend the time so each of them could be heard.

While there were both proponents of and opponents to the Board's plan, the sentiment of the majority of citizens present was clearly supportive of the Board action. After all had been heard, a roll call of the Board was taken with the outcome reported above.

Despite the initial outcome of the legal contest, the Board's rationale for its decision shows considerably more thought than does the objection of its opponents. If anything, it has been cautious in some of its assumptions.

For example, if 100 elementary and 50 secondary students currently in the district's public schools should elect to take advantage of the \$500 and \$1,000 grants, respectively, board members estimate saving \$80-120,000 by furloughing two or three teachers making \$40,000 apiece.

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However, it is reported that the average cost of a teacher in the district approaches \$80,000—\$59,000 in salary and \$20,000 in benefits, with more than a third of the teachers receiving a total compensation of more than \$90,000 each. One such teacher leaving the roster would pay for most of the estimated cost of 150 students leaving the district. Also, the teacher-pupil ratio in the district is approximately 1 to 16 (250 teachers for slightly more than 4,000 students). Therefore, depending on how the student reduction is dispersed through the schools, if 150 students should leave it might be possible to reduce the teaching staff by as many as nine teachers and still maintain current ratios and class sizes. Finally, although the board used the term "furlough" for the reduction of staff, with a roster of 250 teachers there is normal staff turnover far in excess of any need to economize by releasing anyone.

In addition, legislation recently enacted in Harrisburg opened another "window" for teachers to retire with no penalty after 30 years service, instead of the usual 35. The state estimates that more than 19,000 teachers will be eligible to take advantage of such a change, and that about 4,000 will do so—about one of every 25 teachers in the state. Applying the same ratio to Southeast Delco, the district could see as many as 10 teachers take advantage of this retirement benefit. By definition, with at least 30 years service each, they would be at the top of the salary schedule and thus the district could save \$100,000 or more for each of them, or as much as \$1,000,000.

Even should these teachers be replaced with new teachers, the district might save about \$50,000 for each position, or \$500,000 for the total, far in excess of the estimated \$100,000 cost for paying the tuition of 100 elementary and 50 secondary students should they leave the district. Further, aside from the new law, a faculty of 250 normally sees 20 or more teachers leave in any given year due to retirement, moves to other communities, or leaving teaching. Most teachers do not remain active until reaching retirement age; more than half of all new teachers move on to some other occupation within ten years.

Should recent Southeast Delco trends continue—enrollment was up 400 students in the past five years while nonpublic school enrollments have declined by 300—with the district approaching capacity, it may need new or expanded buildings in another five years. While costs vary depending on the grade level, community costs, etc., it is not uncommon for a new school to cost \$30,000 per pupil space. That is, a school for 500 pupils might cost \$15 million to build and equip, with an ultimate cost of perhaps twice that by the time the bond issue is paid off. Such an expenditure of \$30 million approximates the total current annual budget for the district, and would only be for the building and its contents. It would still be necessary to pay the additional \$6-7,000 per year in average instructional expense (AIE) for the 500 students, or another \$3-3.5 million a year (at current costs; undoubtedly higher than that several years from now). This is far more expensive than

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providing tuition assistance for students to go elsewhere, and leaves *less* money per student for those in the district rather than more.

Looked at another way, the district has about 6,000 students living within its borders, 4100 of whom attend the public schools and 1900 of whom are in nonpublic ones. If the 40% nonpublic enrollment ratio of 1963 still applied, there would be 2400 students in the nonpublic schools and only 3600 in Southeast Delco. With the present \$32.6 million budget intact, that would provide more than \$9,000 per student per year rather than the \$8,000 per student average now being spent.

Alternatively, if the district continued to spent \$8,000 each for 3600 students, the budget would be \$28.8 million, a savings of nearly \$4 million to the taxpayers with no reduction in pupil services. As board member Byron Mundy has said, "You do not have to be a rocket scientist to realize that if it is costing you between \$6,000 and \$7,000 to educate a child, and you can get his parents to take a voucher for \$500 or \$1,000, you are saving big bucks."

With homeschoolers and some reformers being exceptions, most people accept the traditional form of schooling: a box called a school containing smaller boxes called classrooms, inside each of which students sit in rows facing the front of the room where a teacher talks 75-80% of the time, three or more times as much as all students combined. There are far fewer people, even in the education establishment, who know something about sound educational theory and practice, and virtually none who understand economics in general or public school finance in particular.

Gail McCune, president of the teachers' union in Southeast Delco, has said that "They are saying that somehow they're going to save money by paying families to keep their students in private schools. That doesn't sound too logical." At \$250-\$1,000 per child, saving money is more than logical: it is inevitable. Apparently it does take nearly a "rocket scientist" to realize that the savings do not translate into less money to be spent on each of the students remaining within the district's public schools.

Assume, then, that the voucher plan is carried to its logical extension: the school district gives \$1,000 to each of its students and all 4100 leave to go somewhere else. Assume further that the district lost all of its \$1,600 per student state subsidy and then toss in another loss of \$600 in categorical state aid, federal funds, and the like. Every departing student would therefore cost the district a total of \$3,200. The district says 60% of its costs are paid locally—\$4,800 of the \$8,000; which leaves \$3,200 from the combination of other sources. That's a grand total of \$13,120,000, less than half the district budget. Still remaining, however, would be in excess of another \$19 million, with no students to educate. And this is the extreme scenario; indications are that the district, at least in the short run, would lose little if any state money.

In essence, every student going elsewhere would be a loss of 100% of that

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student, but a maximum of only 40% of the money spent on that student. This is because while most state and federal funds going to a local school district have a relationship to the number of students in that district, local money, primarily derived from the property tax, has no relation to student population. The same amount is derived, based on assessments and rates, whether student enrollment goes up or down. If it drops, the district gains financially, and the more enrollment dips the more the district gains, and this can be compounded if, in addition, building programs become unnecessary. Similarly, if enrollment goes up, the number of per pupil dollars available goes down.

A few years ago at least one public school superintendent in Pennsylvania demonstrated that he recognized the economic advantages of tuitioning students. As an advocate of school choice, I was invited to meet with the editorial board of The Easton *Express-Times*. I had formerly taught history at the Easton Area High School, and was president of the Easton Area Education Association for several years. They invited the then Easton Area Superintendent, William Moloney, to join in. He supported student aid saying that, financially, the best thing that could happen to the district would be if 1,000 of the students could go elsewhere. While the district might lose some outside public funding for the departing students, that was a minor part of his budget. The great bulk of it, as just suggested, was derived from local taxes collected without regard to student enrollment. If 1,000 students had left the Easton Area School District at that time, the total budget would decrease, but the per pupil funding for those remaining would *increase* by more than 20%, a clear gain to the district and its students. Bill Moloney is now Colorado's Commissioner of Education. Thus, when David Gondak, the president of the Pennsylvania State Education Association says "This unconscionable act takes funds away from public school children," he is mistaken.

U.S. Senator Daniel Patrick Moynihan (D-N.Y.), in recently advocating changes in the present social security system, said if the system is brought down it will be because of the refusal by liberals to accept change. Similarly, if the public school system is ever eliminated it is the established status quo forces who will bring it about by their similar obstinate refusal to change, or even to recognize economic reality. They continually attack reformers as members of the "far right" (without ever defining the term) as being out to destroy the public school system. Reformers, in fact, have very little influence on the public schools. If the system is damaged, it is those within it who will be responsible.

In a major study of the public school system in 1970, Charles Silberman concluded that the greatest problem was "mindlessness," a failure of educators to ask why they do what they do. Nothing in the years since that time challenges that judgment.

Other arguments seem to be made up out of whole cloth or, at least, out of virtually a total lack of knowledge. Timothy Potts of the Pennsylvania School

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Reform Network, a former press secretary for the Pennsylvania Department of Education, has been quoted as saying, "There is absolutely no educational research that says you're going to get any education benefits from a voucher program." Gondak has said the same, claiming "There is no credible evidence anywhere suggesting that vouchers result in improved education for any children," proving the point made earlier that few involved with schooling seem to be aware of educational theory and practice.

Actually, there is considerable and growing evidence of benefits. To mention one of particular relevance, when the state of Wisconsin introduced a voucher program in the Milwaukee Public Schools at the beginning of this decade, the usual arguments were made, and the Milwaukee School Board was adamant in its opposition. During the legal challenge to that program, several past and present members of the Milwaukee School Board entered the case on the side of the defendants. One school director, John Gardner, said the Milwaukee system would not have made the changes (and the progress) that it has made in recent years had the voucher program not presented itself as both a challenge and a justification to do things differently. Since that time, the state courts have fully upheld the state and federal constitutionality of the voucher program.

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In September of 1997, all Milwaukee school board members signed an appeal for citizens to contribute to a privately funded scholarship program in the city, one that helps 4,500 children by paying part of the tuition for them to attend a private school of their choosing. The Board's statement said "Parents have the right and responsibility to determine the course of their children's education. As members of the Board of MPS, our task is to support them in carrying out that responsibility." That is precisely what the Southeast Delco Board is attempting to do.

THE LEGAL CHALLENGE

The First Amendment to the U.S. Constitution

While this was not cited in the challenge to the Southeast Delco Board of School Directors, a review might be helpful since such litigation is pending in several other states, and a U.S. Supreme Court decision would have relevance to Pennsylvania as well.

This amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." Opponents of vouchers and school choice conveniently forget to cite the last six words, preferring to invoke words that appear nowhere in the U.S. Constitution, about "a wall separating church and state." This phrase appears in a letter Thomas Jefferson wrote to the Danbury Baptist Association in Connecticut on January 1, 1801, a decade after the Bill of Rights was amended into the Constitution, and nearly a decade and a half after the

Constitution itself was drafted at a convention which Jefferson not only did not attend but during which he was in France.

For more than a century and a half this was not a concept applied to the public schools, or in many other areas of public life, such as a manger scene on a town hall lawn, until the U.S. Supreme Court, in the *Everson* decision in 1947, combined interpretations of the First Amendment and the 14th Amendment adopted after the Civil War, to find a hitherto unknown constitutional mandate.

Even then, opponents seem to not know what that Court has done. On this topic, Timothy Potts makes yet another inaccurate statement, saying "If you look at voucher programs across the country that include parochial schools, they've universally been declared unconstitutional." In actual fact, *the U.S. Supreme Court has never found a general student aid program to be unconstitutional.*

The case opponents repeatedly cite is the *Nyquist* decision of 1973, from New York State, accompanied by a similar case, *Sloan vs. Lemon*, from Pennsylvania. Here the Court did indeed say that vouchers for students attending non-public schools were unconstitutional, but it was because in each instance the state laws provided such aid *only* to students attending nonpublic schools. At the time it was reported that three-quarters of the schools had a religious affiliation, and two-thirds of them (that is, one half of the total) were related to a single religion. In the Court's view, that was a constitutionally unacceptable entanglement between church and state.

Further, by providing such assistance to only nonpublic school students, the court viewed the state as, in effect, encouraging students to attend nonpublic rather than public schools. The Court conveniently ignored the fact that the vouchers were worth only a fraction of the number of dollars being provided for public school students, and that public schools remained free of cost, while many nonpublic schools still would have found it necessary to charge tuition even for students with grants.

At variance with this oft-cited case, the U.S. Supreme Court has frequently and consistently upheld aid that included nonpublic school students, beginning with the *Everson* decision itself a half century ago. Such aid includes a wide variety of services, including textbooks and transportation. Even as long ago as 1971 it was estimated that as much as 25% of the costs of nonpublic schools already came from public dollars. The Court has similarly upheld aid that directly assists individual students.

In the 1983 *Mueller* decision, the Court upheld a Minnesota program allowing income tax deductions for certain expenditures by parents of students at both public and private schools. Opponents said actual practice showed that most of the deductions were granted to parents of nonpublic school students. The

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Court said that was understandable since most of what public students received was free. It further stated that the law was neutral on its face and for the courts to begin deciding cases on the specific amount each individual benefited would lead to a quagmire which the Court preferred not to enter.

Incidentally, this year's Minnesota state budget significantly increases that program, the deduction now being up to \$1,625 at the elementary level and up to \$2,500 for grades 7-12.

With the *Witters* decision of 1986, from Washington State, the Court ruled constitutional the use of a state program available to help blind individuals obtain an education even, as in this instance, if the individual wished to attend a religious institution to become a member of the clergy.

In the 1993 *Zobrest* case from Arizona, the Court upheld the right of a deaf student, who had been aided by a sign language interpreter while attending a public school, to continue utilizing the publicly funded services of the interpreter after transferring to a religious school. Again, this was a service generally available to such students and to deny it to students going to a religious school would be a violation of their constitutional religious rights, "prohibiting the free exercise thereof."

In some ways the most interesting are the Court's *Aquilar* decisions of 1985 and 1997. In the earlier version the Court held that federally funded special education services could not be provided directly on-site at a religious school. Often overlooked is that the Court upheld the constitutionality of the program itself, the provision of special education services to students in religious schools, only objecting to on-site delivery at such schools.

In the 1997 decision, with some of the 1985 justices still on the bench, the Court reversed itself, saying both the program and the on-site provision of services by public school teachers are constitutional.

As far back as 1974, California paid tuition for private schools for five categories of handicapped youngsters. In an equity decision in 1976, that state's Supreme Court said constitutionally acceptable funding could be provided, among other options, by using vouchers, a term the Court used.

The Texas Supreme Court has held that using vouchers to pay tuition at private sectarian (religious) schools is not a violation of either the state or federal constitutional provisions regarding separation of church and state. At about the same time, in January of 1994, a unanimous Vermont State Supreme Court decision upheld public payment of tuition for a Vermont student attending a religious school in the state of Delaware. Retired Philadelphia Court of Common Pleas Judge Armand Della Porta, as noted earlier, has also given his personal opinion that vouchers do not qualify as direct aid to any school and, therefore, do not violate the Constitution.

...AFTER ALL THE ARGUMENTS PRO AND CON ON THE ISSUE OF SCHOOL CHOICE...AT HEART THE ISSUE COMES DOWN TO MONEY. ANYONE WHO CAN AFFORD THE TUITION TO SEND THEIR CHILD TO A NONPUBLIC SCHOOL OR (MORE COMMONLY) WHO CAN AFFORD TO LIVE IN THE SCHOOL DISTRICT OF THEIR CHOICE OR EVEN WITHIN THE ATTENDANCE AREA OF A SPECIFIC PUBLIC SCHOOL OF CHOICE, CAN EXERCISE THAT RIGHT. THE POOR CANNOT.

One other U.S. Supreme Court decision deserves further mention, as it is the most basic one. In the early 1920s the people of Oregon, urged on by a group on the true "Far Right," the Ku Klux Klan, adopted an initiative that all children in that state must attend only public schools. (Both the real far right (fascists) and far left (communists) are the strongest supporters of state-run education because it is a means to indoctrinate rather than, or in addition to, educate.) A legal challenge worked its way upward until the U.S. Supreme Court, in the unanimous *Pierce* decision of 1925, ruling that "the child is not the creature of the State," said no child in this nation can be compelled to attend a public school (unless they are not being educated at all). So, after all the arguments pro and con on the issue of school choice, some of which are valid and some of which are not, at heart the issue comes down to money. Anyone who can afford the tuition to send their child to a nonpublic school or (more commonly) who can afford to live in the school district of their choice or even within the attendance area of a specific public school of choice, can exercise that right. The poor cannot.

You will be hard pressed to find an opponent of vouchers or school choice who personally has any children in one of the failing schools to which they so willingly consign other people's children. So if an opponent of choice tells you he supports public schools, and sends his own children there, do not accept the generality. Ask him what public school district and, more importantly, what public school. What is the dropout rate at that school? How common are incidents of violence? What is the per pupil spending compared with typical districts in the area, the high school graduation rate, the percentage who go on to postsecondary education? (etc., etc.) The hypocrisy of school choice opponents, their willingness to force other people to sacrifice their children's educational future, is unfortunate, even tragic.

None of the precedents noted above guarantees what the U.S. Supreme Court will do when it receives a general student aid case. But all of this shows that opponents making a claim similar to that by Potts aren't familiar with legal history, or are deliberately distorting it to influence public opinion and/or frighten proponents. Making such a claim also contributes to the conclusion that they don't believe, or don't understand, the implications of, their own rhetoric.

After all, if they are absolutely certain that courts will find all such programs to be unconstitutional, why do opponents go to such efforts to prevent their being enacted? All they have to do is sit back and let the courts throw them out. To oppose all attempts to initiate such student aid programs is to admit by their actions what they deny by their words: that the Court may very well uphold a general aid program in the future, as it has in the past.

...IF THEY ARE ABSOLUTELY CERTAIN THAT COURTS WILL FIND ALL SUCH AID PROGRAMS TO BE UNCONSTITUTIONAL, WHY DO OPPONENTS GO TO SUCH EFFORTS TO PREVENT THEIR BEING ENACTED?...To OPPOSE ALL ATTEMPTS TO INITIATE SUCH STUDENT AID PROGRAMS IS TO ADMIT BY THEIR ACTIONS WHAT THEY DENY BY THEIR WORDS: THAT THE COURT MAY VERY WELL UPHOLD A GENERAL AID PROGRAM IN THE FUTURE, AS IT HAS IN THE PAST.

THE PENNSYLVANIA SCHOOL CODE

While the state constitution is the more fundamental standard and will receive most of the future legal attention, the challenge brief (and Judge Battle's ruling) cited the Pennsylvania school code (Chapter 24 of the state statutes). Specifically cited are sections 6-610: "(t)he use or payment of any public school funds of any school district, in any manner or for any purpose not provided in the Pennsylvania Public School Code, shall be illegal," and 25-2522, "(t)he annual State appropriation...shall be used by the district through its board of school directors for the purposes mentioned in the Pennsylvania Public School Code."

However, it is at least arguable that since a purpose of the local board of school directors is to see that students living within that district are provided with an opportunity to obtain an education, the action of the Southeast Delco School Board is "for purposes mentioned."

The Pennsylvania Constitution

Aside from the likelihood of the U.S. Supreme Court finding general student aid meets the test of the First Amendment, there are still considerations of state constitutions, since many are more restrictive than the U.S. Constitution. In the *Witters* case, for instance, it is rarely recognized that while the U.S. Supreme Court upheld the program it remanded the case back to the state level where *Witters* lost because of the Washington State constitution, which contains one of strictest "Blaine Amendments" in the nation.

These amendments are named for James G. Blaine, Speaker of the U.S. House of Representatives in the early 1870s, later an unsuccessful candidate for President, who sought to have the national Constitution amended to prohibit financial assistance to religious schools, an effort in which he was backed by then U.S. President Ulysses Grant. Blaine failed, and in so doing demonstrated two truths: one, that he and his colleagues saw no impediment in the Constitution to such aid or they would not have made the attempt to amend it (and this was after the 14th Amendment had been adopted), and, two, that Congress would not recommend such wording. However, the anti-Catholic bigotry of the day was such that many states picked up on the idea and included variations of the prohibition in their state constitutions, whether in new states adopting their first constitution, or in older states making revisions.

In Pennsylvania, as is generally true across the nation, there had previously been little reference to statutory law, such as school codes, as impediments to student aid programs. Challenges made on the basis of statutory law including school codes have been rare. This is perhaps partially true because statutory law can be corrected by simple legislative action, while barriers alleged to be found in constitutions are much more difficult to overcome.

The Pennsylvania state constitution has three provisions that are commonly cited as evidence that student grants are not constitutionally permissible,

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Article 3, Sections 14, 15 and 30, which establish the basic ground rules for Legislation. The Southeast Delco challenge adds Article 1, Section 3; Article 3, Section 29; and Article 9, Section 30.

The first says: *"Public School System Section 14. The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth."*

This is the provision under which the present so-called PARSS equity lawsuit is being pressed. Filed in January of 1991 by the Pennsylvania Association of Rural and Small Schools (PARSS), of which I was then its Executive Director, more than 200 school districts now support the suit which alleges that the present state funding for the public education system is neither thorough nor efficient. Examples in the Southeast Delco area are Radnor Township, also in Delaware County, which spends more than \$13,000 per pupil—\$39 million for 2,900 students, and nearby Philadelphia which spends less than half that amount, \$1.4 billion for 217,000 students, or about \$6500 per student. Many states have already lost such cases, as did PARSS in the Commonwealth Court (a ruling that is now being appealed). Regardless of the ultimate decision, though, a ruling about equity does not indicate what another ruling might be about funding students as well as systems.

In any event, most Pennsylvanians probably agree with the wording of Section 14, but to what effect? Whatever the courts may ultimately say as to whether the state is meeting the basic requirements of this section, this wording only states what the General Assembly must do as a minimum. It does not say, or imply, that it cannot do other things as well. The opponents' brief argues that school boards have only those powers that are granted to them by statute, either expressly or by necessary implication, and maintains that the Southeast Delco Board action goes beyond "necessary implication." Perhaps, but no court has yet said that so the test is worthwhile.

The second objection is based on the next section: *"Public School Money Not Available to Sectarian Schools. Section 15. No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school."*

There are at least two possible reasons the state courts will find this is not a problem. One is that, under the Southeast Delco plan, no money will "be appropriated to or used for the support of any sectarian school." The money is a general benefit to students, to assist them in obtaining an education of their (and/or their parents') choice. No public money granted to help students exercise educational choice is sent to any school, public or nonpublic. It will go to the parents and, even then, goes to them after the fact. The actual payment for tuition is made by them and reimbursed to them only at a later date.

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A second reason is the phrasing that "No money raised for the support of the public schools..." The Southeast Delco resolution says the cost of the program shall never exceed the amount of the funds the district receives from the state, thus permitting the argument that it is state money that is being used for the program. Despite the frequent citation of Section 15 against a state program, such as that which passed the state Senate in November of 1991 and subsequent proposals by Governor Tom Ridge, no state money in the general budget is "raised for the support of the public schools," or for much of anything else. State revenues that are derived from the income tax, sales tax, etc., go into the general fund, none of which is allocated in advance. This is why the special interests, educational and otherwise, hover around the Capitol each year when the state budget is adopted. Only then are specific dollars allocated for particular programs.

It is also at least debatable that even money raised locally in the Southeast Delco district, or by any other Pennsylvania school board, could be used for student grants since the dollars are being used to educate students for which the board is responsible.

Then there is the following: *"Charitable and Educational Appropriations. Section 30. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House."*

This section may be irrelevant, although the opponents obviously think not. First, no appropriation is being made to "any charitable or educational institution not under the absolute control of the Commonwealth..." Second, even if it were, the section allows for exceptions when such appropriations are made by at least a two-thirds vote, and the Southeast Delco Board approved their plan 7-0, with two abstentions. Abstentions do not count as votes because they are not cast, so the vote was unanimous. Even counting the abstentions, the tally would be 7-2, better than a two-thirds margin.

Finally, note that the section refers to "a vote of two-thirds of all the members elected to each House." This is a restriction placed upon the state, specifically upon the state legislature, not upon school boards, which don't have "members elected to each House," or, as a side issue, to city councils, County commissioners, or any of the 2500 or so units of government in the state which, except for the General Assembly, are not bicameral. The opponents' brief argued that this restriction on the legislature is indirectly also a limitation on units of local government as well.

In addition, the brief cites Article I, Section 3: *"no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent."*

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This does seem a stretch, since no money is going to support a place of worship, etc., but is going only to students to support their education at a place of their choice, not the government's.

Section 3, Article 29 says: "*(n)o appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational and sectarian institutions, corporation or association.*"

First, no appropriation is being made to a community, institutions, corporation or association, so that seems irrelevant. No appropriation to an individual is often cited but a strict interpretation of that leads to an interesting anomaly or inconsistency. The *Pennsylvania Abstract* annually gives a breakdown of the "General Fund Expenditures of the Commonwealth of Pennsylvania, by Types of Expenditure." One of those line items each year is "Grants and payments to individuals", which it usually lists for several years, updating the list annually. Page 202 of the 1994 Abstract, for example, gives the years 1987, 1988, 1989, 1990, 1991 and 1993, with the amounts of the "Grants and payments to individuals" growing from \$3,333,886,000 in 1987 to almost double that amount, \$6,584,717,000 in 1993. That's a lot of money for something that is unconstitutional—and it may well be in excess of \$10 billion this fiscal year, which is not yet completed.

It would seem that this prohibition on a grant to an individual is just that—the state cannot give money to "Citizen A," but it can give money to a class of citizens to which "A" belongs.

Finally, the brief objected on the basis of Article 9, Section 9. The "*General Assembly shall not authorize any municipality or incorporated district...to obtain or appropriate money for...any corporation, association, institution or individual.*"

Does "shall not authorize" mean the same as prohibit? Does, again, "individual" mean one person or a class of persons made up of individuals? It's not clear.

The brief, as was perhaps to be expected, was also selective in its evidence. It says that a majority of the House of Representatives in 1991 voted that a bill providing for such tuition payments would violate the state constitution (which it did). But it is also a common observation by legislators that such votes are merely attempts to avoid dealing with a controversial issue because legislatures have no power to decide what is or is not constitutional.

Even accepting that premise, however, the brief failed to note two other directly comparable actions. Prior to the 1991 House vote, the state Senate voted by nearly a 60% margin that such tuition payments are constitutional, and in June 1995, a majority of the House did the same. So both chambers of

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the state legislature are on record, in their latest and currently active votes, as holding that tuition vouchers generally available to students are constitutional.

If ultimately successful, this program may prove beneficial to many students within that school district and may, in addition, have implications for untold numbers of students well beyond the district's borders as other school boards in Pennsylvania, and perhaps elsewhere, take the same course. If ultimately unsuccessful, the program will at least settle some unanswered questions about what is or is not permissible in assisting citizens seeking to exercise their constitutional right of school choice.

PRECEDENTS, HERE AND THERE

Opponents do not cite and, again, perhaps do not even know, the precedents that exist. After all, when you already know what you believe, where is the need to be knowledgeable? "My mind is made up; don't confuse me with the facts."

But courts will look at facts, and it is a fact that school boards across this state, and nation, send students to other agencies all of the time, and pay their tuition. One national study a year or so ago concluded that at least 100,000 special education students are sent by public school systems to private schools, with the costs paid for by public funds. Even when the Milwaukee School Board members were opposing the state voucher program they were operating a larger program on their own. Since the 1986-87 school year they have been able to contract with community-based groups to educate up to 30% of their at-risk students. The reason they did not object to that program is that they pick the students to remove from the system.

There are reportedly more than 3,000 private special education schools, while another 2,000 house 35,000 juveniles under court care, and the Catholic Church has 195 schools for disabled youngsters, for whom the schools receive public funds. Under federal programs for disadvantaged and disabled children, the U.S. Department of Education *requires* that private schools receive enough public funds so they can provide an education at least as good as that in the public system. The main difference between these programs and general vouchers is not a constitutional one—it is that, again, public agencies determine who goes where rather than the parents/students.

The 1996 federal welfare reform law contains a "charitable choice" provision that permits the nation's 260,000 religious groups to solicit government funds directly rather than set up charitable subsidiaries. Even prior to this law, Catholic Charities have received more than \$1 billion a year in government grants. Can education be discriminated against in comparison to welfare programs?

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The June 9, 1992 *Philadelphia Inquirer* reported that the city's Department of Human Services was spending an average of \$100,000 a year per student (\$13 million for 130 youngsters) for hard-to-handle youngsters placed as far away as California, Wyoming and Arizona. These were children who were unacceptable to local agencies in Philadelphia. Part of the high cost was due to a court order that they be permitted all-expense-paid visits by their relatives twice a month. These 130 youngsters, in other words, were costing the public half as much as the Southeast Delco School District's total budget for that year for some 3,700 students.

BRYN ATHYN

On a lesser scale, Pennsylvania's Bryn Athyn school district has no schools. Permitted to be an exception to the school-district consolidation law in the 1960s, it has legal existence but serves to collect money and then pay tuition for its students to go elsewhere.

MIDLAND SCHOOL DISTRICT

The Midland School District in Pennsylvania's Beaver County has no high school. For years it sent its students to an adjoining district on a tuition basis. When the existing contract expired several years ago, the other district offered to continue the arrangement on an annual basis only.

Believing this didn't assure its students stability and continuity, Midland looked for another district to pick up the program. They could not find one in Pennsylvania (so much for the argument that public schools must accept all students; they only accept those they have to, those in their district, which allows for many forms of discrimination, not least of which are race and class). So for some years now Midland has been sending its high school students to East Liverpool, Ohio.

Admittedly, some of these programs utilize other public schools. But Southeast Delco includes other public schools in the options for its students. Nonpublic, nonsectarian schools also raise few or no constitutional questions. And, as noted, around the nation nonpublic religious schools receive such students, and considerable public dollars.

PENNSYLVANIA CATHOLIC SCHOOLS EDUCATING PUBLIC STUDENTS

At present, and for some years past, there are religious schools in Pennsylvania, Catholic schools in particular, which have special education centers, and the students they serve include students from area public schools whose tuition is paid for by that public school district. In one instance of such a practice, during this current 1997-98 school year, a Catholic special

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education center contains students from several public school districts. Interestingly, the tuition charge is \$6,500, not only far less than most public schools spend for such students but even less than many districts spend for their regular students. Another example of a few years ago found a local public school district sending one or more of its disciplinary problem students to a local Catholic high school and paying the tuition.

Again, this doesn't assure either side as to how the courts may ultimately rule, since these programs have not been challenged in court and courts do not decide issues that have not been presented to them. But if such Pennsylvania programs have a long history, present ample precedents, are satisfactory to the public school system and the recipient institutions as well, if they are cost efficient and educationally effective, and if, most importantly, they so clearly benefit the students involved, why should they not be permitted to continue, and even expand?

VERMONT AND MAINE

Despite opponents' claims to the contrary, there are programs in the nation of long standing that are quite similar to what Southeast Delco would like to initiate.

In Maine, as in Pennsylvania's Midland School District, more than 30 towns pay the tuition for high school students to go to school elsewhere rather than operate high schools of their own. Unlike Midland, however, in Maine these other high schools have often been private or even parochial in addition to public. This practice has a very long history.

Vermont has an even larger scale program (one that is perhaps even older, although it was codified in a law of 1869). The Vermont constitution is the nation's oldest, predating the creation of the nation itself, and is considerably older than anything resembling a public education system anywhere in the nation. Within it is perhaps the nation's most flexible education mandate, which is why it has remained in force for well over two centuries.

The mandate is that "a competent number of schools ought to be maintained in each town unless the General Assembly permits other provisions for the convenient instruction of youth." As a result, many academies dating from the colonial period in Vermont still exist today, many Vermont towns have no high school, others have no elementary school, and some have neither. The practice of "tuitioning," as it is sometimes called, permits students to attend public or private schools, in or out of state and even out of the country, with students going to school in Canada and even France with the tuition paid by the local Vermont community. The tuition can be as much as the state average for comparable public schools, which for high schools is in excess of \$6,000 per year and, if the citizens give approval at a town meeting, the authorized tuition may even be higher. For most of its history, this practice included

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religious schools. While there are relatively few in Vermont—reportedly only three Catholic high schools at present—the precedent was set long ago.

In 1961, the Vermont Supreme Court, basing its decision of those of the U.S. Supreme Court since 1947, ruled that public funding of tuition at a religious school was no longer permissible. In January of 1994, again viewing what it saw the U.S. Supreme Court as saying in its more recent decisions, and saying that jurisprudence on this issue had altered considerably since 1961, the Vermont Supreme Court unanimously reversed itself and, in a case involving a Vermont youngster attending a religious school in Delaware, held this to be constitutional. The issue is once again before that court only because the Vermont state department of education, holding that the 1994 decision only applied to that one student, told the community of Chittenden, which has no public high school, that it could not pay to send students to a Catholic High School in Rutland, as it has been long doing with students attending the public high school there. If Chittenden, whose program is quite similar to that of Southeast Delco, insisted upon paying the forbidden tuition the state department said it would withhold all of the state's education funding to the community. Chittenden, being unable to absorb such a penalty, acquiesced in the short run but promptly appealed what it views as an arbitrary bureaucratic decision to the courts.

A FINAL THOUGHT

The goal in education is not to spend money, or to build buildings, or to create jobs, as necessary as all of these may be to some extent. Nor is it to satisfy anti-Catholic bigots or those with more generic anti-religious sentiments. It is to educate children. And, as noted earlier, since everyone has a constitutional right to an education of their choice, all should be given the means to make that right a reality. The trend is clearly in that direction, and the momentum built since 1990 may have reached critical mass. Southeast Delco is not the first entity to take its recent action, and it will likely not be the last.

Finally, there is one more voice that merits inclusion on this issue. In the presidential debates during the 1996 campaign, when the question of vouchers came up, candidate Bob Dole favored them and candidate President Bill Clinton said he did not favor them at the national level but that if a local district wanted to do this they should have at it. The next day some of his aides said that isn't what he really meant. Maybe not, but he repeated it again, and in writing, in the November 1996 issue of *The Reader's Digest*, when he and Dole were again asked their views. Dole, of course, again endorsed the idea and Clinton reiterated his support, saying that he did not favor the national government doing this but "If a local community wants to try vouchers, that's for them to decide." Southeast Delco has so decided—and their fight may not yet be over.

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APPENDIX

With minor changes for local names and numbers, the adopted wording of the Southeast Delco School Board's resolution could serve as a model for other boards, at least in Pennsylvania, who might wish to consider doing the same, as could its rationale which it termed "Supporting Information."

As made available in printed form on the evening of March 18, 1994, the two documents are as follows:

THE RESOLUTION

Whereas, we believe that parents have a fundamental right to control the education of their children, and that to more fully exercise this right, parents should be given more direct, individual control over their education dollars.

We believe that school choice plays an essential part in improving the quality of education for all Southeast Delco students. It will empower parents and help them choose the school that they feel is best for their children. The resulting increased competition to attract and keep students will spur school improvement in both the public and private sectors and benefit the entire community.

And Whereas, enrollment in our Southeast Delco public schools currently is about 4100 students. This is an increase of more than 400 students in the past five years. During this same period of time, the number of Southeast Delco students attending non-public schools has decreased by more than 300.

Many families in our district are struggling financially, and their children are leaving non-public schools and enrolling in our public schools, which are now filled near capacity. If this trend continues, the financial burden on the taxpayers in our district will be substantial, especially if new school construction is required.

Our district spends about \$6,000 to \$7,000 for each regular public school student per year. (NOTE: This is an approximation for what Pennsylvania terms AIE: Average Instructional Expense. It omits major items such as transportation and capital costs. The total budget for 1997-98, as noted, amounts to about \$8,000 per pupil.) Thus, the Southeast Delco students who currently attend non-public schools, totaling 1,890 as of January 1997, represent a potential unfunded liability of twelve million dollars per year, or more, for local and state taxpayers.

Be it therefore resolved, that the Southeast Delco Board of School

Directors adopt the school choice enrollment stabilization plan as set forth in the following paragraphs.

- I. The District will provide a tuition scholarship for any student legally residing in the Southeast Delco School District who chooses to attend any other public or private school, at which the compulsory attendance requirements of state law may be fulfilled.*
- II. This plan will become effective for the 1998-99 school year with scholarships in the following amounts: Kindergarten - \$250.000; Grades 1-8 - \$500.00; Grades 9-12 - \$1,000.00. The estimated maximum cost of the plan for 1998-99 is \$1.2 million. In no event will the total amount expended for such scholarships exceed the amount of state appropriated funds received by the district. For the 1999-2000 school year and beyond, the amounts of the scholarships may be increased, or decreased, in accordance with funds available, in conjunction with the approval of the annual school district budget. In no event will the amount of any scholarship exceed the actual tuition paid.*
- III. The mechanism of scholarship payment will be reimbursement of funds to the eligible student's parent. An eligible student, who enrolls in a non-district-operated school, shall pay the tuition in accordance with that school's policy. At the end of the school year, verification of the year's attendance, along with proof of tuition paid, will both be sent to our Southeast Delco School District. A reimbursement check will then be sent directly to the parent.*
- IV. In summary, the primary purpose of this plan is to help all Southeast Delco parents to exercise their inherent and fundamental right to individually control the education of their children. The increased empowerment of parents will improve school quality and benefit all Southeast Delco students. In*

addition, the plan will help stabilize enrollment and reduce class size in our six (6) public schools in a cost efficient manner by eliminating the need for expensive school construction. The plan will save local and state taxpayers millions of dollars per year in the long run.

THE RATIONALE

Maximum Cost of Plan Estimated at \$1.2 million.

According to the report, Enumeration of Children (PDE-4040 filed by our district during the 1996-97 school year) there were 1,890 Southeast Delco children assigned to (enrolled in) non-public schools. Using our district's 1997-98 non-public school transportation listing, we can estimate that no more than 550 of these non-public school students currently attend grades 9-12. Scholarships of \$1000 each would cost \$550,000. That leaves about 1240 grade school students who would receive \$500 scholarships totaling \$620,000 and 100 kindergarten students, each getting \$250 or \$25,000. Grand total: Just under \$1.2 million.

Of course our current public school students are eligible to receive scholarships, too, if they choose to attend a non-district operated school, but we are estimating that the net additional cost for these scholarships will be zero. Example: If 100 grade school students and 50 high school students leave our public schools and enroll elsewhere, the additional cost would be 100 x \$500 plus 50 x \$1,000, or \$50,000 plus \$50,000 for a total of \$100,000. However, we are estimating that if these 150 students leave our public schools, we will be able to furlough 2 to 3 teachers (costing \$40,000 each). The resulting savings of \$80,000 to \$120,000 would cover the cost of the additional 150 scholarships. Should more of our public school students choose non-district operating schools, the savings would surpass the cost of the additional scholarships and the \$1.2 million total cost of the plan would drop.

Long Term Trend Shows Big Drop in Percentage of Students in Non-Public Schools

Back in the year 1963, forty percent (40%) of Delaware County's 144,000 students attended non-public schools. Today, total student enrollment in Delaware County has dropped to about 95,000, but only 25% of these students now attend non-public schools. A major reason for this percentage decline in enrollment is the growing financial difficulties faced by those families who pay both public school taxes and non-public school tuition, even though the majority of non-public schools educate regular students for about 1/2 to 1/3 the cost of public schools. Many non-public

grade schools charge tuition of \$1000 to \$2000 per year. Typical non-public high school tuition is \$3,000 to \$4,000 per year.

No Tax Increase Required; All Public Programs Maintained.

The money needed to fund the proposed scholarship plan, projected to be \$1.2 million in the first year, 1998-99, is available in the 98-99 school budget with no need to raise local school taxes. And the school board is absolutely committed to maintaining or improving all worthwhile public school programs. Over the past two years the district has reduced expenditures by over \$500,000 per year due to teacher retirements (without any costly incentives being offered). The amount of money that the district is mandated to pay into the teachers' retirement fund (contribution rate) was reduced the past two years, which reduced district expenditures an additional \$500,000 per year. In addition, state revenues (subsidies) have increased substantially the past two years. For the school year ending June 30, 1997 (1996-97 school year), our district's independent auditor's report showed a surplus of \$1.54 million of revenues over expenditures, pushing our district's fund balance to \$2.8 million. A similar surplus is expected for the current 1997-98 school year, and beyond.

Teacher's Union Contract Being Negotiated

Our Southeast Delco School Board has been in contract negotiations with our teachers' union since January 1996. The previous 6 year contract, which expired in June 1996, gave the union an average 60% increase in pay. This contract cost Southeast Delco taxpayers an additional \$5 million per year. Many teachers' pay more than doubled over the six years, as the average salary hit \$59,000 (plus \$20,000 in benefits). Nearly one-third of the teacher union members had salaries of \$72,070 per year, or more in 1996. With benefits included, their total compensation exceeded \$90,000 each.

Our board has asked the teachers' union for a partial give back in pay and benefits. Our board realizes that it has no way to force the teachers to give back any money, but on the other hand, the board is not required to give the union any increase either. A polite stalemate currently exists. The teachers are working under the still lucrative terms of their previous contract. No teacher has had their pay reduced, and the district still pays 100% of the teachers' medical coverage.

Our board is committed to reaching a fair settlement that will not jeopardize the use of funds for other important school programs, like the proposed scholarship plan.

Southeast Delco Board Expects Legal Challenge to the Scholarship Plan

Public school teachers unions and their affiliates strongly oppose any school choice plan, such as ours, that would allow students to attend non-district operated schools. School Choice introduces competition and accountability into the teacher union's monopoly, and they will fight it "to their dying breath" as one prominent union official recently stated.

If our resolution is approved, we expect a powerful group, such as the PSEA, to file a lawsuit in court to try to stop the plan. Conversely, there are many organizations dedicated to defending the legality of School Choice proposals, which are now springing up all over the country. The REACH Alliance of Pennsylvania and the Institute for Justice in Washington, D.C. are two such organizations that may become involved in our legal defense, removing our need to expend public funds on extended court battles.

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