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EDUCATION - Answered Prayers

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Just what do Catholic schools have that public schools don't? Study after study shows that inner-city minority students who attend parochial school do well on standardized tests, usually stay to graduate and go on to college. All too often, public school students accomplish none of the above.

How can inner-city parochial schools do such a good job for the same poor minority children whom the public schools fail so miserably? Do parochial schools spend more money on students, pay their teachers high salaries or rely on high technology?

Not at all, Catholic educators say. But clearly these schools are on to something special--a point often made by Chicago Mayor Richard M. Daley and New York City Mayor Rudolph W. Giuliani, among many others. That's why the head of the Chicago public schools meets regularly with the superintendent of the Chicago Catholic schools to exchange ideas and collaborate. And that's why Giuliani has rounded up private scholarship money to send about 1,600 New York youths to local Catholic schools.

In fact, Catholic schools don't have a monopoly on inner-city success. Other religious schools, nonsectarian private schools and some public magnet schools produce similar results. But there are more Catholic schools--and more poor students attend them because Catholic school tuition is relatively low--so their statistics appear more dramatic.

"We in Catholic education don't consider ourselves to be in competition with the state-run schools," said Robert Kealey, executive director for elementary schools at the National Catholic Education Association in Washington. "We are in no way looking to attract students from the state schools into our schools," he added.

Even if they were, the Catholic schools wouldn't have the resources to accommodate all inner-city students. But they might have some lessons to teach the public schools.

The Catholic schools' secret is well-known and, theoretically, within reach of all public schools: high standards and high expectations for all students; a safe, disciplined and highly structured environment; caring teachers who reach out and involve parents; a core curriculum that emphasizes the academic basics of reading, writing, mathematics and science; and clear reciprocal responsibilities between school and home. The school explains in writing what it will deliver and what it expects. Students and parents then agree, also in writing, to fulfill their role. Each side is accountable for upholding its part of the bargain.

So the real question is, why don't the public schools adopt the winning formula used by the parochial schools?

There's the rub. There is a consensus on the need for school reform, but it often disintegrates into political, ideological and interest-group posturing and wrangling. Conservatives blame the teachers' unions and the school bureaucracy. No government-run monopoly will ever reform itself,

they insist. Trying to remake the public schools is a waste of time, they conclude, so they demand vouchers that would enable parents to send their kids to private and parochial schools. If anything can make the public schools snap to attention, they add, it's competition now.

They haven't done too well on the voucher front, however. Congressional efforts to provide vouchers or tax breaks for private-school tuition have failed. Voucher programs in Ohio and Wisconsin are tied up in the courts.

Teachers, administrators and other defenders of public schools counterattack that the voucher proponents are just trying to destroy public education. Inner-city public schools carry all kinds of burdens that their private counterparts don't have, they assert. Children who go to private or parochial school choose to do so, they maintain, so they are more motivated than the alleged slackers who remain in public school. And Catholic schools can kick out the troublemakers.

Neither side speaks the whole truth, say education experts. The voucher debate is beside the point, they say. Nothing but lacking the will to do it--and to change a state law or two--keeps public schools from adopting the Catholic schools' winning strategies. Individual schools have done so, and have achieved remarkable success. But so far, no entire school system has taken the plunge. The bureaucratic structure, the vested interests, the countervailing political pressures seem to make it an all-but-insurmountable challenge.

"Of course, public schools can do it," said Kati Haycock, director of the Education Trust, a nonprofit organization in Washington that promotes high standards for poor and minority public school students. "What are the reasons they don't? Inertia, inertia, inertia--and not enough incentives to break out of that inertia."

CATHOLIC SOLUTION

Public schools may have a lot to learn from Catholic schools, but the solution to urban education, all but the most extreme government-privatization advocates agree, is not to send all poor minority children to parochial or private school. There's no room. There aren't enough teachers. It would probably be unconstitutional. And the Catholic schools themselves don't see that as their mission.

"Our schools are based on a particular religious philosophy and that is integral to our whole school," Kealey said. Nonetheless, a large proportion of the inner-city African-American students enrolled in Catholic school aren't Catholic.

Of the 49 million students in elementary and high schools across the country, slightly more than 10 per cent go to a nonpublic school and slightly more than half of those attend Catholic schools. More than two-thirds of the remainder go to other religious schools. The others attend secular private schools.

The current prominence of urban Catholic schools is in marked contrast with a long period in deep shadow. Enrollment has picked up a bit in the past few years, but for decades, it plummeted from its high point in 1960, when 14 per cent of school age-children attended Catholic school. The main reason for the decline was that white Catholic families who left the inner cities sent their children to public schools in the suburbs. Whatever reason those parents had for choosing public schools, researchers now find that they probably made an academically sound decision. The miracle that the Catholic schools perform for poor minority children in the inner cities doesn't extend to middle-class students in the suburbs.

David N. Figlio, an economics professor at the University of Oregon, has done a very sophisticated comparison of public, private and parochial students in urban, suburban and rural

schools. For white suburban students, "you actually end up with kids going to these religious private schools maybe doing a little worse than they would have in the public schools," Figlio explained. "However, for perhaps the most desperate of the students, for blacks and Hispanics, there's a significant and positive effect of religious schools, particularly in urban areas."

Inner-city Catholic schools have some empty seats. "Nobody looks beyond the fact that the Catholic schools could educate only another 2 per cent of the public school population and that putting kids in Catholic schools is no solution to anything except a short-term triage," said education researcher

Paul T. Hill, a professor at the University of Washington.

Even if there were classroom space, finding teachers would be a problem. Despite all the complaints about the public schools, teachers gravitate from private to public institutions, which pay much more. A recent Education Department study of teachers who changed schools or left the teaching profession between the 1993-94 and 1994-95 school years found that nearly half the teachers who left a job at a private school transferred to a public school, while almost all the public school teachers who changed schools stayed in the public school system. The attrition rate for private school teachers (11.9 per cent) was almost double that for public school teachers (6.6 per cent). Catholic elementary schools spend an average of \$ 2,145 a year per pupil, one-third-to-one-half of per pupil spending in public elementary schools. Moreover, Catholic school teachers nationwide are paid, on average, between 25 and 40 per cent less than their public school counterparts.

Catholic schools' success with poor minority students was first documented in the early 1980s by James S. Coleman, the University of Chicago sociologist who studied the decline of urban education after World War II. In 1990, Hill and two colleagues conducted a study, for the Santa Monica (Calif.)-based RAND, of poor minority youth attending 13 Catholic high schools in New York City. They found that 66 per cent of Catholic school graduates received the Regents diploma for taking an academically challenging curriculum, but only 5 per cent of their counterparts in the public schools did so; 85 per cent of Catholic high school students took the Scholastic Assessment Test (SAT), compared with only 33 per cent of public school students; and the average SAT score for these Catholic school students was 803 compared with 642 for the public school students.

Recently, Derek Neal, an economics professor at the University of Chicago, did a much broader nationwide study, in which he calculated that while only 62 per cent of black and Hispanic teens who attend urban public schools graduate from high school, the figure is 91 per cent for those who attend urban Catholic schools.

"If it were in any area but education--health care or transportation, for instance--the evidence would be considered conclusive and persuasive and sufficient to justify at least low-income vouchers," said education consultant Denis P. Doyle, a voucher expert in Montgomery County, Md.

BIASED SELECTION

Comparisons between Catholic school students and public school students just aren't fair, public school defenders contend, because of "selection bias."

"For parents to enroll their kids in Catholic school takes initiative and it usually means they're paying a little bit of money," said John F. Jennings, director of the Center on Education Policy, a Washington-based nonprofit that studies and promotes public education. Catholic school tuition averages \$1,300 a year, according to Kealey's organization, less than half

the \$ 3,000-plus annual average at private schools in general. "Catholic schools will argue that they're inclusive," Jennings continued. "But just to walk in their doors takes something."

The education researchers try to account for selection bias. Neal recalculated the dropout rates adjusting for that bias and still came up with a 26 per cent difference between the graduation rate of minorities attending public and Catholic schools in inner cities. Figlio's study was probably the most sophisticated attempt yet to factor out selection bias. "The computer cranks and cranks and cranks until it finds the highest probability odds that we are comparing apples to apples," he explained. While his comparisons aren't perfect, he said, he's pretty confident of his findings.

Others emphasize the crucial role that choosing a school plays in family involvement in a child's education. "It is the fact that the people choose the school that makes them susceptible to the kinds of demands that the school makes on them," Hill said. "So the choice is not just something that needs to be factored out. It is actually part of the treatment."

Choice also helps students in independent black schools, Joan Davis Ratteray, president of the Institute for Independent Education, a Washington-based trade association representing these schools, said. "These children can be right across the street, work and live in the same neighborhood as a public school family," she said. "In fact, they are the same people--only one has found a way out of a chaotic and not very good learning environment."

But, respond the public school defenders, the very passivity of the public school parents shows that they can't or won't get involved. Give them a chance to have a choice and watch them make it, Hill and others retort. Nearly 15 students applied for each of the 1,600 scholarships Giuliani secured to Catholic schools in New York City. In Cleveland, 6,300 students applied for the 1,700 vouchers. Across the country, according to the Indianapolis-based American Education Reform Foundation, 32 privately financed scholarship programs for low-income elementary and high school students support 14,000 youngsters in school. The waiting list numbers 40,000.

Choice gets the most attention because it is the most politically volatile issue, but other elements in the Catholic school strategy are probably more important in achieving their dramatic results with inner-city students. Many public school systems have instituted some form of choice among their schools. Another well-publicized component is a safe, secure and disciplined learning environment. Surveys show that safety and discipline usually top the list of what parents say they want for their children's schools, regardless of geography, race or socioeconomic class. Catholic schools are famous for providing that discipline. But that is only a precondition for the learning that takes place.

Two components of the strategy probably surmount the rest: high expectations and high standards for all students, coupled with a solid focus on core academic subjects. President Clinton, for years, has urged schools to set high standards, but his enthusiasm has yet to trickle down to inner-city school systems.

"Our teachers have the very strong belief that every child can learn," Kealey of the National Catholic Education Association said. "No matter who the child is, no matter what the problems are at home, no matter what--that child can learn and that child will learn."

And if they don't, the critics contend, you can kick them out. "No. That's one of the real myths," Kealey insisted. "If you look at the statistics, the vast majority of our schools have not discharged any student all year long." The personal

attention of the teacher and the active involvement of the parent almost always correct the situation before expulsion becomes necessary, he said.

What you learn in that environment is reading, writing, mathematics, science and the other core subjects. "What you have are fewer curricular choices, and what's there is primarily solid academics," Haycock of the Education Trust, said. "More kids in Catholic schools are taking a college prep curriculum because that's pretty much all they offer. They've not grown the Christmas tree curriculums like so many urban schools have."

Nothing on this list would be out of reach of inner-city public schools. So why don't they do it?

Hill blames a structure with encrusted bureaucratic rules that end up providing the wrong incentives to the wrong people. Catholic schools have much greater autonomy than public schools. The principal controls the budget, hires and fires the teachers and is responsible to the parents for educating their children.

Many of these reforms have been adopted by charter schools. Increasingly popular, these are public schools "chartered" by the local government but generally operating outside the local school district and its often-cumbersome rules. Hill would like to see such autonomy given to all public schools. He describes a plan that he calls "contracting," which would convert all public schools into something like charter schools, in the new book *Reinventing Public Education: How Contracting Can Transform America's Schools*, written with Lawrence C. Pierce and James W. Guthrie.

Education reform has been a high national priority for 15 years. If it were that simple, it would have been done already. Hill recognizes that. "We won't do it overnight," he said. "It's pretty tough stuff to do, because it means messing up all kinds of adult arrangements," such as central school district functions, teacher tenure, pet subjects in the curriculum. Drastic reform will undoubtedly take state legislatures that don't kowtow to extremely powerful education lobbies. It will take local school boards that exercise independent judgment. And it will take more than simply providing vouchers to send inner-city students to Catholic schools.

"People are saying, 'Here's another solution. Let's all run off and be like Catholic schools,'" Jennings said. "I'm afraid, it's a little harder than that."

Catholic schools are no solution for what ails public schools. But for lots of America's poorest inner-city students, they are getting the job done.

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**Millions of Americans Get
Their News From the Big Three**

Barriers, Benefits, and Costs of Using Private Schools to Alleviate Overcrowding in Public Schools

Final Report

1998

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Executive Summary

Many urban school systems are currently experiencing overcrowded conditions in their schools, and some policymakers have suggested that private schools could alleviate this problem by accepting some students from overcrowded schools in exchange for tuition reimbursement. Congress requested this study to examine "the benefits of using private and parochial schools as alternatives to alleviate the overcrowding in public schools and barriers to using public school dollars for tuition reimbursement." The study is also examining the extent of overcrowding in urban school systems, the amount of excess capacity in private schools, the willingness of private schools to participate in a transfer program, and program design, administration, and cost issues that should be considered if such a program were created.

Study Design

This study is primarily based on data collection and analysis in 22 large urban areas with overcrowded public schools: Baltimore City, Buffalo, Chicago, Dade County, Dallas, Detroit, Duval County (FL), El Paso, Houston, Long Beach, Los Angeles, Memphis, Milwaukee, Nashville, New Orleans, New York City, Oakland, Philadelphia, Pittsburgh, Portland (OR), San Antonio, and San Diego. First, we identified a set of 34 school districts with large enrollments located in central cities. An initial inquiry showed that 22 of those districts had overcrowding affecting more than 10 percent of schools. All private schools located within the geographic boundaries of these 22 urban districts were then identified as well. Surveys were administered to both the school districts and the private schools in Spring 1997:

- The school district survey focused on the nature and extent of overcrowding, the methods being used to address overcrowding, and district concerns about using private schools to help alleviate overcrowding.
- The private school survey (from a representative sample of private schools in the 22 urban areas) sought information on enrollment rates, tuition and fees, additional space availability, admissions policies, student characteristics and flows, policies on religious participation (for religiously affiliated schools only), willingness to participate in a transfer program, and likely decisionmakers on participation.

Data from both surveys was merged with background data from other sources (the Common Core of Data for school districts and the Private School Survey conducted by the National Center for Education Statistics (NCES)) to examine the characteristics of private and public schools in these urban communities.

Other components of the study include:

- Survey of private school associations and organizations, soliciting their views on their member schools' willingness to accept public school students under various conditions.
- Analysis of program design and implementation issues, reviewing recent voucher programs as well as the general literature on school choice.
- Analysis of legal issues, addressing the constitutional and other legal issues that would be raised by a program that transferred public school students to private schools.

Findings

Extent of school overcrowding in large, central-city school districts

There is considerable variation in the methods that districts use to determine the existence and extent of overcrowding in their schools. The most common indicator of overcrowding among our sample of 22 urban school districts is to compare the number of students a building is designed to serve with its enrollment, but some districts use district-wide rules for computing building capacity rather than measuring the physical capacity of each building. Some districts considered other factors such as pupil/teacher ratios, use of portable buildings, or a range of quantitative and qualitative indicators.

Further, there are differences in the standards districts set for whether a certain enrollment level or class size means a school is overcrowded.

- In some districts, schools are considered overcrowded if they are operating at 80 percent or 85 percent of capacity, while in other districts, schools are not designated as overcrowded until they are operating at 105 percent or 110 percent of capacity.
- Among districts that use class size or pupil/teacher ratio indicators, the threshold for overcrowding frequently varies by grade level, with lower desired class sizes for lower grades. Here, too, there is substantial variation across districts; for example, desired class sizes at the kindergarten level range from as low as 20 students to as high as 30 students per class.

Despite those differences, however, overcrowding does appear to be a serious problem in some urban school districts.

- Using each district's own indicators and standards, we found that among 34 large urban school districts, 22 had overcrowding rates ranging from 9 percent of the schools in Philadelphia to 89 percent in Dade County.

- About two-thirds of these districts have overcrowded conditions in at least 25 percent of their schools, and seven of the districts are experiencing overcrowding in more than 50 percent of their schools.
- There are sizable differences across districts in the extent of overcrowding in individual schools. The average amount by which actual enrollments exceed the capacities of overcrowded schools ranges from 10 percent to 41 percent in the nine districts that provided this information.

Characteristics of private schools located in overcrowded public school districts

Private schools are relatively plentiful in the 22 urban communities examined in this study, with over 3,000 private schools serving 774,000 students — 16 percent of total public and private school enrollments, compared to 11 percent nationally.

- **Religious affiliation.** Catholic schools are the most common private schools in these communities, enrolling 57 percent of all private school students. About 30 percent of private school students are enrolled in other religious schools and 13 percent in nonsectarian schools.
- **School size.** Private schools are considerably smaller than public schools in these urban communities — on average, roughly a third the size of the public schools. At the elementary level, private schools in these 22 communities enroll an average of 204 students, compared to 705 students in the average public school.
- **Pupil/teacher ratios.** Private schools in these communities have fewer pupils per teacher than the public schools. The average number of students per full-time equivalent teacher is 14.9 in these private schools, compared to an average of 19.9 pupils per teacher in the public schools in these districts.
 - Catholic schools have an average of 19.4 pupils per teacher, about the same ratio as in the public schools. In five of the communities, Catholic schools have pupil/teacher ratios that exceed the public school ratios in those communities.
- **Student composition.** Private schools in these 22 communities have higher proportions of minority and low-income students compared to private schools nationally, but these enrollments are still well below those in public schools in these same communities.
 - Minority students account for 43 percent of the private school students in these 22 urban communities — substantially higher than their proportion of private school enrollments nationwide (22 percent) but still well below their proportion in the public schools in these 22 communities (82 percent). In the Catholic schools, minorities are 51 percent of all students.

- Low-income students (i.e., students eligible for free or reduced-price lunches) constitute 32 percent of private school enrollments in these 22 communities, well above the national average for private schools in central cities (12 percent) but below the average for public schools in the 22 communities (64 percent).
- **Cost.** Tuition averages \$3,654 across private schools in the 22 communities. Secondary schools (\$4,869) are more expensive than elementary schools (\$2,978), and nonsectarian schools (\$5,888) cost more than Catholic schools (\$2,406) and other religious schools (\$3,586). Tuition revenues provide 82 percent of total operating funds for these private schools, and reliance on non-tuition revenues is particularly high in schools charging relatively low tuition.
- **Financial aid for low-income students.** Two-thirds of the schools (67 percent) offer scholarships or tuition discounts based on family financial need, and this assistance is more prevalent in schools with relatively high tuitions. Financial aid is provided to 22 percent of all students and 35 percent of low-income students in these private schools and offsets about 45 percent of tuition for the students who receive this assistance, reducing their average tuition from \$3,654 to \$2,001.
- **Admissions.** Private schools in the 22 communities accept 83 percent of the students who apply. About half of the schools (51 percent) maintain a waiting list, and the average number of students on the list in those schools is 25. Schools with high tuition (greater than \$8,000) have considerably lower admissions rates (51 percent, compared with 91 percent in the schools with tuition below \$2,000).

Private school interest in participating in a transfer program under various program conditions

Most private schools would be willing to participate in a program if they could maintain their current policies regarding curriculum, admissions, assessment, and other issues. However, their interest in participating would decline considerably if the transfer program included rules or conditions that affected their autonomy over admissions and other policies.

- **Random assignment.** If transfer students are randomly assigned to participating private schools (rather than allowing the schools to exercise control over which students they admit), the percentage of schools willing to participate declines to one-third to one-half of all private schools (the higher end of this range includes schools that are “possibly” willing to participate).
- **State assessments.** If transfer students are required to participate in the same assessments that the state requires for public school students (in order to monitor their academic progress), about one-third to one-half would be willing to participate.
- **Inclusion of students with special needs.** Only 15 to 31 percent of the private schools would participate if they were required to accept students with special needs such as learning disabilities, limited English proficiency, or low achievement.

Private school associations expressed concern about the potential numbers of special needs children who might be assigned to their schools and about the severity of the disability or other need. Some associations indicated that willingness to participate would depend on the types and severity of the disability or other special need, and whether additional funds were provided to support special services for these students.

- **Exemptions from religious instruction.** Most religious schools (86 percent) would not participate if they were required to allow transfer students to obtain exemptions from religious instruction or activities. Because religious schools comprise such a large percentage of all private schools, this condition would reduce the overall percentage of private schools willing to participate to 24 to 31 percent. The United States Catholic Conference comments that the notion of exemptions "strikes at the very nature of what a Catholic school is all about" and Christian Schools International said that "almost all our schools would not allow the exemption because every class is permeated with a Christian religious viewpoint."

Under most scenarios, religiously-affiliated schools account for about three-fourths of the schools that would be willing to participate. If, however, religious schools that participated in the transfer program were required to permit exemptions from religious instruction or activities, the number of religious schools willing to participate would decline considerably, and about two-thirds of the participating schools would be nonsectarian.

Space availability in private schools

Private schools in these 22 communities have a considerable number of spaces available. Under a transfer program that allows these schools to maintain their current policies, almost all of these spaces would be available for transfer students. If, however, the transfer program included provisions that affected the autonomy of participating private schools, the number of available spaces would decline significantly.

- **Amount of excess capacity in private schools.** Many of the private schools in these 22 communities are currently operating well below their full capacity. One-third of the schools have enrollments below 70 percent of their full capacity, and another third have enrollments between 70 and 90 percent of capacity.
 - Schools with higher tuition level are less likely than lower-tuition schools to have substantial excess capacity. Among schools with tuitions of \$8,000 or more, 70 percent are operating near full capacity, whereas among schools that charge less than \$2,000, only 29 percent are operating close to full capacity.
- **Total number of spaces available in private schools.** Private schools said they could accommodate an additional 150,000 students — somewhat less than the 185,000 spaces obtained if one calculates the difference between the schools' full capacities and their current enrollments.

- Religious schools account for 85 percent of the available spaces, and 57 percent of these spaces are in Catholic schools. Thus, if the transfer program included nonsectarian schools only, the number of available spaces would decline from 150,000 to 22,000.
- Schools with tuition below \$4,000 account for 83 percent of the available spaces; however, only 38 percent of the spaces are in schools with tuition below \$2,000, and very few (5 percent) are in schools that charge tuition of \$1,000 or less.
- **Impact of possible program conditions on the number of available spaces.** Specific provisions of the transfer program could result in a much smaller number of available spaces because fewer private schools would be willing to participate.
 - If transfer students are randomly assigned to private schools, the number of spaces available for transfer students declines by about one-third to one-half, to between 63,000 and 101,000 students. If participating schools are required to accept special needs students, the number of transfer students who could be accommodated in participating schools drops even further, to between 41,000 and 66,000 students. If transfer students are required to participate in state assessments, schools willing to participate could accommodate between 67,000 and 101,000 students.
 - If the transfer program required participating religious schools to permit transfer students to be exempted from religious instruction or activities, only 33,000 to 48,000 spaces would be available in schools that are willing to participate under this condition (including both religious and nonsectarian schools). Religious schools that would not be willing to participate under this condition account for 95,000 (78 percent) of the available spaces in religious schools.

Potential impact of transfer program on alleviating public school overcrowding

If all of the available spaces in private schools were filled with public transfer students, the transfer program would reduce public school enrollments by 4 percent and increase private school enrollments by 17 percent. If the transfer program contained provisions for random assignment, inclusion of special needs students, state assessment of transfer students, or exemptions from religious instruction, the potential impact would decline to 1 to 2 percent of public school enrollments.

- **Private school spaces as a percent of public school excess enrollments.** In the nine communities for which detailed data on the amount of overcrowding in public schools was available, private schools could accommodate 23 percent of the excess enrollments in public schools if participating schools could maintain their current policies without change.

- **Variations across communities.** The potential impact of a transfer program on alleviating overcrowding varies substantially across different urban areas.
 - In communities that have relatively small overcrowding problems and relatively large private school sectors, it appears that excess capacity in private schools could be sufficient to handle all of the public school excess enrollments. Available private school spaces amount to 294 percent of the public school excess enrollments in Pittsburgh, 135 percent in New Orleans, and 105 percent in Houston.
 - In other communities, the estimated number of available spaces constitutes a much smaller percentage of public school excess enrollments (e.g., 16 percent in San Diego), and transferring students from overcrowded public schools to available spaces in private schools would have little impact on the overall size of the overcrowding problem.
- **Cost of transfer program.** The total cost of a transfer program, including tuition, transportation, categorical program services for transfer students, and program administration, is estimated at \$4,575 per pupil. Some, although probably not all, of this cost might be offset by reductions in school district expenditures.
 - The average cost of tuition for the available spaces in private schools would be \$2,900 if schools could maintain their current policies. Under other program conditions, the average tuition would range from \$2,400 to \$3,200. If the program were limited to nonsectarian schools, the average tuition would rise to \$4,500.
 - Few spaces are available in schools that charge \$1,000 or less; such schools account for only 5 percent of the available spaces. About 38 percent of the spaces are in schools with tuition below \$2,000.

Analysis of Program Design and Implementation Issues

If a program was created to alleviate public school overcrowding by transferring some public school students to private schools, there are a wide variety of program design and implementation issues that program sponsors and administrators should consider. Some of these issues are applicable to any type of voucher program that subsidizes private school tuition, while others arise from the unique goal of this program to alleviate overcrowding. These issues include:

- **Selection and assignment of transfer students.** Would participation in the transfer program be open to all public school students, limited to students in schools with overcrowding or with the most severe overcrowding, or (as in recent voucher experiments) limited to students from low-income families? How would the transfer program affect students who already attend private schools? What issues concerning the inclusion of special education or other special-needs students would need to be addressed?

How would participating students be assigned to specific private schools — would students be assigned randomly to private schools, would they apply to specific private schools which would then randomly select from this pool of applicants (in the event of oversubscription), or would they apply to specific private schools subject to the school's normal admissions criteria?

- **Eligibility of private schools.** Would private school eligibility be restricted in any way, such as nonsectarian schools only, schools that are located within a reasonable proximity to the public schools with overcrowding problems, or schools offering the grade levels that are affected by overcrowding in public schools? Would newly-formed private schools be eligible to participate?
- **Oversight and accountability.** Would students transferring to private schools become private school students or would they remain public school students receiving instruction in private schools? Would there be any public oversight or accountability for participating private schools? For example, would program administrators or evaluators monitor the achievement of students who transferred to private schools?
- **Transfer students' participation in religious instruction and activities.** Would transfer students be allowed to opt out of religious instruction or activities?
- **Administration of transfer program.** What administrative activities need to be undertaken by public and/or private school authorities to implement and maintain the program? How would the program handle transfer students who leave their private school? Would the transfer program establish rules concerning the handling of disciplinary problems? Who would pay for any additional costs to parents that are associated with private school attendance, such as registration fees, book and material fees, school uniforms, and before- and after-school activities?
- **Duration of transfer program.** What would happen to students and schools in the program when overcrowding no longer exists in a school district?

Analysis of Constitutional and Other Legal Issues

The primary legal issues raised by a program of tuition reimbursement to alleviate overcrowding in public schools are: (1) whether inclusion of religious schools would violate the Establishment Clause of the U.S. Constitution, which states that "Congress shall make no law respecting an establishment of religion"; and (2) the applicability and effect of the Fourteenth Amendment and civil rights laws on any such program.

- **Establishment Clause.** Previous cases have been decided using the so-called Lemon test, which has three parts: to be constitutional, a program must have a secular legislative purpose, not have the primary effect of advancing or inhibiting religion, and not foster excessive entanglement between government and religion.

A carefully-designed transfer program would be likely to meet the first and third parts of the Lemon test. The program ostensibly would have a secular legislative purpose — namely, to relieve overcrowding in the public schools. And although it is assumed that private schools would have to meet some basic requirements to participate in the program, minimal requirements relating to health, safety, curriculum and similar matters in private schools, and the monitoring of those requirements, have been upheld in other contexts.

Satisfying the second part of the Lemon test is more difficult. In previous cases, the Supreme Court struck down state programs that provided tuition reimbursements only for parents sending their children to private schools, concluding that these programs had the primary effect of advancing religion even though the money was paid to the parents. However, other Supreme Court decisions suggest that a program that included a broad range of schools (both public and private) for participating students to attend would be less subject to constitutional attack.

- **Civil rights.** The provision of tuition assistance to private schools raises civil rights issues under the Constitution and Federal civil rights laws. Private schools that practice racial discrimination would be ineligible to participate due to Constitutional prohibitions and the requirements of Title VI of the Civil Rights Act of 1964. Additionally, all non-religious private schools are required by the Americans with Disabilities Act to refrain from discriminating against persons with disabilities. Section 504 of the Rehabilitation Act also prohibits discrimination based on disability and requires both religious and non-religious schools to admit students with disabilities when the school can do so by making "minor adjustments" to its program. Finally, Title IX prohibits sex discrimination but allows for single-sex enrollments at non-vocational elementary and secondary schools and provides for exemptions based on religious tenets at religious coeducational schools.

Exhibit 40

Comparing the "Excess Capacity" in Private Schools with the "Excess Enrollment" in Public Schools, in Individual Urban Communities, 1996-97

	Number of Spaces Available in Private Schools	Number of Students over Capacity in Public Schools	Available Spaces as a Percent of Public School Excess Enrollment
Baltimore City	4,081	4,823	85%
Dade County	14,414	69,192	21%
Houston	8,752	8,318	105%
Memphis*	"	6,743	"
Nashville	800	3,623	22%
New Orleans	11,369	8,410	135%
New York City*	"	124,103	"
Pittsburgh	3,710	1,260	294%
San Diego	2,148	13,610	16%
Total	56,055	240,082	23%

Notes: Asterisks indicate urban communities in which the response rate (percent of private schools reporting their number of spaces available) was below the study average of 45 percent. Totals include private school spaces available in all nine communities for which data was available on the size of the public school overcrowding problem.

Sources: Survey of Urban Districts with Overcrowding, 1997; Survey of Private Schools Regarding Participation in a Student Transfer Program, 1997.

In other communities, the estimated numbers of available spaces constitute a much smaller percentage of public school excess enrollments (16 percent in San Diego, 21 percent in Dade County, and 22 percent in Nashville), and transferring public school students to private schools is likely to have a smaller impact on alleviating the public school overcrowding problem.

It should be noted that the average potential reduction of 23 percent across the nine communities is near the lower end of the range for the seven communities shown in Exhibit 40. This is largely because the estimated reduction potential for New York (not reported separately due to the low response rate for private schools in that city) is well below the figures for the other seven communities. It is not clear whether the estimate accurately reflects a relatively small amount of available private school spaces or whether the estimate for New York is artificially low as a result of the low response rate, partly due to systematic non-response from Catholic diocesan schools.¹⁸ If the non-responding schools in New York City tended to have more spaces available than the responding schools, then the "average" potential impact on overcrowding could be much higher.

¹⁸ See Chapter 1, page 7, for a discussion of the low survey response rate for Catholic schools in New York City.

In other communities, using all of the available spaces to alleviate overcrowding in public schools would have a relatively small impact on public and private enrollments. In a number of communities, the total impact on public school enrollments would be 2 percent or less — Dallas, Nashville, Portland, and San Antonio — suggesting that a transfer program would have little impact on alleviating public school overcrowding in these communities.

Match between available spaces in private schools and overcrowding in public schools.

An important question for this study is the potential amount of the reduction in public school overcrowding that might be achieved by transferring public school students to private schools that have spaces available for additional students. In addition, given the considerable variation across the 22 communities in the number of available spaces in private schools and in the size of the public school overcrowding problem, it would be useful to examine the potential reduction in overcrowding that might be achieved in individual communities.

However, due to the low response rates of both private schools and public school districts to the surveys conducted for this study, we have limited information available to answer these questions. Nine of the 22 school districts provided information on the amount of “excess enrollment” in public schools.¹⁷ In two of these nine urban communities, the percentage of private schools providing information on their number of available spaces was quite low (19 percent in Memphis and 21 percent in New York City). The following analysis compares the “excess private school capacity” with the “excess public school enrollments” in these nine communities, but it is important to keep in mind that the overall estimates may be strongly affected by the estimates for New York City, which accounts for half of the excess public school enrollments across these nine communities.

Overall, across these nine districts, spaces available in private schools could accommodate 23 percent of the excess enrollments in public schools (Exhibit 40). In some of the districts, it appears that excess capacity in the private school spaces is sufficient to handle all of the public school excess enrollments; available private school spaces amount to 294 percent of the public school excess enrollments in Pittsburgh, 135 percent in New Orleans, and 105 percent in Houston. These three communities have relatively small overcrowding problems, with excess enrollments amounting to between 3 and 10 percent of all public school students. In addition, New Orleans and Pittsburgh have relatively large private school sectors that enroll between 20 and 24 percent of all students in these communities.

¹⁷ Fifteen school districts responded to the survey, but only nine of these were able to provide information on the capacities of their schools, which we used to calculate the number of students over capacity, i.e., the amount of enrollment reduction that would be needed to eliminate the condition of overcrowding.