

Impact of Legislation on Education:
Have We Tossed the Baby Out with the Bathwater?

Presented by

David R. Steiner

Quest Club

Friday, February 10, 2012

Outline

	<u>Page</u>
I. Introduction.....	1
II. The Context for Education Legislation.....	3
III. The 2011 Legislative Reforms.....	4
IV. The School Voucher Litigation.....	11
V. Conclusion	18
Endnotes.....	20

Impact of Legislation on Education

I. Introduction

Few topics spark as much emotion and debate as the education of our children. There seems broad consensus that a quality education is a key component to a child's success in life. The consensus breaks down, however, when discussion turns to the optimal way to provide that quality education. Philosophically and practically speaking, there is disagreement over whether and to what extent the responsibility for that education is the job of the parent, the local community, the state, or is shared.

There is further disagreement over whether and to what extent the federal government should be involved in education, if at all. While the topic I've been given allowed me to consider the role of the federal government in education, I have decided instead to focus on the significant reform legislation passed by the Indiana General Assembly during the 2011 legislative session.

Parents' decision on where their child should receive education is one of the most important decisions they make. And for our family, as I think it is with many families, it is not a one-time decision, but a continual evaluation of whether the place and form of education our child is getting is best for him. It may be cliché, but no caring parent wants less. Thanks to the Indiana General Assembly, most Indiana parents now have expanded options within reach for their children.

Before going further, let me acknowledge that many of you are or have been deeply involved in the formal education of the children of our community, as professional educators, administrators or advocates, and I thank you for your important service. I also acknowledge that many fellow Quest Club members in this audience know a lot more

about education policy than I do and have given outstanding papers on numerous education topics. In particular, I am grateful for the excellent papers of Sherrill Colvin and, my law partner, Patrick Michaels. Pat's 1995 paper on "Does Choice in Education Make Sense" and Sherrill's 2003 paper "Introducing Competition into Public Education" seem prescient in light of the 2011 reform legislation. Frankly, we've been talking about these kinds of needed changes for decades.

I also want to thank Fort Wayne Community School Board President Mark GiaQuinta for being a helpful resource particularly on the subject of school vouchers and putting me in touch with Indiana State Teachers Association representatives who provided me with court briefs filed in the case challenging the school voucher legislation. My thanks also to FWCS School Board member Julie Hollingsworth for providing me with the Indiana Department of Education school voucher data for the 2011-2012 school year.

In the interest of full disclosure, and by way of background about me, I was primarily educated in a private Christian school. However, I am not without many ties to the public schools. My older brother and sister attended Lakeside Junior High and graduated from North Side High School, and my other brother attended Forest Park Elementary School, a block from where we grew up. I walked with my brother to Forest Park to half-day kindergarten there, then attended Fort Wayne Christian School for full-day kindergarten, then returned to Forest Park to begin 1st grade in what my parents anticipated would be where I would spend the remainder of my elementary school years, just as my brother did. Instead, after about the first quarter, I transferred back to Christian school, primarily because I was significantly ahead of my classmates and was

encouraged by my public school teacher to return to an environment where I could be more academically challenged. Fortunately, my parents were able to make the financial sacrifice to do that. I attended there through graduation from high school.

My mother substitute taught in the Fort Wayne Community Schools. An uncle of mine was a principal for many years at South Wayne Elementary School. My aunt has taught for 30 years and several cousins are teachers in the Fort Wayne Community Schools.

Two of my sons attend Southwest Allen public schools. One is a junior at Homestead and the other is a seventh grader at Woodside Middle School. Prior to attending public schools, they each spent some or all of their elementary years in private Christian school. My youngest son is a third grader at Emmaus Lutheran School.

I must also mention that several of my nieces and nephews have been home-schooled by their parents, quite successfully. Some of my wife's cousins were educated in a mission boarding school in Africa. One of my nieces, a teacher, is currently spending a year teaching the children of missionaries in Albania.

I say all of this to suggest that I have some perspective on the variety of ways that children can receive a quality education, and the importance of parents having options to choose from. I support laws that give parents real choices in quality education and the 2011 reform legislation.

II. The Context for Education Legislation

Formal primary and secondary education in the United States has historically been a local and state matter. Each state has laws requiring the establishment and

maintenance of a public school system within that state. The authority for Indiana's public school system derives from the state Constitution ratified in 1851, which in Article 8, Section 1 provides:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

It is important to note that the Constitution imposes the duty on the General Assembly. Moreover, the duty toward the end of "knowledge and learning ... for the preservation of a free government" is not exclusively by means of providing for a public school system. Rather, the duty is two-fold: first, to encourage, by *all suitable means*, moral, intellectual, scientific, and agricultural improvement; and second, to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all. The first duty is what has motivated much of the 2011 legislative reforms.

III. The 2011 Legislative Reforms

Indiana's education reform of 2011 has been heralded as the most comprehensive education reform package in the nation. Championed by Republican Governor Mitch Daniels and the State Superintendent Dr. Tony Bennett, the Republican-controlled state legislature passed sweeping reforms described by Dr. Bennett as "inject[ing] the education system with a healthy dose of competition, freedom and accountability."¹ According to the Indiana Department of Education, these reforms are intended to accomplish three goals:

- (1) Recognize and reward our best teachers and principals;
- (2) Empower school leaders to make decisions based on students' needs; and
- (3) Provide families quality educational options.²

The four key bills passed in support of these goals are Senate Bill 1, Senate Bill 575, House Bill 1002 and House Bill 1003.

Senate Bill 1 most significantly establishes the framework by which each school corporation must develop a plan for annual teacher performance evaluations which must include a rating of each teacher as either "highly effective", "effective", "improvement necessary" or "ineffective". The rating is to be based on objective measures of student achievement and growth, and "rigorous measures of effectiveness" including observations and other performance indicators. Students are not to be instructed for two consecutive years by two consecutive teachers who are each rated ineffective. If the school corporation cannot comply with this provision, then the school must notify the parents of the students, before the start of the second school year, that they will be placed in a classroom of a teacher rated "ineffective". The school corporation annually before August 1 must give the performance results, including the number of teachers given each rating category, to the Department of Education without any personally identifiable information about the teachers, and the Department before September 1 will publish on its website this information.³

The other significant aspects of Senate Bill 1 pertain to the requirements by which principals may cancel teacher contracts⁴ and teacher pay increases are determined⁵. For example, teachers rated ineffective for two consecutive years may have their contracts cancelled. In addition, these statutory requirements regarding teacher contract

cancellation expressly limit and cannot be altered by a collective bargaining agreement with the teachers union.⁶

The bill also requires that increases in teacher salary scale cannot be based exclusively on years of experience and additional degrees beyond basic job qualifications (in fact, those factors can't account for more than 33% of the increase calculation), but must also consider the results of annual performance evaluations, the teacher's instructional leadership roles, and the academic needs of the students.⁷ Teachers rated ineffective or improvement necessary may not receive any raise, and any amount otherwise allocated for such raises must be allocated to highly effective and effective rated teachers.⁸ Each school corporation must submit its salary schedule to the Department who must then publish it on the Department's website.⁹

Senate Bill 575 makes significant changes to aspects of the collective bargaining process and what employment matters must be bargained into the union contract, giving more flexibility to school administrators. Importantly, it provides that the union contract may not include provisions regarding teacher dismissal procedures and criteria, and provisions that limit a school employer's ability to restructure schools that do not meet federal and state accountability standards, or that limit a school employer's ability to enter into programs that offer postsecondary credit or dual credits to students.¹⁰ In addition, union contracts will be limited to two year terms to coincide with the state budget biennium.¹¹

Moreover, while the hours of employment must be discussed between the school corporation and the teachers union, that term is no longer required to be in the agreement and is instead to be included only in the contract between the teacher and the school

corporation.¹² School administrators must also only discuss with the union other terms such as hiring, evaluation, and retention of teachers, curriculum development and revision, textbook selection, teaching methods, pupil/teacher ratio, student discipline, class size or budget appropriations, and safety issues for students and employees in the workplace.¹³ There is no obligation that any of those terms be included in the union contract. And if they are not, neither the school corporation nor the union may invoke the impasse procedure that allows a "factfinder" to impose such a contract term on the parties.¹⁴ In addition, any items that lead to deficit financing for the school corporation are prohibited from being in the union contract.¹⁵ Also, unfair practice complaints filed against the school employer that are found to be frivolous now result in the party filing the complaint being liable for costs and attorney's fees.¹⁶ There are many other modifications and amendments to the collective bargaining process, impasse, mediation, and factfinding procedures which would be of more interest to labor lawyers, so I will move on to the last two important reform bills.

House Bills 1002 and 1003 were the vehicles for expanding educational options for families. House Bill 1002 expands the entities that may sponsor charter schools to include nonprofit four-year baccalaureate or more advanced degree-granting colleges and universities in the state (such as Indiana Tech, Saint Francis, and my alma mater, Taylor University) and the newly-created Indiana Charter School Board.¹⁷ The charter board is made up of seven persons, two appointed by the governor (who also appoints the chairperson of the board), one by the superintendent of education, and four non-legislators: one each who is appointed by the president pro tempore of the State Senate,

the minority leader of the Senate, the speaker of the House, and the minority leader of the House.¹⁸

The bill further establishes accountability standards for charter school sponsors and places them under the same accountability standards as for public schools.¹⁹ It also requires that prior to issuing a charter, the sponsor must conduct a public hearing concerning the establishment of a charter school and the governing body of the school corporation in which the charter school will be located must be given an opportunity to comment on the effect the charter school may have on the school corporation, "including any foreseen negative impacts".²⁰ The bill further authorizes the state board of education to close a charter school, transfer sponsorship of a charter school, or reduce the administrative fees collected by the sponsor, if the charter school remains in the lowest performance category or designation for a period of five years.²¹ It also allows the state board of education to suspend the authority of a sponsor if at least 25% of the sponsor's charter schools have been the subject of accountability action.²²

House Bill 1003 provides the greatest victory for school choice advocates with the creation of the Choice Scholarship program. In addition, the bill authorizes a \$1,000 state tax deduction per child for which parents during the year make an unreimbursed education expenditure (like tuition or textbook purchases) for a private elementary or high school program (which includes either attendance at a private school or homeschooling).²³

Back to the crown jewel of the reform legislation. Very simply, the Choice Scholarship is available to an Indiana resident, age five to twenty-two years, who has been or is currently enrolled in a public school, and is a member of a household with an

annual income of not more than 150% of the amount required to qualify for the federal free or reduced price lunch program²⁴ (for a family of four that amount is currently approximately \$62,000²⁵). The scholarship may be used to attend any "eligible school" which is defined as a public or nonpublic elementary or high school that:

- (1) is located in Indiana;
- (2) requires an eligible individual to pay tuition or transfer tuition to attend;
- (3) accepts the eligible individual for enrollment;
- (4) is accredited by either the state board of education or a national or regional accreditation agency recognized by the state board;
- (5) administers the ISTEP test;
- (6) is not a charter school or the eligible individual's home public school corporation; and
- (7) submits to the Department of Education data required for a category designation under the Department's school performance assessment of improvement process.²⁶

Eligible schools may not discriminate on the basis of race, color or national origin and must abide by the school's written admission policy without discrimination towards applicants receiving scholarships.²⁷ The bill also places curriculum requirements on the eligible schools, such as providing instruction on the Indiana and United States constitutions and good citizenship.²⁸

The Department of Education is required to visit each eligible school at least once a year to verify compliance with Choice Scholarship program requirements, and the school must give access for observing classroom instruction and reviewing any

instructional material and curriculum.²⁹ The Department may also suspend scholarships to poor performing *nonpublic* eligible schools which are placed in the lowest two categories or designations under the Department's school performance assessment of improvement process for at least two consecutive years.³⁰

The amount of the scholarship is the lowest of the following:

(1) the sum of the tuition, transfer tuition, and fees required to be paid for enrollment at the eligible school;

(2) 90% of the state tuition support on a per pupil basis received by the home public school corporation of the eligible individual if the household income is not more than 100% of the amount required to qualify for the federal free or reduced price lunch program (currently about \$41,350 for a family of four);

(3) 50% of the state tuition support on a per pupil basis received by the home public school corporation of the eligible individual if the household income is between 101% and 150% of the amount required to qualify for the federal free or reduced price lunch program; or

(4) If the eligible individual is enrolled in grades 1 through 8, the maximum amount is \$4,500.³¹

The number of scholarships available for awarding was limited to 7,500 for the 2011-2012 school year, and to 15,000 for the 2012-2013 school year.³² Thereafter, there is no limit on the number of scholarships that may be awarded.

About 4,000 students (3,919 to be exact) received the scholarship in the 2011-2012 school year and 85% come from households with incomes that qualify for free or reduced price lunch.³³ 53% of the recipients were minorities.³⁴ The total amount of

scholarships was approximately \$16.25 million and averaged \$4,150 per recipient.³⁵ For comparison, Indiana's 3-year average total expenditure per student is \$11,300.³⁶ Thus, the average scholarship awarded represented less than 37% of the state's spending for a student in the public schools. The total amount of scholarships awarded represents about 0.25% of the \$6,262,800,000 appropriated for distribution for tuition support to the public schools in the state budget.³⁷

There are currently approximately 1,040,000 students enrolled in public schools³⁸, and the number of scholarship recipients represents less than 4/10ths of one percent of total students. The largest number of students receiving scholarships (644 or almost 16.5% of the total) resided in the Indianapolis Public Schools district. The relative impact on Allen County public school systems is somewhat expected, given household income levels and the relative size of each of the four school corporations: 393 students or about 10% of all scholarship recipients lived in the Fort Wayne Community School district (the state's second largest public school district), while East Allen had 90 students, and Northwest Allen and Southwest Allen each had 13. The scholarship students represented about 1.25% of the FWCS student enrollment, about 0.9% of East Allen about 0.2% of Northwest Allen and Southwest Allen.³⁹

IV. The School Voucher Litigation

Not surprisingly, the reform legislation was unwelcome to the state teachers union, historically one of the most powerful lobbies in the State, and its Democratic allies in the General Assembly, and was responsible (along with Right to Work legislation) for

the 5 week-long abdication to central Illinois of the House Democrats. Having lost the legislative battle, opponents of the legislation have now turned to the courts.

The ink was barely dry on the Governor's signature to House Bill 1003 on May 16, 2011, when a lawsuit was filed on behalf of a group of Plaintiffs which included various public educators, parents of school children and two ministers in the Marion Superior Court in Indianapolis, challenging the constitutionality of the school voucher program. The legal team for the Plaintiffs included lawyers with the National Education Association. The Defendants included Governor Daniels and Superintendent Bennett, in their official capacities, and were later joined by two parent Defendant-Intervenors who supported the law.⁴⁰ The Defendant-Intervenors' legal team included lawyers for the Institute for Justice, self-described as "the nation's only libertarian public interest law firm."⁴¹

The Plaintiffs sought a preliminary injunction to prevent the law's enforcement until the legal issues could be fully litigated. But on August 15, 2011, Judge Michael Keele issued an order denying the preliminary injunction. Some believe the uncertainty arising from the preliminary injunction request kept many parents, who might have otherwise, from applying for the scholarship over the summer, and it is somewhat remarkable that nearly 4,000 of the available 7,500 scholarships were awarded given the court's decision coming just days before the beginning of the 2011-2012 school year.

The case moved forward in the trial court, and on October 3, 2011, Plaintiffs filed their Motion for Summary Judgment on the grounds that it violated several provisions of the Indiana Constitution. Counter-motions were filed by the Defendants and Defendant-Intervenors seeking dismissal of the Plaintiffs' Complaint and summary judgment to

uphold the law. On January 13, 2012, Judge Keele ruled the law was constitutional and granted the Defendants and Defendant-Intervenors motions.

For the remainder of the paper, I would like to briefly go over the major arguments and counter-arguments of the parties and the judge's decision in the school voucher case.

Plaintiffs' case in a nutshell is that the Choice Scholarship program is an impermissible diversion of public funds to support private religious schools. They made three primary arguments that the program was unconstitutional. The first argument was that the program compels taxpayers to support religious ministries in violation of Article 1, § 4 of the Indiana Constitution, which provides:

No preference shall be given, by law, to any creed, religious society, or mode of worship; and no person shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.

Plaintiffs contended that because of the pervasively religious nature of many of the eligible private schools (they, for example, include religious instruction in the education, pray, and seek to inculcate spiritual values in the students) they must be deemed to be "ministries", and the program's transmittal of public funds from general tax revenues for the unrestricted use of these "ministries" is compelled support to those ministries by taxpayers.⁴² Plaintiffs made much of the fact that currently 97.7% of the 259 eligible private schools are religiously affiliated institutions and only 2.3% are nonsectarian, giving no real non-religious private school choice to parents.⁴³

The State responded to this argument by noting that the idea behind the Choice Scholarship program is to provide incentives for schools to compete in educational quality to attract students. Plaintiffs ignored the fact that the program gives parents a

choice between a higher-performing private school and a lower-performing public school. Students at the participating schools on average score higher than public schools on ISTEP+ pass rates, End-of-Course Assessment pass rates and graduation rates.⁴⁴ Plaintiffs' effort to prove that participating religious schools are, in fact, religious, was irrelevant. Plaintiffs' invitation to the court to troll through the eligible school's religious beliefs and practices to decide that the program stands or falls on whether the school is "too religious" threatens federal rights under the Free Exercise Clause of the First Amendment of the United States Constitution and the first clause of Article 1, § 4 of the state's constitution.⁴⁵

Defendant-Intervenors argued that the 1816 Indiana constitution originally contained Article 1, § 4, and after its ratification, religious schools continued to receive state funding.⁴⁶ So the original understanding and practice was that § 4 does not prohibit public support for religious schools.

Both the State and Defendant-Intervenors reasoned that construing the "compelled support" clause of §4 to include the use of general tax revenues would make Article 1, §6 of the state constitution -- adopted in the 1851 constitution and prohibiting money from the state treasury being drawn "for the benefit of any religious or theological institution" -- unnecessary and redundant.⁴⁷

In siding with the State and the Defendant-Intervenors, the court held that the degree of religiosity of the participating schools was immaterial to the issue of the constitutionality of the program,⁴⁸ and concluded that Article 1, § 4 does not prohibit the state from creating a program under which general tax revenues are given to private citizens who may then choose to use those funds to pay tuition at religious schools.⁴⁹ The

court relied on the history and structure of Article 1 (which is the Indiana Bill of Rights) and also Ohio, Wisconsin, and Pennsylvania Supreme Courts -- states with very similar constitutional language -- which upheld publicly funded scholarship programs like Indiana's and aid to children who attend religious schools.⁵⁰

Plaintiffs' second attack on the law was that the Choice Scholarship program provides substantial benefits to religious institutions and directly funds activities of a religious nature, in violation of Article 1, §6 of the state constitution. That section states:

No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

Plaintiffs argued that Indiana Supreme Court precedent in *Embry v. O'Bannon*⁵¹ (a 2003 decision which upheld dual enrollment of students at public and parochial schools) interprets this provision of the constitution as drawing a line between relatively minor and incidental benefits that may accrue to a religious institution from a government program and one that confers "substantial benefits". Plaintiffs contended the program is directly funding "a myriad of religious activities that take place" in these eligible schools, and such funding is prohibited by *Embry*,⁵² and, further, that the scholarship money "substantially supports and benefits the religious missions of the schools and their sponsoring churches."⁵³

The State and the Defendant-Intervenors responded that the Choice Scholarship program meets the test in *Embry* because it is religion-neutral and directly benefits students, not religious institutions or activities.⁵⁴ Any benefit to the schools (and their religious teachings) is rendered indirect and incidental by the private individual choices of parents.⁵⁵ The State also argued that a host of other religion-neutral State programs allow taxpayer funds to flow to religious institutions by way of private individual

choices. Examples include the Frank O'Bannon Grant Program, the Twenty-First Century Scholars Program, the minority teacher, special education, occupational therapy, and physical therapy program, the nursing program, and the School Scholarship Tax Credit. Thus, Indiana already provides sizeable scholarships and other aid to students who use them to attend private religious schools.⁵⁶

The court determined that the Choice Scholarship program was consistent with the Indiana Supreme Court's decision on the dual enrollment program in *Embry* and does not violate Article 1, §6. Judge Keele concluded that like the dual enrollment program, the Choice Scholarship program is religion-neutral and was enacted "for the benefit" of students, not religious institutions or activities.⁵⁷ Moreover, he agreed that no direct benefit was assured to any participating school, and that any cost-savings and curriculum expansion benefits religious schools might receive were incidental to parents choosing to provide their children with an education at those schools.⁵⁸ The court also found support for its conclusion from the Wisconsin Supreme Court's decision that held that Wisconsin's similar § 6 did not prohibit Milwaukee's Parental Choice Scholarship Program, a program with similar legal structure to Indiana's program.⁵⁹ The court also expressed concern that interpreting Article 1, § 6 to prohibit the Choice Scholarship program would cast doubt on the constitutionality of the many other long-standing state programs whereby taxpayer funds are ultimately paid to religious institutions by way of individual choice.⁶⁰

Finally, the Plaintiffs argued that the program is contrary to the Article 8, §1 mandate of a general and uniform system of common schools, in that the General

Assembly was in essence funding "a parallel and competing system of private schools"⁶¹ that was not "uniform," "equally open to all," and "free of charge."⁶²

The State argued that the General Assembly is empowered under the first clause of Article 8, §1 to encourage "intellectual . . . improvement" "by all suitable means" to fund private school education *in addition to* providing for a general and uniform system of common schools.⁶³ The General Assembly has determined that the Choice Scholarship program is a "suitable means" to improve the quality of education for all Indiana students.⁶⁴ The State further recounted the long history of the Indiana legislature funding private schools before *and after* the ratification of the 1851 constitution.⁶⁵

The Court held that the Choice Scholarship program also does not violate Article 8, §1 of the Indiana constitution.. Citing Indiana Supreme Court precedent in *Bonner ex rel. Bonner v. Daniels*⁶⁶ (a 2009 case), the court deferred to the General Assembly's authority under the constitution to set education policy and confirmed that the two duties under §1 exist separately and that the second duty (to provide general and uniform common schools) should not be seen as the only means to carry out the first duty (to encourage moral, intellectual, scientific and agricultural improvement).⁶⁷ The court noted that "[s]hortly after the adoption of the 1851 Indiana Constitution, the General Assembly created the Indiana public school system, but did not reverse the longstanding policy of financing private schools."⁶⁸ Thus, the court concluded that Article 8, §1 authorizes the General Assembly to provide educational options outside of the public school system, and that the Choice Scholarship program did not violate the Indiana constitution.

So having lost in the trial court, Plaintiffs filed a Notice of Appeal with the Indiana Court of Appeals on January 20, 2012.⁶⁹ Regardless of the outcome in the Court of Appeals, the constitutionality of the Choice Scholarship program will ultimately be decided by the Indiana Supreme Court.

V. Conclusion

With the passage of the 2011 reform legislation, Indiana has become the nation's leader in education reform. Indiana has done in bold scope what other states have done, if at all, in rather limited measures. In so doing, Indiana is challenging our education system to deliver a better quality product to the marketplace and its consumers: the parents and schoolchildren of our state. More families than ever will have real choice in the education that is best for their children. Schools now have strong incentives to improve and the tools to change and adapt to make those improvements. At the same time, elementary and secondary public school funding is now 56% of the entire state budget, the highest percentage of any state in the nation.⁷⁰

Yesterday, February 9, 2012, Indiana's commitment to comprehensive education reform was rewarded by the federal government when it was announced that Indiana is one of the first states to be granted a federal waiver from certain requirements of the federal No Child Left Behind law. Indiana and the other nine states granted waivers are now free, in the words of President Obama, "to continue making reforms that are best for them."⁷¹

I mentioned at the outset the papers of fellow-Questers, Sherrill Colvin and Pat Michaels, and I think it is appropriate to end with quotes from the conclusions of each of their papers.

Sherrill concluded, in his 2003 paper:

The proper goal of education reform is not to remove a few children from failing schools, but to create the opportunity for all children to receive a quality education. For that to succeed, we'll need a panoply of approaches -- that will include vouchers, but also more resources for our public schools, and significant and promising innovations, such as the new software and charter schools.

In his 1995 paper, Pat concluded:

If quality education in America is to improve, the system must be subjected to the economic dictates of the marketplace. Competition, as a natural market force, must be encouraged. Goals and standards should be established, and scrutinized closely, and results should be evaluated closely and frequently. Choice is an essential tool in this process.

I'm happy to say, gentlemen, that the State of Indiana has heard you and responded in the affirmative.

So to answer the question, "Have we tossed the baby out with the bathwater?" I say, No! The baby is safe in the tub, the plug has been removed and the bathwater is draining.

David R. Steiner

Quest Club

Friday, February 10, 2012

End Notes

-
- ¹ Indiana Department of Education, "Putting Students First", www.doe.in.gov/idoep/putting-students-first/putting-students-first, searched February 4, 2012
- ² *Ibid.*
- ³ IC 20-28-11.5-1, *et seq.*
- ⁴ See IC 20-28-6-7.5 and IC 20-28-7.5-1, *et seq.*
- ⁵ See IC 20-28-9-1(b)
- ⁶ See IC 20-28-7.5-7; see also IC 20-29-6-4.7
- ⁷ IC 20-28-9-1(b)
- ⁸ IC 20-28-9-1(c)
- ⁹ IC 20-28-9-1(f)
- ¹⁰ IC 20-29-6-4.5(a)
- ¹¹ IC 20-29-6-4.7(b)
- ¹² See IC 20-28-6-2(a)(3)(E), IC 20-29-6-4(a), and IC 20-29-6-7(10)
- ¹³ See IC 20-29-6-7
- ¹⁴ IC 20-29-6-8 and IC 20-29-6-15(b)
- ¹⁵ IC 20-29-6-13(b) and IC 20-29-6-18(b)
- ¹⁶ IC 20-29-7-1(b)
- ¹⁷ IC 20-24-1-9
- ¹⁸ IC 20-24-2.1-1
- ¹⁹ IC 20-24-2.2-1, *et seq.*
- ²⁰ IC 20-24-3-5.5(b)
- ²¹ See IC 20-24-2.2-3
- ²² IC 20-24-2.2-4
- ²³ IC 6-3-2-22
- ²⁴ See IC 20-51-1-4.5
- ²⁵ Plaintiffs' Brief in Support of Motion for Summary Judgment (hereinafter "Plaintiffs' SJ Brief") , p. 1, filed October 3, 2011 in *Meredith, et al. v. Daniels, et. al.*, Marion Superior Court, Cause No. 49D07-1107-PL-025402 (hereinafter the "School Voucher Case")
- ²⁶ See IC 20-51-1-4.7
- ²⁷ IC 20-51-4-3
- ²⁸ See IC 20-51-4-1
- ²⁹ IC 20-51-4-3(d) and (e)
- ³⁰ See IC 20-51-4-9
- ³¹ IC 20-51-4-4
- ³² IC 20-51-4-2
- ³³ Editorial, "Will vouchers achieve what the state hopes they will?", *The News-Sentinel*, December 16, 2011, Page 8A.
- ³⁴ Brown, Lindsey, "Indiana's School Voucher Program is the Envy of America", <http://www.insideindianabusiness.com/contributors.asp?id=2124>, searched December 2, 2011.
- ³⁵ Indiana Department of Education Voucher Data for 2011-2012 provided by Julie Hollingsworth (hereinafter the "2011-2012 Voucher Data")
- ³⁶ Indiana Department of Education, 2011 Performance Reports, <http://www.doe.in.gov/improvement/accountability/annual-school-performance-reports>, searched February 2, 2012 (hereinafter "2011 Performance Reports")
- ³⁷ Sec. 9.B., House Enrolled Act 1001 (2011)
- ³⁸ 2011 Performance Reports
- ³⁹ 2011-2012 Voucher Data
- ⁴⁰ See School Voucher Case
- ⁴¹ Institute for Justice website, <http://www.ij.org/about>, searched February 6, 2012
- ⁴² Plaintiffs' SJ Brief, p. 16
- ⁴³ *Ibid.*, pp. 19-20

-
- ⁴⁴ Memorandum of State Defendants In Opposition to Plaintiffs Motion for Summary Judgment filed December 5, 2011 (hereinafter "State's Memorandum", p. 3
- ⁴⁵ Ibid., p. 4
- ⁴⁶ Brief of Defendant-Intervenors in Support of Their Motion for Summary Judgment filed October 31, 2011 (hereinafter "DI MSJ Brief"), p. 6
- ⁴⁷ State's Memorandum, pp. 8-9; DI MSJ Brief, pp. 6-7
- ⁴⁸ Order Granting Summary Judgment to Defendants and Defendant-Intervenors dated January 13, 2012 (hereinafter "SJ Order"), pp. 2-3
- ⁴⁹ Ibid., p. 5
- ⁵⁰ Ibid, pp, 5-6
- ⁵¹ *Embry v. O'Bannon*, 798 N.E.2d 157 (Ind. 2003)
- ⁵² Plaintiffs' SJ Brief, p.24
- ⁵³ Ibid., p. 25
- ⁵⁴ State's Memorandum, p. 14; DI MSJ Brief, p.13
- ⁵⁵ State's Memorandum, pp 16-20; DI MSJ Brief, p.13
- ⁵⁶ State's Memorandum, pp 20-22
- ⁵⁷ SJ Order, p.7
- ⁵⁸ Ibid., p. 8
- ⁵⁹ Ibid.
- ⁶⁰ Ibid., p.9
- ⁶¹ Plaintiffs' SJ Brief, p. 32
- ⁶² Ibid., p. 33
- ⁶³ State's Memorandum, pp 25-26
- ⁶⁴ Ibid., p. 28
- ⁶⁵ Ibid., pp. 29-36
- ⁶⁶ *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516 (Ind. 2009)
- ⁶⁷ SJ Order, p. 4
- ⁶⁸ Ibid.
- ⁶⁹ See *Meredith, et al. v. Daniels, et al.*, Case No. 49A04-1201-PL-00025
- ⁷⁰ Governor Mitch Daniels, State of the State Address given January 10, 2012
- ⁷¹ News Releases from the Indiana Department of Education and The White House dated February 9, 2012, <http://www.insideindianabusiness.com/newsitem.asp?id=52138>, searched February 9, 2012