

# THE HISTORY OF SCHOOL CHOICE IN COLORADO

A READY COLORADO ORIGINAL RESEARCH BRIEF

JANUARY 2023

## Districts approve more charter schools

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Amid questions about cost and exclusivity, the Adams 12 Five Star School Board approved two charter school applications in the last month, on the condition the sponsors find classroom space.

The Jefferson County School Board has approved three charter schools, going Broadfield school district.

local school board. For funding, the school district hands over revenue it would have used to educate the students had they stayed in a regular school program.

It looks as if the special schools will be popular. Hundreds of parents in Adams 12 and Jefferson County have submitted to the

Adams 12 school board members. Adams 12 school board member Larry Karsen voted against the gifted and talented charter school, just weeks after voting in favor of another. The school board of Charter School

ed money into schools districtwide. Funding of about \$316,000 had been cut in 1990, said Dave Nugent, district director of school improvement. The question of exclusivity and losing the classroom mix many educators feel is essential came up in Jefferson County Superintendent Lew Finch criticized charter schools in saying the grass-roots

out the remaining \$28.6 million of a \$77 million bond issue passed in 1986. The new school finance act passed last month could change all that, but saving the bonds would mean raising taxes, which opens other cans of worms, said Mike Bergstedt, Adams 12 chief financial officer.

What the strapped education budget means is that charter schools in that district are on their own when it comes to find

## Charter School Gaining Speed

ing Fork Waldorf Parents Group e collected enough positive with their proposal to create a

## INTRODUCTION

June 4, 1991 is perhaps the most important date in the history of the school choice movement in the United States. On that day, Minnesota's Republican Governor, Arne Carlson, signed the Omnibus K-12 Education Finance Bill into law. Tucked into what may have appeared to be a routine school finance measure was a revolutionary provision: an authorization for the creation of eight "results-oriented, student-centered public schools." With the stroke of a pen, charter schools were born, and one year later, the first charter school in the country opened its doors to students in St. Paul, Minnesota. As the charter school movement got underway in Minnesota, dozens of other states would follow the example of the North Star State, Colorado among them. Colorado Governor Roy Romer, a Democrat who in later years would go on to serve as Superintendent of the Los Angeles Unified School District, signed the state's Charter Schools Act into law on June 3, 1993, making the Centennial State the third in the nation to authorize charter schools. The bipartisan legislation was sponsored by then-State Senator and future-Governor Bill Owens (R) and State Representative Peggy Kerns (D).

Three years earlier, Governor Romer had signed the Public Schools of Choice Act into law, requiring school districts to offer open enrollment within and across districts. Legislation authorizing public online education, innovation schools and magnet schools were eventually all signed into law by the end of the first decade of the new millennium.

The history of school choice in Colorado closely mirrors that of the nation at large. What began as a largely academic discussion of public education reform in the 1970s and 1980s materialized into a full blown political movement centered on empowering parents to pursue educational opportunities that are the best fit for their children.

After much legislative success in the 1990s, the school choice movement faced strong backlash by special interest groups beholden to preserving the status quo. This is despite the fact that many charter schools and other schools of choice have achieved phenomenal outcomes for students of color and low-income students who were long underserved by a one-size-fits-all education system.

Now, after decades of continued underperformance in the public school system, coupled with steep learning losses from school closures during the pandemic, school choice is again front and center on the policy stage. Parents are increasingly demanding more choices in schooling, and it is becoming ever more likely that, decades from now, we will look back on post-pandemic America as an era in which the public education system was once again subjected to sweeping reform, putting parents—not government—at the center of their children’s education and reimagining school finance models to prioritize students—not systems.

## HOMESCHOOLING: PRECURSOR TO SCHOOL CHOICE

Homeschooling was one of the first debates around school choice in American history. Massachusetts became the first state in the nation to enact a compulsory attendance law, and as other states followed suit, questions arose as to whether a parent could legally withhold their children from the public school system in order to homeschool. It wasn’t until 1972 that the United States Supreme Court would settle this question in *Wisconsin v. Yoder*, which concerned a group of Amish families who refused to send their children to their local public high school.<sup>1</sup> Those families opted instead to provide vocational and religious instruction, as their faith commands, in home-based settings. The state of Wisconsin objected and sought truancy charges against the families.

The Supreme Court ultimately ruled that Wisconsin’s compulsory education law violated the Free Exercise Clause of the First Amendment because it interfered with the ability of parents to direct the religious upbringing of their children. The Court’s ruling in *Yoder* effectively made homeschooling a right that all parents may exercise if they choose.

One year after the *Yoder* decision was handed down, the Colorado legislature moved to revise the state’s compulsory attendance law to exempt children educated at home. However, homeschooling arrangements required the approval of the State Board of Education, undoubtedly an onerous task for most parents. In fact, throughout the 1980s several families were prosecuted by the state for truancy because their homeschool arrangements had not been authorized by the State Board.

At the same time that the state was pursuing truancy cases, homeschool parents across the state were petitioning the State Board to ease the regulatory burden they were confronted with; in 1986, they formally organized into the Colorado Home Educators Association. In 1988, the Colorado legislature passed Senate Bill 56, eliminating cumbersome barriers to homeschooling while holding parents accountable for their children’s attendance, academic achievement, and completion of standardized testing.<sup>2</sup>

The school choice movement, still in its infancy in the late 1980s, had lodged its first victory: a degree of autonomy for those parents who wished to provide for their children's education outside of the public school system. Over the twenty or so years that followed, the movement would turn to devoting itself to advocating for reforms within the public school system.

## OPEN ENROLLMENT POLICIES PAVE THE ROAD TO "MAXIMUM CHOICE"

Well before the push to welcome charter schools to Colorado, legislators in the state had toyed with the idea of allowing students to enroll in public schools across school district lines. In 1988, Minnesota, ever the leader in promoting school choice, became the first state to enact a law requiring school districts to facilitate cross-district enrollment; by 1990, seven more states had followed its lead.

In the same year Minnesota enacted its open enrollment law, Colorado legislators were debating a bill to make the Centennial State an open enrollment state as well. During the 1988 legislative session, the bill, sponsored by Representative Jeanne Faatz (R – Denver), ultimately died in the legislature. After several more unsuccessful attempts, Rep. Faatz was able to successfully insert a provision in the annual school finance act requiring intra-district enrollment and creating several inter-district enrollment pilot programs in 1990. Four years later, Rep. Faatz would once again introduce legislation to make Colorado a fully open enrollment state, and that bill, House Bill 1065, mustered enough support to pass both chambers of the General Assembly and was signed into law by Governor Romer.<sup>3</sup>

"It seems to me the people of Colorado want maximum choice within the public school system," Faatz, herself an educator, is quoted as saying in a 1994 Pueblo Chieftain article. While it may have been up for debate in 1994 whether open enrollment was a policy that parents and students desired, today we can consider that question settled.

In recent years, the number of public school students taking advantage of the state's cross-district, open enrollment policy has ranged from 85,000 - 120,000 students in a given year. In the current 2022-23 school year, 12.4 percent of public school students (approximately 110,000 students) are enrolling in a public school outside of their home district. There are thousands of more students who choose to open enroll within their district by attending a public school that is not their neighborhood school. A study by Ready Colorado, *Open Doors and Open Districts*, found that many families use open enrollment to access higher-performing schools and districts.<sup>4</sup> Higher performing districts are likely to enroll more families from outside the district, and low-performing districts are likely to have higher rates of exit from their districts. Movement across districts is most popular in the Denver metro area and near Colorado Springs, where districts are larger in terms of enrollment and more internal and external school choices are practically accessible.

The report also found, however, that school choice in rural Colorado is alive and well. Some small, rural districts have a very high proportion of families enrolling from outside the district, meaning students commute 30 miles or more every day to a school of their choice.

Almost thirty years after the passage of House Bill 1065, it is clear that the people of Colorado still want maximum choice within the public education system.

## BIRTH OF CHARTER SCHOOLS

In the decades before the school choice movement found its way to states like Minnesota and Colorado, the concept of the “school by charter” was first being articulated and debated in the 1970s and 1980s among a small number of academics interested in reforming the public education system. The principal motivation behind this particular reform was an interest in “freeing teachers from the constraints of an excessively rigid public school management system.”

The early reformers viewed the empowerment of teachers over administrators as a means to foster more dynamic schools for the benefit of students. The authors wrote in their report, *Chartered Schools = Choices for Educators + Quality for all Students*, “The charter school concept recognizes that different students learn in different ways and at different speeds, and teachers and schools should adapt to children's needs rather than requiring children to adapt to the standard system.”<sup>5</sup>

In 1983, President Reagan’s National Commission on Excellence in Education published *A Nation at Risk*, a scathing report on the state of American public education.<sup>6</sup> The report documented widespread academic underachievement among American students and brought renewed attention to the work of the early pioneers in the education reform space who first proposed the idea of charter schools, among others. Academics like Ray Budde and the authors of the Citizens League report paved the way for Minnesota to host the nation’s first charter school in 1992.<sup>7</sup>

## COLORADO’S CHARTER SCHOOLS ACT: “TRY TO DO THINGS IN A DIFFERENT WAY”

A year after the nation’s first charter school opened its doors in St. Paul, the Colorado legislature would begin debating a bill to bring charter schools to Colorado. Senate Bill 183, known as the “Charter Schools Act,” was introduced during the 1993 legislative session by Senator Bill Owens and Representative Peggy Kerns.<sup>8</sup> The Act allowed school districts to authorize the establishment of charter schools that would be exempt from most laws and regulations governing traditional public schools.

As stated by the bill's legislative declaration, the goal was to "create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating all children within the public school system." The Colorado Children's Campaign, which was led at that time by future Democratic Lieutenant Governor and future Denver School Board Director Barbara O'Brien, lobbied ardently in support of the bill, dubbing it "the most innovative reform Colorado education has seen in over a decade" (Denver Post Archives).

Senate Bill 183 was subject to fierce debate and numerous amendments during the 1993 legislative session. Legislators debated, among other issues, the appropriate level of funding for charter school students, applying a cap to the number of charter schools statewide, and the degree of legal autonomy that charters should enjoy. Finally, with bipartisan support in the legislature and the support of Democratic Governor Roy Romer, Senate Bill 183 passed both chambers of the General Assembly and was signed into law that June. Colorado became the third state in the country to welcome charter schools.

Colorado's Charter Schools Act authorized the creation of 50 charter schools statewide, 13 of which had to be dedicated to serving "at-risk" students. Almost immediately after the Act became law, parents and teachers across the state began organizing to establish charter schools. On August 30, 1993, the Douglas County School Board voted to approve the first charter school in the Denver Metro area, Academy Charter School in Castle Rock. Parents and teachers in Pueblo and Denver quickly followed suit, the latter effort being led by then-beermonger, future mayor and governor, and current U.S. Senator, John Hickenlooper.

With bipartisan support, the charter school movement had taken off in Colorado, and it did not slow down. In future years, the legislature would eliminate the 50-school cap in the original Act, push funding levels for charter school students closer to those for students in non-charter public schools, and create an alternative option for charter school authorization, the state Charter School Institute. Today, the Centennial State is home to 265 charter schools serving more than 134,000 students. If there is any doubt as to the success of Colorado's charter school movement, consider that seven of the top ten public high schools in the state are charter schools.<sup>9</sup>

"The point about a charter school is to try to do things in a different way" Governor Romer is quoted as saying to the Denver Post as the legislature debated Senate Bill 183 near the end of the 1993 legislative session. Over the last 30 years, evidence has mounted that Colorado's experiment in "doing things a different way" has yielded extraordinary benefits for parents, students, and the state at large.<sup>10</sup>



## FUND STUDENTS, NOT SYSTEMS

In more recent years, a coalition of elected officials, parents, and activists have continued the work of Colorado's school choice trailblazers like Representative Faatz, both in the state legislature and even at the local level. Countless proposals have been offered over the years to transition at least part of Colorado's school finance system into one in which funding follows each student to their school of choice, regardless of whether that school is a public or private school.<sup>11</sup>

The pandemic brought attention to the tension between the laws and policies that are the product of the school choice movement of the 1990s and the "legacy" laws and policies that were designed to support the traditional public education system. For example, in response to excessive school closures during COVID-19, students not only took advantage of the state's open enrollment law, many—over 25,000—also chose to exit the public education system altogether. As of 2023, those students have yet to return. Despite this shift in student and parent preferences, the state's school finance formula continues to provide over \$230 million dollars to the public schools that these children no longer attend, a policy known as funding "phantom students."<sup>12</sup>

For years, many of the reforms proposed by the state legislature have been stymied by teachers unions that spend vast sums of money to elect politicians who will preserve the legacy funding model at all costs. These special interests attempt to make the case that "what's best for teachers is best for students," but their aggressive lobbying efforts to dismantle school accountability systems, protect underperforming teachers, and trap millions of dollars of taxpayer money in failing public schools, despite declining enrollment, tell a starkly different story. Bringing this hypocrisy to light and getting voters to see past the unions' misinformation is a critical step if private school choice policies are ever to come to fruition in Colorado.

Thus far, the closest Colorado has come to funding private school choice occurred at the local level, in Douglas County. While that experiment was relatively isolated and ultimately failed, it remains to date the only near-successful attempt to fund students, not systems.

## LOCAL ATTEMPT AT PRIVATE SCHOOL CHOICE

In March 2011, the Douglas County School Board voted unanimously to establish the Douglas County Choice Scholarship pilot program. The program would have allowed up to 500 students in the Douglas County School District to convert a portion of the funding associated with their attendance in a district school into a scholarship to be used to pay for tuition at a private school of their choice. In the short time that the pilot program was operational, 271 parents had applied for scholarships to send children to 30 different private schools.

Almost immediately, various groups, including the American Civil Liberties Union and a “dark money” organization calling itself Taxpayers for Public Education, filed suit against the Douglas County School District, arguing that state constitution and the School Finance Act only allow taxpayer dollars to support students attending public schools and that the pilot program’s use of public funds to support students who choose to attend private schools is impermissible.

The case eventually made its way to the Colorado Supreme Court, which ruled in 2015 that Douglas County’s Choice Scholarship Program was unconstitutional because it “created financial partnerships between the District and religious schools and, in so doing, has facilitated students attending such schools.” The Court reasoned that such a “financial partnership” violated Article IX Section 7 of the Colorado Constitution, which prohibits aid to religious schools.<sup>13</sup>

Douglas County School District sought to appeal the state supreme court’s ruling before the U.S. Supreme Court. After the high court’s ruling in the 2017 *Trinity Lutheran v. Comer* case, which ruled that a religious organization could not be denied an otherwise available public benefit on the basis of its religious status, there was some hope that the Choice Scholarship pilot program would survive. While the U.S. Supreme Court did order the State Supreme Court to reconsider its ruling, the 2017 elections in Douglas County brought a new anti-choice majority to power on its local school board, which immediately moved to shut down the program. The Colorado Supreme Court determined the case to be moot and it was dismissed. The Choice Scholarship pilot program was the closest Colorado has ever come to truly funding students, not systems.

## NATIONAL MOMENTUM FOR EDUCATION SAVINGS ACCOUNTS

While the current political landscape in Colorado makes for scarce opportunities to pass private school choice programs, there is reason for optimism when looking at the national landscape. The combination of decades of underperformance and a deep frustration with schools’ responses to the pandemic have made the public education system, along with the state funding model that supports it, ripe for reform. Lawmakers are facing increasing pressure from parents and communities to facilitate school choice through education funding reform. Among the most popular policies are Education Savings Accounts (ESAs). ESAs allow families to access state education funds to pay for private school tuition, online learning, tutoring, or other state-authorized alternative, customized educational expenses. Eight states currently have ESAs: Arizona, Florida, Indiana, Mississippi, New Hampshire, North Carolina, Tennessee, and West Virginia. Other states such as Iowa, Texas, Utah, and Oklahoma are considering ESA-type policies in the 2023 legislative session.

ESAs have grown in popularity because parents want the ability to provide different educational options for their children. Arizona and Florida have been at the forefront of advancing the conversation around ESAs with increasingly ambitious policies. Florida recently increased the family income threshold, widening access to ESAs to a broader portion of the population. Arizona recently made its ESA universal by providing nearly \$7,000 to any student in the state who wants to attend a private school of their choice. Previously, the program was only available to specific groups of students.

Although ESAs are increasingly popular, education reform writ-large continues to face opposition from unions and defenders of the system's status quo, and ESAs are no exception. There have also been legal barriers with the Supreme Courts of Kentucky and Nevada both rejecting ESA measures in 2022. At the ballot box, voters in California and Michigan rejected ESA efforts. Detractors claim that public school students' educational outcomes suffer from ESA-type policies. This perspective, however, is no more than fear-mongering with the goal of preserving a one-size-fits-all approach to education, which has tragically failed many students in the U.S.

Indeed, a growing majority of voters and families express support for ESAs and the national landscape seems favorable to expanding such programs in the coming years. In a recent poll conducted by YouGov and released by yes. every kid., for example, 60 percent of parents voiced support for ESA programs, while just 15 percent expressed opposition.<sup>14</sup>

More and more people are recognizing that allowing students to attend the school that best meets their needs, regardless of school type, is the most equitable way to help students flourish and set them up for success in life. Students from more affluent backgrounds already have access to any school of their choice; programs like ESAs open up such opportunities to students of all socioeconomic backgrounds who have for too long been constrained in mediocre, or worse, educational settings.

## THE FUTURE OF SCHOOL CHOICE

Ideas that started on the pages of academic journals and in the halls of government during the 1970s and 1980s evolved into a powerful school choice movement by the 1990s. That movement, propelled by Democrats and Republicans alike, resulted in colossal changes to the way American education is governed and organized, giving parents and students more choices and autonomy. In the first two decades of the new millennium, school choice has become ingrained as a fundamental right within our educational system. Students now have access to public schools within and across district lines, with many schools offering unique programming or models. Charter school enrollment nationwide has tripled since 2005. This expansion of opportunities has resulted in millions of students



achieving their full potential who may not have otherwise.

There are still many students, however, whose options remain confined by their zip code. Not all families are able to drive their children across town to a better school.

Not all families can afford private school tuition even if the private school is a better fit for their child. Not all families get selected in the lottery to attend the high-quality charter school in the neighborhood that has a lengthy weight list. The one-size-fits-all educational system is the only option for far too many students.

Parents, educators, community members and political leaders must continue to expand school choice and enable a variety of high-quality schools to flourish. Every kid deserves an exceptional education that meets their unique needs. Because every kid matters.

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## ABOUT READY COLORADO

We are Colorado conservatives dedicated to ensuring that every kid in Colorado receives the education they deserve. The touchstone of our education system must be parent choice. No one system of schooling should have a monopoly over opportunity. Parents should have the ability to send their kids to the school that will help their children thrive, regardless of type—public, private, charter, traditional, magnet, virtual, or home school. **Learn more at ReadyColo.org.**