



The Indiana Choice Scholarship Program: Legal Challenges, Program Expansion, and Participation

Katherine Cierniak, Rebecca Billick and Anne-Maree Ruddy

February 2015

INTRODUCTION

In 2011, Indiana's governor signed House Enrolled Act 1003 (HEA 1003; Public Law 92-2011) establishing, at the time, the nation's largest school voucher program in terms of student eligibility (Friedman Foundation, 2014). While 13 states have voucher programs, Indiana is one of only a few states with a voucher program open to students statewide (Friedman Foundation, n.d.). Florida, Louisiana, Ohio, and Wisconsin also offer statewide voucher programs, as described in the Center of Evaluation and Education Policy's companion to this brief (see Cierniak, Stewart, & Ruddy, forthcoming 2015). Indiana's program, called Indiana Choice Scholarship (ICS), continues to expand, with increases in the number of scholarships awarded occurring each year since the program's inception. The number of scholarships awarded increased from 3,911 in 2011 – 2012 to 9,139 in 2012 – 2013, an increase of approximately 134 percent. The following school year, 2013 – 2014, 19,809 students participated in the program, an increase of 116.8 percent from the prior year (Indiana Department of Education [IDOE], 2014a). Since 2011, significant changes have been made to Public Law 92-2011 and the constitutionality of the ICS program has been upheld through the 2013 *Meredith v. Pence* court decision. Given this

dramatic rise in statewide voucher programs and, in turn, the relevance of Indiana's program in this national context, a review of the ICS program and its recent changes is warranted.

School choice programs can take a variety of forms, from the provision of various public school options, such as charter schools, to programs which provide funds to offset the cost of students' attendance at a private school. The provision of funds is most often accomplished in two ways: through the provision of state educational funds to be used for tuition in private schools or through tax-credit scholarships. Vouchers typically refer to government provision of funds for parents to send their child(ren) to a private school rather than their assigned public school. While Indiana has both a tax-credit scholarship and voucher program, this brief will only highlight the ICS voucher program. In reporting on ICS, this brief draws upon data obtained through documents on court decisions as well as information provided by the IDOE via publicly available reports and unpublished raw data obtained through data requests. This brief will first provide an overview of the ICS program, and then describe the Indiana Supreme Court's *Meredith v. Pence* 2013 decision, which upheld the constitutionality of the law. Next, changes to public law and eligibility requirements that



impacted the implementation of ICS will be detailed. Additionally, data on the ICS program's first three years of implementation will be presented. Finally, the implications of the changes in ICS will be explored.

OVERVIEW OF THE ICS PROGRAM

ICS was established in 2011 under House Enrolled Act 1003-2011. The ICS program provides funds for students so that they are able to attend a participating **Choice School**. Choice Schools are those which have been approved by the IDOE to participate in the ICS program. At the time it launched, ICS was considered one of the most expansive statewide voucher programs in the nation, largely because eligibility for the program was determined by income, rather than attendance at a failing school (“So you want to go to a private school?”, n.d.). Indiana Choice Scholarships are designed to cover the price of tuition and fees at choice schools for students who meet designated eligibility criteria. Indiana awards two different scholarship amounts to students: 90 percent awards and 50 percent awards. The 90 percent award provides up to \$4,800 for students in grades K through 8 in the 2014 – 2015 school year. The program has expanded following 2013 legislation, which introduced additional eligibility pathways and eliminated the cap on the number of students who can participate in the program, which had been set at 15,000 for the 2012 – 2013 school year (IDOE, 2014a).

MEREDITH V. PENCE

In 2013, the Indiana Supreme Court ruled on the case *Meredith v. Pence*, which challenged the constitutionality of the ICS program's use of public funds to support student attendance at private religious schools in Indiana. Challenges to school choice programs at the federal level have historically referenced the First Amendment to the United States Constitution, which states that “Congress shall make no law respecting an estab-

lishment of religion, or prohibiting free exercise thereof,” often referred to as the Establishment Clause. The 1983 federal case *Mueller v. Allen* ruling set a precedent for subsequent federal cases in which the element of “private choice” as related to school selection began to be used to determine the constitutionality of programs in which religious institutions receive public funds. Additionally, in the 2002 federal case *Zelman v. Simmons-Harris*, the United States Supreme Court determined that the voucher program in Cleveland is constitutional because it meets two specific criteria. First, by providing assistance to low-income children in failing schools, the program serves a valid, secular purpose. Second, the program was deemed to be Constitutional because the funds are given to the parents rather than the schools, and parents exercise a choice in using to the funds to attend a religious or non-sectarian private school. Following the *Zelman* case, cases that challenged the constitutionality of voucher programs at the state level increased in frequency (Billick, 2014, personal communication; Eckes, 2014, personal communication). The Center for Evaluation and Education Policy's (CEEP) 2011 brief provides further details of the legal precedents for the contribution of public funds to religious schools, particularly in relation to school choice programs at the state and federal level (Billick, Hiller, & Spradlin, 2011).

On March 26, 2013, the Indiana Supreme Court ruled on *Meredith v. Pence*¹ and upheld the Choice Scholarship Program as fully compliant with the Constitution of the State of Indiana. The Plaintiffs² challenged the constitutionality of Indiana's Choice Scholarship statutes based on three specific sections of Indiana's Constitution: (1) Article 8, Section 1; (2) Article 1, Section 4; and (3) Article 1, Section 6.

1 984 N.E.2d 1213 (Ind.2013)

2 Teresa Meredith, Dr. Edward E. Eiler, Richard E. Hamilton, Sheila Kennedy, Rev. Michael Jones, Dr. Robert M. Stwalley III, Karen J. Combs, Rev. Kevin Armstrong, Deborah J. Patterson, Keith Gambill, and Judith Lynn Failer.

Article 8, Section 1 of the Indiana Constitution 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 improvements; *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” (Ind. Const. art. 8, §1, emphasis added by the Indiana Supreme Court in *Meredith v. Pence*). In their arguments, the Plaintiffs suggested that, by permitting parents to choose to send their child to a school outside the Common Schools, the General Assembly violated Article 8, Section 1. The Plaintiffs argued that the second directive of providing public schools supersedes the first directive (*Meredith v. Pence*, p. 8). In its opinion, the Indiana Supreme Court made clear that the General Assembly has two distinct duties: (1) *to encourage* moral intellectual, scientific, and agricultural improvement; and (2) *to provide* for a general and uniform system of open common schools without tuition. Based on a review of both the 1851 and 1816 Indiana Constitutions, the Indiana Supreme Court determined that these two duties are “separate and distinct” imperatives of the General Assembly (*Meredith v. Pence*, 984 N.E.2d at 1222). Thus, the Choice Scholarship Program, by being a suitable means for encouraging the education of Indiana’s children without any evidence of hindering the parallel uniform system of schools, is within the purview of the General Assembly’s authority and duties and does not violate Article 8, Section 1.

Article 1, Section 4 of the Indiana Constitution provides: “No person shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent” (Ind. Const. art. 1, §4). The Indiana Supreme Court indicated that Article 1, Section 4 serves the narrow purpose of “prohibiting compulsion of

individuals related to attendance, erection, or support of places of worship or ministry” (*Meredith v. Pence*, 984 N.E.2d at 1226). The Court went on to explain that, according to the Indiana Constitution and Indiana jurisprudence, an Indiana citizen does not “support” a place of worship or ministry simply by paying general taxes which, through neutral legislation, may end up assisting a program organized by a church.

Article 1, Section 6 of the Indiana Constitution provides: “No money shall be drawn from the treasury, for the benefit of any religious or theological institution” (Ind. Const. art. 1, §6). In order to determine whether the Choice Scholarships run afoul of Article 1, Section 6, the Indiana Supreme Court analyzed Article 1, Section 6 in two subsections: (A) whether Indiana’s Choice Scholarships are for the benefit of religious or theological institutions; and (B) whether schools eligible for vouchers under Indiana’s Choice Scholarships are “religious or theological institutions” as envisioned by the drafters of Article 1, Section 6.

In determining whether a government expenditure in the form of a choice scholarship violates subsection A of Article 1, Section 6, the Indiana Supreme Court held that the test is not whether any funds trickle into religious or theological institutions or even whether funds *substantially* benefit a religious or theological institution. Rather, the critical question, with regard to subsection A of Article 1, Section 6, is whether or not an expenditure *directly* benefits a religious or theological institution: “We find it inconceivable that the framers and ratifiers intended to expansively prohibit any and all government expenditures from which a religious or theological institution derives a benefit—for example, fire and police protection, municipal water and sewage service, sidewalks and streets, and the like. Certainly religious or theological institutions may derive relatively substantial benefits from such

municipal services. But the primary beneficiary is the public, both the public affiliated with the religious or theological institution, and the general public. Any benefit to religious or theological institutions in the above examples, though potentially substantial, is ancillary and indirect” (*Meredith v. Pence*, 984 N.E.2d at 1227). The Court went on to conclude that the principal actors and beneficiaries of the Choice Scholarships are lower-income Indiana families with school-age children, not the schools nor the state.

In determining whether a government expenditure in the form of a choice scholarship violates subsection B of Article 1, Section 6, the Indiana Supreme Court referred to the historical context of the Indiana Constitution. When the Indiana Constitution was drafted, the primary sources of education for Indiana’s children were private or religious entities. These entities were financed, in part, from taxes and proceeds from public school funds, and “religious subject matter was an essential component of such general education” (*Meredith v. Pence*, 984 N.E.2d at 1230). Thus, “while certainly favorable to advancing the role of government in providing education through Common Schools, the framers did not manifest an intent to exclude religious teaching from such publicly financed schools.” *Id.* The Court went on to hold that the drafters of the Indiana Constitution did not intend to include primary and secondary education facilities under the umbrella of “religious and theological institutions.” *Id.*

HOUSE ENROLLED ACT 1003-2013: MAJOR POLICY CHANGES

Just two years after the ICS program was created, and days after the Indiana Supreme Court ruling on *Meredith v. Pence*, Choice Scholarship supporters advocated for the passage of HEA 1003-2013 (Public Law 211-2013), the same bill number as the law passed in 2011. This law modified the ICS program in a number of ways. Chief among them,

the 2013 iteration of HEA 1003 made some adjustments to income eligibility requirements and also expanded the number of avenues through which students become scholarship-eligible.

ELIGIBILITY

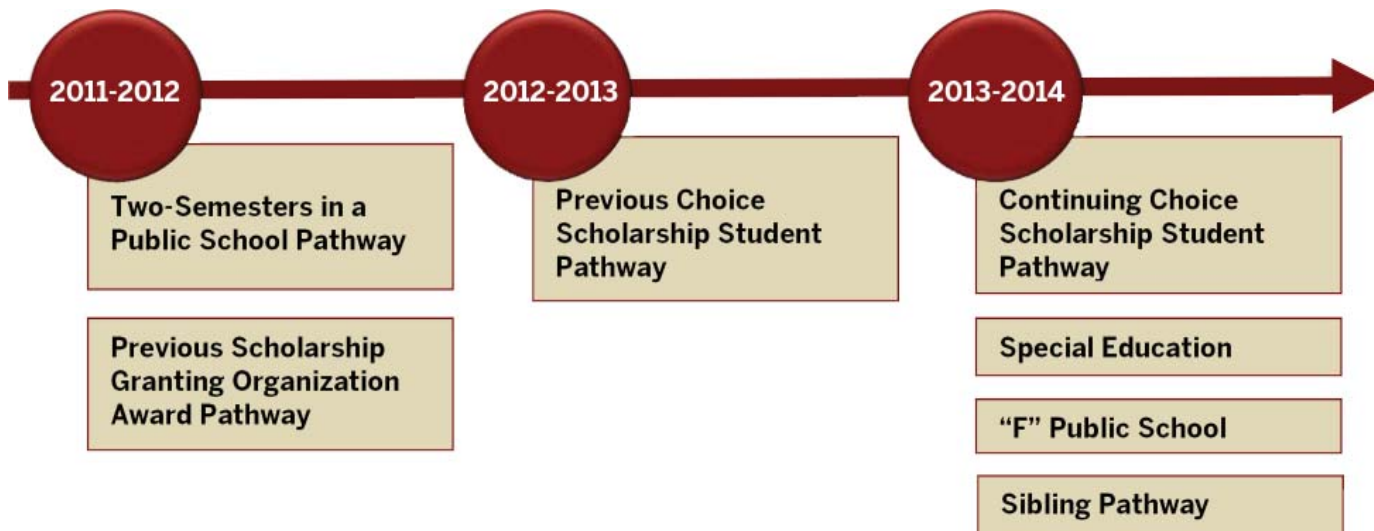
The IDOE identifies three basic requirements for students to participate in the Choice Scholarship Program: they must have legal settlement in Indiana, be between the ages of five and 22 (no later than August 1 of the school year), and be accepted for enrollment into a participating Choice Scholarship School. Choice Scholarship award payments are made to the Choice School on the student’s behalf once each semester (IDOE, 2014a). Beyond these three requirements, the state of Indiana has identified multiple pathways through which students are now eligible to participate in the ICS program (see Figure 1).

In the first year of the program, 2011 – 2012, two eligibility pathways existed for students to receive a scholarship. The first was for students who had spent at least **two semesters in a public school** (grades 1 through 12), including charter schools, immediately preceding the first semester in which the Choice Scholarship was received. Additionally, the student was required to be a member of a household with an annual income equal to or below 100 percent of the federal reduced price lunch guideline to receive the 90 percent award, or below 150 percent of the reduced price lunch guideline to receive the 50 percent award. The second pathway was for students who had received a **tax-credit scholarship** through a Scholarship Granting Organization (SGO)³ in a prior school year (IDOE, 2014a).

With the start of the 2012 – 2013 school year, a third pathway became available, under the

³ A scholarship granting organization is eligible for certification from the Indiana Department of Education if it is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and is organized at least in part to grant school scholarships.

FIGURE 1. INDIANA CHOICE SCHOLARSHIP (ICS) ELIGIBILITY PATHWAYS



Source: Center for Evaluation and Education Policy

provisions of the original statute. This pathway, termed the **Previous Choice Scholarship Student Pathway** by the IDOE (2014a), enabled those who had received a scholarship in the first year of the program to receive the scholarship again. Additionally, it was stipulated that for the 2013 – 2014 school year, students are also eligible for a Choice Scholarship if they have received a Choice Scholarship in a school year not immediately prior to the one in which they are applying for a scholarship. Changes in House Enrolled Act 1003 in 2013 introduced additional pathways through which a student could receive a Choice Scholarship. These new pathways include the **Special Education pathway**, **"F" public school pathway**, and the **Sibling pathway**. Additionally, the **Continuing Choice Scholarship** student pathway was established and distinguished from the Previous Choice Scholarship pathway. The Continuing Choice Scholarship pathway is for students who have received a scholarship and attended an eligible choice school in the year *immediately preceding* the one for which they are applying; while eligibility through the Previous Choice Scholarship pathway is determined by *continuous* participation in the program and enrollment at a participating school. Additionally, students who are identified as having a disability and who have

an Individualized Education Program (IEP) are now eligible for the Choice Scholarship through the Special Education pathway. For both the Continuing Choice and Special Education pathways, a student must be a member of a household with an annual income equal to or below 200 percent of federal reduced price lunch program. In addition to the special education pathway, the "F" public school pathway was introduced in 2013. Through this pathway, students who would be required to attend an "F" public school because of their residence are eligible for a Choice Scholarship. Additionally, the student must be a member of a household with an income equal to or below 150 percent of the reduced price lunch guidelines. Finally, siblings of students who have received either a Choice Scholarship or a SGO scholarship in a preceding school year are now eligible for the Choice Scholarship via the Sibling pathway. According to the IDOE, for the purposes of the scholarship, "the term 'sibling' shall mean one of two or more individuals having one *or* both parents, guardians or custodians in common" (IDOE, 2014a, p. 5). A blood relationship between individuals is not required. Students must be members of a household with an annual income equal to or below 150 percent of the amount to qualify for reduced price lunch.

INCOME ELIGIBILITY, AWARD TYPE, AND AMOUNT

Scholarships are awarded according to a student's financial need. Before the 2013 legislative session, the scholarship value for primary school students was capped at \$4,500 (IND CODE § 20-51-4-4). HEA 1001-2013 increased the scholarship amount to \$4,700 for the 2013 – 2014 school year and to \$4,800 for 2014 – 2015 (IDOE, 2014a; IDOE, 2014b). Students cannot receive scholarships with values greater than a private school's tuition. High school students will continue to receive the maximum allowable scholarship value (either the full 50 percent award or the full 90 percent award), which cannot exceed the school's tuition rate. For students in Grades 9 – 12, the scholarship amount is based on the per-pupil state funding for the student's school corporation of residence. The average award amount for high school students receiving up to the 90 percent award was approximately \$5,550 in 2012 – 2013 and approximately \$5,800 in 2013 – 2014 (IDOE, 2014a). Given the factors which determine scholarship amounts, the specific amount students receive varies according to financial need, grade level, and the tuition charged by participating private schools.

Whether a student is eligible for the 90 percent scholarship or the 50 percent scholarship is determined by the federal income guidelines for reduced price lunch, which are determined by the federal poverty guidelines. For the 2014 – 2015 school year, the U.S. Department of Education set the reduced price lunch guideline for a family of four at \$44,123 (pre-tax). This amount is indicated as 100 percent of reduced lunch eligibility by the IDOE, and the 150 percent reduced price lunch limit for a similarly sized family was set at \$66,184 (see Table 1). In Indiana, students who are from households with income equal to or less than 100 percent of the amount for reduced price lunch guideline are eligible to

receive the 90 percent scholarship award (see Table 1). Students from households whose income is up to 150 percent of the reduced price lunch guideline are eligible for the 50 percent award.

However, beginning in the 2013 – 2014 school year, students who are eligible for the ICS program through the Continuing Choice or Special Education pathways remain eligible for the 50 percent scholarship if they are from households with income up to 200 percent of the reduced price lunch guideline. Additionally, an “earning out” amendment was introduced to HEA 1003 in 2013. To address the possibility of earning out of the program, HEA 1003 was revised to include a provision that allows current ICS students whose family income increases beyond 150 percent reduced price lunch status to remain eligible, regardless of pathway, as long as the household income remains below the 200 percent limit of reduced price lunch status (IND CODE § 20-51-4-2.5, 2013). In other words, this amendment primarily impacts students who receive a scholarship through the Previous Choice, Previous SGO, Two Semesters in Public School, F-School, and Sibling Pathways.

2013 – 2014 PARTICIPATION IN THE ICS PROGRAM

STUDENT PARTICIPATION BY PATHWAY

In 2013 – 2014, the pathway through which the highest percentage of students received a Choice Scholarship was the Continuing Choice pathway (IDOE, 2014a). Approximately 36 percent of Choice Scholarship recipients, over 7,000 students, participated in the program through this pathway (see Figure 2). Another 23 percent, or approximately 4,600 students, received a scholarship through the Two Semesters in a Public School pathway. The next highest percentage of ICS students participated in the program through the newly introduced Sibling pathway (approx-

**TABLE 1. CHOICE SCHOLARSHIP PROGRAM INCOME LIMITS BY HOUSEHOLD SIZE
2014 – 2015**

	100% of Reduced Lunch Eligibility	150% of Reduced Lunch Eligibility	200% of Reduced Lunch Eligibility
Persons in household	Annual household income limit for a 90% Choice Scholarship¹	Annual household income limit for a 50% Choice Scholarship²	Annual household income limit for a 50% Choice Scholarship³
1	\$ 21,590	\$ 32,385	\$ 43,179
2	\$ 29,101	\$ 43,651	\$ 58,201
3	\$ 36,612	\$ 54,918	\$ 73,223
4	\$ 44,123	\$ 66,184	\$ 88,245
5	\$ 51,634	\$ 77,451	\$ 103,267
6	\$ 59,145	\$ 88,717	\$ 118,289
7	\$ 66,656	\$ 99,984	\$ 133,311
8	\$ 74,167	\$ 111,250	\$ 148,333

Note:

1. For a household size of nine (9) or more, add \$7,511 to the annual limit for each additional member for a 90% scholarship.
2. Add \$11,267 to the annual limit for each additional member for a 50% scholarship.
3. Add \$15,022 to the annual limit for each additional member for a 50% scholarship.

Source: IDOE, 2014b

SCHOLARSHIP AMOUNTS

For the 2014-2015 school year, the value of the Choice Scholarship is the lesser of three amounts:

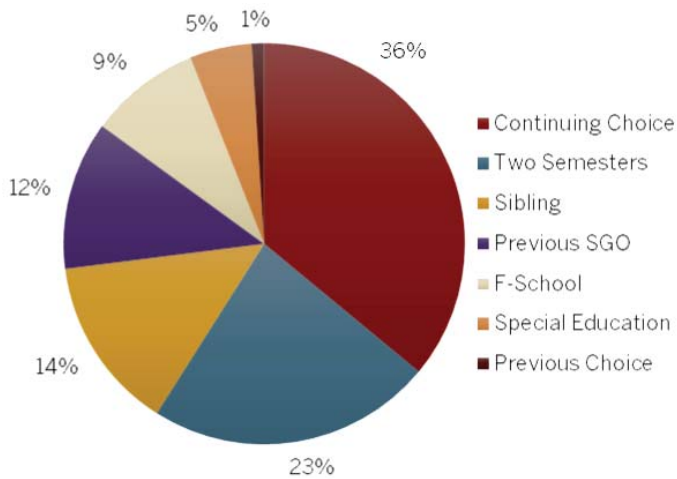
1. Tuition and fees charged to the student at the eligible school
2. \$4,800 for grades 1-8
3. An amount based off the per-student state funding for the student’s school corporation of residence, determined as follows:
 - 90% of funding formula amount if household income is up to 100% of Reduced Lunch;
 - 50% of formula amount if household income is up to 100% of Reduced Lunch;
 - 50% of formula amount if household income is up to 200% of Reduced Lunch eligibility if the student is eligible under the Continuing Choice Scholarship OR Special Education pathway.

Source: IDOE, 2014b

mately 14% or 2,730 students), closely followed by the previous SGO pathway (12%; 2,400). Nine percent of ICS students (approximately 1,800 students) received a scholarship through the F-school Pathway, and five percent through Special Education Pathway (approximately 1,000 students). Only one percent of students participated

through the Previous Choice pathway (approximately 100 students). With Continuing Choice considered as an original pathway, the IDOE (2014a) reports that 14,196 students (approximately 72 percent) participated in the ICS program through the original pathways. Approximately 28 percent of students (5,613

FIGURE 2. PARTICIPATION IN THE ICS PROGRAM BY PATHWAY, 2013 – 2014



Source: IDOE, 2014a

total) received a Choice Scholarship through one of the expanded pathways established in 2013. In other words, in 2013 – 2014, the vast majority of students received Choice Scholarships through one of the original pathways (IDOE, 2014a).

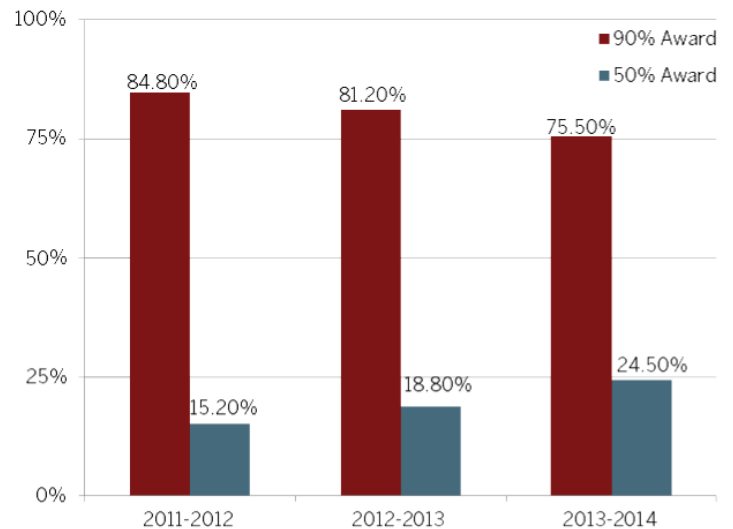
STUDENT PARTICIPATION BY AWARD TYPE

According to the IDOE (2014a), for the 2013 – 2014 school year, 75.5 percent of participating students met the income criteria to qualify for a 90 percent scholarship award, and 24.5 percent of students met the income guidelines for receiving a 50 percent scholarship award (see Figure 3). As seen in Figure 3, the percentage of students receiving the 90 percent award has decreased with each year of the program, with the percentage of students who receive the 50 percent award increasing each year. Despite these changes, it is important to note that the number of students receiving 90 percent scholarships doubled from 2012 – 2013 to 2013 – 2014, increasing from 7,420 in 2012 – 2013 to 14,960 in 2013 – 2014 (see Table 2). Additionally, the number of students receiving 50 percent scholarships rose from 1,719 in 2012 – 2013 to 4,849 in 2013 – 2014 (IDOE, 2014a).

VOUCHER SCHOOL AFFILIATION

Given that the Indiana Supreme Court’s *Meredith v. Pence* decision established that it is permissible by law for the ICS program to provide vouchers for private religious schools, it is instructive to examine the religious affiliation of the schools which enroll ICS students. Given limitations on available data, information on the funding allocated to religious schools is not provided in this brief. Rather, this brief focuses on the religious affiliation of the schools participating in the program, as a means of quantifying the participation of religious schools in the ICS program. During the 2013 – 2014 school year, 313 schools were approved by the IDOE to participate in the ICS program, and the IDOE categorized each of these schools according to religious affiliation (IDOE, 2014c). In this brief, the IDOE classifications of schools are used, with the exception of the “Other Christian” category. This classification encompasses eight of the IDOE categories for the religious affiliation of ICS schools.

FIGURE 3. PERCENT CHOICE SCHOLARSHIP RECIPIENTS BY AWARD TYPE



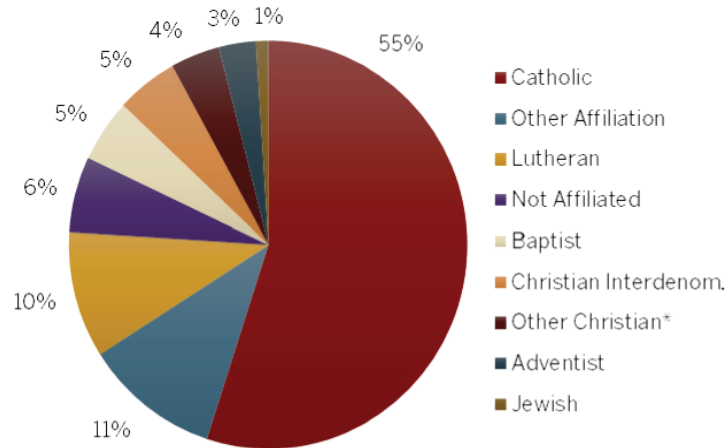
Source: IDOE, 2014a, p.17

TABLE 2. NUMBER AND PERCENT OF ICS AWARDS BY TYPE IN FIRST THREE YEARS

	2011-2012	2011-2012 Percent	2012-2013	2012-2013 Percent	2013-2014	2013-2014 Percent
90% Award	3,315	84.8%	7,420	81.2%	14,960	75.5%
50% Award	596	15.2%	1,719	18.8%	4,849	24.5%
Total	3,911	100%	9,139	100%	19,809	100%

Source: IDOE, 2014a, p. 17

FIGURE 4. ICS SCHOOLS BY RELIGIOUS AFFILIATION, 2013 – 2014



Source: IDOE, 2014c

As illustrated in Figure 4, approximately six (6) percent of ICS schools are categorized by the IDOE as not affiliated with a religious institution. In other words, over 90 percent of voucher schools are considered to be religiously affiliated (IDOE, 2014c).

By far, Catholic schools are the most highly represented among private schools, with approximately 55 percent of ICS schools affiliated with the Catholic Church during the 2013 – 2014 school year (IDOE, 2014c). However, this percentage is lower than the prior year, as Catholic schools comprised 61 percent of ICS schools in 2012 – 2013 (IDOE, 2013). Lutheran schools represented approximately 10 percent of ICS schools in 2013 – 2014, similar to 2012 – 2013 (IDOE, 2013; IDOE, 2014c). Christian interdenominational and Baptist schools each comprised approximately five (5) percent of Choice schools in 2013 – 2014. Three (3) percent of ICS schools in 2013 – 2014 were Seventh Day Adventist Schools (IDOE, 2013;

IDOE, 2014c). Denominations in the “Other Christian” category include Mennonite, Apostolic, Presbyterian Brethren, Episcopal, Community Christian, Christian Reformed/Church of America, and Church of Christ, which represented approximately four (4) percent of Choice schools (IDOE, 2014c). Among ICS schools, two were Jewish schools, comprising approximately one (1) percent of all schools. Additionally, 11 percent of all ICS were categorized as “Other Affiliation,” which was not defined by the IDOE. Finally, six (6) percent of ICS schools in 2013 – 2014 were not affiliated with any religious institution, an increase from three (3) percent the prior school year (IDOE, 2013; IDOE, 2014c).

PROFILE OF THE ICS PROGRAM

Looking at the data on schools and students participating in the ICS program, a picture of the ICS program can be discerned. For instance, the majority of students (75.5%) receive the 90 percent scholarship. Additionally, the pathways primarily utilized by Choice Scholarship students are the Continuing Choice and Two Semesters in a Public School pathways. Finally, 94 percent of ICS schools have some sort of religious affiliation, with Catholic schools representing over half (55%) of all ICS schools.

IMPLICATIONS FOR INDIANA

The implications of the 2013 changes in HEA 1003 and of the *Meredith v. Pence* ruling on the ICS program are that more students are now eligible for the program and that state funds can be used to send students to private religious

schools in accordance with Indiana's constitution. Multiple changes in eligibility criteria expanded the scope of the program as well, providing additional pathways for students to access the program. Some of the most notable changes included the introduction of three **new pathways** (the Special Education, Sibling Pathway, and F School Pathways) as well as relaxed **income requirements**.

With the 2013 changes in HEA 1003, Indiana students are now able to access Choice Scholarships via three entirely new pathways. First, students identified with special needs are now eligible for a voucher through the Special Education pathway. Additionally, students attending schools performing poorly on the Indiana school report card are now able to access the program through the F-School Pathway. Finally, siblings of students who had received either a SGO scholarship or ICS Scholarship are now eligible for the program through the Sibling pathway. In 2013 – 2014, the first year in which these pathways were available for students, approximately 28 percent of ICS students participated through the new pathways, representing 5,613 students total, suggesting that these new pathways have enabled participation in the program to increase. As a point of comparison, this is approximately 1,700 more students than the 3,911 who participated in the ICS program during its first year.

In addition to the introduction of new pathways, the expansion of income eligibility requirements is another likely factor in continued participation increases. Indiana's Choice Scholarship program utilizes the federal reduced price lunch guideline as its reference point for determining income eligibility. In effect, Indiana's 100 percent reduced price lunch guideline is equivalent to 185 percent of the federal poverty guideline. Similarly, Indiana's 150 percent reduced price lunch guideline, used as the cut-off for the 50 percent scholarship, is equivalent to 278 percent of the federal poverty guideline. With the 2013 changes

that increased income eligibility to 200 percent of the reduced price lunch guideline, Indiana students from families whose annual income is equal to or below 370 percent of the federal poverty level are now able to participate in the program. In effect, these changes make Indiana's income eligibility requirements the least restrictive of all statewide voucher programs, and most similar to those of neighboring state Ohio, where students receiving the EdChoice scholarship for low-income students are eligible to receive a 50 percent scholarship until household income exceeds 400 percent of the federal poverty guidelines (Ohio Rev. Code § 3310.032 Sec. E 1-3). In essence, Indiana's program can now reach more students, including students from households with higher incomes, than in previous years.

While there are limited data on how these changes in income requirements impacted participation in the program, the available information suggests that these changes in requirements allow more students to access the program. For the 2013 – 2014 school year, the IDOE (2014a) reported that of the students receiving the 50 percent scholarship through the Continuing Choice and Special Education pathways, that approximately 24 percent, or 492 students total, were from households with annual incomes between 150 and 200 percent of the federal reduced price lunch guideline, a population of students which had previously been ineligible for the program (p. 18).

CONCLUSION

In conclusion, the 2013 *Meredith v. Pence* decision upheld the constitutionality of the ICS program and legislative changes further expanded its reach. Data on 2013 – 2014 participation in the ICS program indicate that the introduction of new pathways enabled over 5,000 students to receive an award, with 28 percent of all ICS students accessing the program through the three newly introduced pathways. Furthermore, the changes in income eligibility requirements also appear to

have increased participation in the program, as more students are receiving 50 percent scholarships than in previous years. Overall, both the addition of new pathways and the expansion of eligibility criteria will likely continue to contribute to increases in participation in the ICS program.

Indiana's program is important to consider not only because of its impact in the state, but also because of its significance in the national context. In CEEP's national policy brief (forthcoming) which accompanies this brief on Indiana, statewide voucher programs throughout the U.S. are outlined. As detailed in the companion brief, since 2011, the year in which the ICS program was established, Wisconsin and Louisiana launched statewide voucher programs and Ohio expanded its existing statewide Educational Choice program. Additionally, the constitutionality of the North Carolina Opportunity Scholarship Program continues to be debated in that state's courts. While voucher programs have operated in the U.S. for over 20 years, there has been considerable growth in the number and types of programs in recent years as well as numerous rulings on the constitutionality of these programs in Indiana as well as in other states. The ICS program is situated within this national context.

SUGGESTED CITATION

Cierniak, K., Billick, R. and Ruddy, A.M. (2015). *The Indiana Choice Scholarship Program: Legal Challenges, Program Expansion, and Participation*. Bloomington, IN: Center for Evaluation & Education Policy.

ACKNOWLEDGEMENTS

The authors would like to thank Michael A. Poletika and Terry E. Spradlin for the preliminary work upon which this brief is based. We would also like to thank CEEP staff for their assistance, Kathleen Lorenzen and Rebekah Sindors for

formatting, Stephen Hiller for assisting with the design of tables and figures, LeeAnn Sell for fact checking, and Cate Racek for final edits and proofing. We would also like to thank Suzanne Eckes and John Hitchcock for their document review and edit suggestions.

ABOUT THE AUTHORS

Katherine Cierniak (kciernia@indiana.edu) is a Graduate Research Assistant at the Center for Evaluation & Education Policy. Her research interests include international education, urban education, and teacher education.

Rebecca Billick (rebecca@rebeccabillick.com) is the owner of Billick Mediation & Family Law with offices in Northwest Indiana and Chicago. She currently serves as a parenting coordinator, mediator, guardian ad litem, and attorney focusing on family advocacy.

Anne-Maree Ruddy (aruddy@indiana.edu) is the Director for Education Policy and a Senior Research Associate at the Center for Evaluation & Education Policy. Her research focuses on analysis of policy, its development and implementation.

RESOURCES

Ohio Department of Education. (n.d.). *EdChoice Scholarship Program*. Retrieved from <http://education.ohio.gov/Topics/Other-Resources/Scholarships/EdChoice-Scholarship-Program>

Ohio Department of Education. (2014b). *Ed Choice Scholarship Program fact sheet*. Retrieved from http://education.ohio.gov/getattachment/Topics/Other-Resources/Scholarships/EdChoice-Scholarship-Program/2014_2015_ECFactSheet.pdf.aspx

REFERENCES

- Billick, R., Hiller, S., and Spradlin, T. (2011). *School choice issues in Indiana: Sifting through the rhetoric*. Bloomington, IN: Center for Evaluation and Education Policy (CEEP).
- Constitution of the State of Indiana. Retrieved from <http://www.law.indiana.edu/uslawdocs/inconst.html>
- Friedman Foundation for Educational Choice. (2014). *The ABCs of school choice: The comprehensive guide to every private school choice program in America* (2014 ed.). Indianapolis: The Friedman Foundation for Educational Choice.
- Friedman Foundation. (n.d.). *School choice programs*. Retrieved from <http://www.edchoice.org/SchoolChoice/School-Choice-Programs>
- Indiana Department of Education. (2013). *CEEP Data Request Final*. [Excel spreadsheet]. Unpublished raw data.
- Indiana Department of Education [IDOE] Office of School Finance. (2014a). *Choice Scholarship Program annual report: Participation and payment data 2011–2012, 2012–2013, & 2013–2014*. Retrieved from <http://www.doe.in.gov/sites/default/files/choice/choice-scholarship-program-annual-report-061614.pdf>
- Indiana Department of Education [IDOE]. (2014b). *Choice Scholarship Program household income limits: 2014–2015 school year*. Retrieved from <http://www.doe.in.gov/sites/default/files/choice/choice-income-guidelines-2014–2015.pdf>
- Indiana Department of Education. (2014c). *CEEP Data Request – ICS School Affiliation 2013–2014*. [Excel spreadsheet]. Unpublished raw data.
- IND CODE 20-51-1-4.7. (2013). “Eligible School” <https://iga.in.gov/legislative/laws/2014/ic/titles/020/articles/051/>
- IND CODE 20-51-4-4. (2013). “Maximum amount of scholarship” <https://iga.in.gov/legislative/laws/2014/ic/titles/020/articles/051/>
- IND CODE 20-51-4-2.5 (2013). “Eligibility of individual whose income increases” <https://iga.in.gov/legislative/laws/2014/ic/titles/020/articles/051/>
- Louisiana Department of Education. (n.d.). *Louisiana Scholarship Program*. Retrieved from <http://www.louisianabelieves.com/schools/louisiana-scholarship-program>
- Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013).
- Mueller v. Allen*, 463 U.S. 464 (1983).
- Ohio Rev. Code Ann. §3310.032 (2013).
- So you want to go to a private school? An Indiana school voucher guide. (n.d.). *State Impact Indiana*. Retrieved from <http://indianapublicmedia.org/stateimpact/tag/school-vouchers/>
- Wisconsin Department of Public Instruction. (2014d). *2014–2015 school year: The Wisconsin Parental Choice Program: Information for parents*. Retrieved from http://sms.dpi.wi.gov/files/sms/pdf/2014-15_wpcp_brochure.pdf
- Wisconsin Department of Public Instruction. (2014f). *Wisconsin Parental Choice Program frequently asked questions – 2014-2015 school year*. Retrieved from http://sms.dpi.wi.gov/files/sms/pdf/2014-15_fa_wpcp.pdf