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Federal Support of School Choice: Background and Options

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Summary

Efforts to implement and expand school choice programs, which offer parents the opportunity to select their children's schools, are widely debated. The federal government currently supports public school choice through the Magnet Schools Assistance program, the Public Charter Schools program, state systemic reform under the Goals 2000: Educate America Act, and Title I of the Elementary and Secondary Education Act (ESEA). Legislation providing additional federal support of school choice has been considered by the 105th Congress, including proposals to provide private and public school scholarships for low-income pupils in the District of Columbia, to allow withdrawals from tax-advantaged education savings accounts for private and public elementary and secondary education expenses, to authorize use of block grant funds for private school scholarships, and to expand the Public Charter Schools program.

Congressional consideration of choice options will be influenced by many factors. There is no single model of a school choice program; rather, choice programs vary substantially in the ways they address a broad array of key features. Among these features are the specific objectives sought, educational sectors involved, eligible students, limitations on student choice, and level of financial support for choice. Many states and localities are already engaged in school choice efforts that fall into one or more of several general categories: intradistrict public choice (students may choose among some or all public schools in a district); interdistrict public choice (students may choose public schools in different districts); charter schools; and private school choice. The last includes privately run voucher programs as well as state-sponsored voucher programs for specific cities.

There are many possible federal options for supporting school choice, ranging from relatively modest modifications of current programs to establishment of expansive new legislative authorities. The options have different consequences for the federal financial commitment, scope of the choice effort, and state and local flexibility. Among the potential options for legislative action by the 105th Congress are the following: modify current programs to remove possible "barriers" to school choice; expand the current choice authority in the ESEA Title I program or authorize provision of Title I aid in the form of vouchers; establish a choice demonstration program; expand the current Magnet Schools Assistance program; expand the current Public Charter Schools authority; create an education block grant program that includes choice as an authorized use of funds; or establish new tax allowances for elementary and secondary education tuition and fees. Bills have been introduced in several of these areas.

Finally, the widespread state and local activity in promoting school choice, and the absence of conclusive evidence concerning the impact of school choice programs on students' academic achievement or the distribution of students among schools, raise questions regarding whether federal action would substantially increase choice options beyond what would otherwise be available, and what the academic and social effects would be of any federally supported increase in choice opportunities.

ABSTRACT

Efforts to offer parents the opportunity to select their children's schools are widely debated. The federal government currently supports public school choice through the Magnet Schools Assistance program, the Public Charter Schools (PCS) program, state systemic reform under the Goals 2000: Educate America Act, and Title I of the Elementary and Secondary Education Act. Legislation providing additional federal support of school choice has been considered by the 105th Congress, including proposals to provide private and public school scholarships for low-income pupils in the District of Columbia, to authorize tax-advantaged education savings accounts for private and public elementary and secondary education expenses, to authorize the use of block grant funds for private school scholarships, and to expand the PCS program. This report provides background information on school choice programs throughout the Nation, federal aid to those programs, plus discussion and analysis of current legislation regarding school choice. This report will be updated regularly, to reflect congressional action on legislation regarding school choice and related developments in state and local educational agencies.

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Federal Support of School Choice: Background and Options

Legislative Status and Recent Developments

Action has occurred on several legislative proposals for increased federal support of school choice in the 105th Congress.

- *On April 23, 1998, the Senate passed H.R. 2646, a bill to exempt from taxation the earnings of education savings accounts used to pay for elementary and secondary school expenses, and to increase the maximum annual amount of contributions to such accounts. This bill was amended during Senate floor debate to add numerous other provisions; an amendment to increase tax benefits for individual contributions to privately-established school voucher programs was considered but not adopted. On October 23, 1997, the House passed a version of H.R. 2646 that included only the education savings account provisions.*
- *The “District of Columbia Student Opportunity Scholarship Act of 1997” (S. 1502, H.R. 1797, S. 847) would provide scholarships to District of Columbia resident students in low-income families to attend public or private schools in the District or nearby suburbs, or to pay the costs of supplementary academic programs. S. 1502 was passed by the Senate on November 9, 1997, and in identical form by the House on April 30, 1998. The President has stated that he will veto the bill when he receives it.*
- *On November 7, 1997, the House passed H.R. 2616, the “Community-Designed Charter Schools Act of 1997”, that would expand and modify the Public Charter Schools program. Charter schools are public schools that are released from many types of regulation; they are generally schools of choice. A similar bill, S. 1380, has been introduced in the Senate.*
- *On November 5, 1997, the House considered but did not pass H.R. 2746, the “Helping Empower Low-income Parents (HELP) Scholarships Amendments of 1997”, which would have amended ESEA Title VI, “Innovative Education Program Strategies”, to allow the use of funds for private school scholarships, in accordance with state law.*

Several other school choice proposals have been introduced in the 105th Congress. Among these proposals are bills that would provide federal assistance to demonstration programs of public and private school choice for educationally disadvantaged or low-income children attending “unsafe” schools (S. 1) or in “renewal communities” (H.R. 1031, S. 432). Other bills would authorize tuition tax

credits for pupils attending private elementary or secondary schools (H.R. 318, H.R. 1633, and H.R. 1816).

Recent judicial developments may affect legislative action on school choice proposals. On May 1, 1997, a state court of appeals ruled that the Cleveland voucher program provides aid to religious institutions which violates both the federal and state constitutions, and that the program further violates the Ohio constitution because it is available in only one school district. However, the court did not order an immediate cessation of the program, and the ruling is being appealed to the Ohio Supreme Court. Finally, on June 23, 1997, in deciding the case of Agostini v. Felton, the U.S. Supreme Court reversed a 1985 ruling that prohibited local educational agencies from sending public school teachers into religiously affiliated private schools to provide Title I, Elementary and Secondary Education Act services to eligible children.

Introduction

School choice has become a popular, though widely debated, approach to reforming elementary and secondary education. Many states and localities throughout the Nation have created and are supporting these programs to increase parents' control over the selection of schools in which their children are to enroll. The U.S. Congress, which in recent years has enacted several school choice provisions and debated others, is considering new legislative initiatives promoting school choice.

This report analyzes selected legislative options for the Congress with regard to school choice. It begins with a background section that identifies key features of choice programs in general, reviews current state and local district choice efforts, and describes current federal programs supporting choice. This background provides a context for consideration of legislative options at the federal level. The report identifies seven broad options that may be considered, and analyzes their potential impact in terms of such factors as cost and expansion of choice opportunities for students. The concluding section explores the issue of the justification for federal support of school choice. It focuses on the arguments made concerning choice's impact on student achievement and the distribution of students among schools, and on specific rationales for additional federal support of school choice.

Major Findings and Conclusions. Among the findings and conclusions presented in this report concerning federal options for new or expanded support of school choice, the following are particularly significant:

- school choice is already being supported in many states and localities, and by several federal legislative authorities;
- choice is a complex phenomenon with no single consensus model;
- there are many possible federal options that range from relatively modest modifications of current programs to establishment of expansive new legislative authorities;

- the federal options considered here have different consequences for the level of federal financial commitment, breadth of choice efforts supported, and state and local flexibility;
- there is an absence of conclusive evidence concerning the impact of school choice programs on students' academic achievement or the distribution of students among schools; and
- the widespread state and local activity in promoting school choice may raise questions regarding the role of federal action in this area.

Background¹

New efforts to establish sources of federal support for school choice are not undertaken in a vacuum. As is delineated in this section, several federal legislative authorities already encourage and finance school choice activities. Further, many states and localities are engaged in the implementation of school choice. It is important to consider the diversity and extent of those efforts in designing any new federal initiative and in considering whether to provide additional federal support. This section begins with an overview of the key features of school choice programs in general.

Key Features of Choice Programs in General. School choice programs provide parents with new or increased control over the selection of their children's educational program or setting. These programs may vary substantially in how they address many key features. As a result, the choice programs being planned and implemented across the country often differ in their general structure and in their details. The implications of this variety are considered in the concluding section of this report. Among the key features of choice programs are the following:

- specific objectives sought (among the possibilities are academic achievement gains, administrative reform, and voluntary desegregation of school enrollments);
- levels of education involved (elementary, secondary, postsecondary);²
- educational sector involved (public, private, religiously affiliated);
- students eligible to exercise choice (all students or some subset of students determined in various ways, such as by level of family income or educational performance);
- schools students can choose (unfettered choice for eligible students among eligible schools, or imposition of certain limits, such as those arising from

¹ Some of the analysis below is drawn from *School Choice in 1993: Status and Issues*, CRS Report 93-1059, by James B. Stedman.

² Postsecondary involvement in elementary and secondary school choice will be discussed in the overview of current state and local choice efforts.

efforts to create or maintain racial and ethnic balance in individual schools, or from selective admissions standards applied by individual schools);

- administrative units participating (individual schools, one school district, multiple districts, states);
- level of financial support for different aspects of a choice program (the portion of students' tuition, fee, transportation, or other costs of exercising choice met by the program);
- form of financial support for students' choices (direct to students' families, such as through vouchers, or indirectly made available, such as through tax credits or deductions for elementary and secondary expenses); and
- auxiliary and supporting activities (including efforts to provide services, such as information dissemination, and to provide families with substantive choices by promoting curricular and other innovations in participating schools).

The options section of this report considers these and other features in its analysis of how federal support for school choice might be structured.

State and Local Choice Programs. Many states and localities are currently supporting school choice programs at their own initiative.³ This portion of the report provides a brief overview of **some** of those activities. Four broad categories of choice, or choice-related, programs, which often vary significantly in terms of the features identified above, are considered below:

- intradistrict public choice (students may choose among some or all public schools in a district);
- interdistrict public choice (students may choose public schools in different districts);
- charter schools (schools operated under charters with public authorities; often with attendance policies involving student choice); and
- private school choice.⁴

Intradistrict Public Choice. Intradistrict public choice programs may be initiated locally or at the state level. A primary example of intradistrict choice efforts initiated locally are the magnet schools or programs undertaken to promote school

³ Information on where choice programs are being implemented or have been statutorily established was derived **in part** from: Heritage Foundation. *School Choice Programs: What's Happening in the States*. 1995 Edition. March 1995; various overviews of charter schools, school choice, and voucher programs by the National Education Association; and review of selected state laws.

⁴ These categories are not mutually exclusive. For example, a state or locality could implement interdistrict choice programs that involve private schools.

desegregation in an estimated 2,400 schools in some 230 districts.⁵ Often cited in the debates over school choice are the locally initiated magnet school efforts known as controlled choice, underway in several urban school districts such as Montclair, New Jersey, and Cambridge, Massachusetts.⁶ A primary objective of these programs is to accomplish voluntary desegregation through the use of closely monitored and controlled choice. In general, parents of students in the grades participating in one of these programs have no neighborhood school and must choose the schools in which their children will enroll. A district attempts to honor parents' choices to the extent possible, as long as those choices do not increase racial and ethnic isolation in its schools. Among steps that a controlled choice district is likely to take are intervention to improve schools that are unpopular with parents, extensive information dissemination, and encouragement of innovation and diversity among its schools in order to offer parents many viable and distinct alternatives.

State-initiated intradistrict choice initiatives can be found in approximately nine states. These differ not only in terms of whether they are voluntary or mandatory for individual districts (in most of these states, the choice option is mandatory), but also in terms of limits that may be placed on intradistrict transfers (e.g., space limitations or consequences for desegregation plans) and whether all districts in a state or only selected districts are involved.

Interdistrict Public Choice. Interdistrict choice programs offer students educational choices within the public sector that take them **across** school district lines. The key differences among these programs include whether district level participation is voluntary or mandatory; what the financial consequences are for sending and receiving districts; the extent to which transportation costs are met with public funds; attention to the distribution of racial and ethnic minorities among districts; the acceptable reasons for parental exercise of the choice option; the number of districts involved; and the number of students involved. At least 18 states either mandate interdistrict choice for LEAs or permit districts to participate in such efforts.

There are several other kinds of programs that involve interdistrict choice. For example, approximately a dozen states expand academic offerings available to high school students by meeting the costs of postsecondary education courses taken for high school credit. Also, several urban school districts, such as St. Louis and Indianapolis, are implementing desegregation plans that support student transfers between their schools and schools in neighboring suburban districts.

⁵ Steel, Lauri, and Roger Levine. *Educational Innovation in Multiracial Contexts: The Growth of Magnet Schools in American Education*. Prepared for the U.S. Department of Education. American Institutes for Research, 1994. p. vi. Some districts may be required to implement magnet school programs, such as under the terms of court orders for school desegregation.

⁶ Among the analyses of controlled choice programs are: Glenn, Charles L. *Controlled Choice in Massachusetts Public Schools*. *Public Interest*, spring 1991; and Clewell, Beatriz C., and Myra F. Joy. *Choice in Montclair, New Jersey*. Educational Testing Service, January 1990.

Charter Schools.⁷ Twenty-nine states, the District of Columbia, and Puerto Rico have enacted legislation for the creation and operation of charter schools. The characteristics of charter schools established under these various statutes differ substantially in terms of such features as purposes, chartering entity (such as the local district, a state board of education, or other state authority), financial support, and extent of regulatory and statutory flexibility. Charter schools may be part of school choice programs. Most, but not all, charter schools are open to all students from within the schools' original attendance areas and their local educational agencies' boundaries. Further, in some states, charter schools are to be open to enrollment from outside of their districts' boundaries.

Private School Choice. Of increasing importance in the public policy debate on choice is the question of whether public funds should be used to finance student attendance at private schools, particularly ones that are sectarian (religiously affiliated). Programs providing such support are often identified as **voucher** or **scholarship** programs. In several cities, programs have been established by private business corporations to subsidize low-income families' enrollment of their children in private schools, including sectarian schools.

Currently, there are only a few programs that permit public funds to support students' choosing to enroll in private schools; some of these are limited to enrollment in nonsectarian schools. The most prominent example of state subsidy for such enrollment is the program providing private school tuition vouchers worth approximately \$4,400 to each of approximately 1,500 children from low-income families in the Milwaukee, Wisconsin school district. This program was initiated in the 1990-91 school year; implementation of subsequent legislation to expand this program to include religiously affiliated schools is being blocked by a state Supreme Court injunction stemming from litigation over its constitutionality under the U.S. and Wisconsin constitutions. Oral arguments in this case were presented to the Wisconsin Supreme Court in March 1998.⁸ In addition, parents in at least one town in Vermont (Chittenden) have challenged in court the exclusion of religiously-affiliated schools from a program in which private school tuition may be paid from public funds on behalf of high school students in certain localities.⁹ A state court has rejected this challenge, but that decision has been appealed to the Vermont Supreme Court, which heard arguments on this case in March 1998.¹⁰

Beginning with the 1996-97 school year, state support for private school choice has been provided on behalf of approximately 3,000 low-income students in the

⁷ For additional information on charter schools, see *Charter Schools: State Developments and Federal Policy Options*, CRS Report 97-519, by Wayne Riddle, James Stedman, and Steven Aleman.

⁸ Vouchers Face Key Legal Test in Wisconsin. *Education Week*. March 11, 1998.

⁹ The population of some Vermont towns is considered to be too small to justify establishment of a public high school. In these towns, public funds are used to pay the costs of attending either a private high school or a public high school in a nearby school district. Religiously-affiliated high schools have been excluded from this program.

¹⁰ Vt. Voucher Claim Rejected. *Education Week*. July 9, 1997. See also footnote 8.

Cleveland, Ohio, school district. This program authorizes financial assistance for enrollment in public schools outside of the district, as well as private schools, including religiously affiliated schools, within the district's boundaries. In practice, approximately 80% of the participating pupils attend religiously-affiliated private schools in Cleveland, and no suburban public school systems have agreed to accept pupils under the program.¹¹ On May 1, 1997, a state court of appeals ruled that the Cleveland voucher program provides aid to religious institutions which violates both the federal and state constitutions, and that the program further violates the Ohio constitution because it is available in only one LEA. However, the court did not order an immediate cessation of the program; the ruling is being appealed to the Ohio Supreme Court, which is scheduled to hear arguments on the case in the spring of 1998. The state has recently extended the authorization for the program for an additional 2 years¹².

Privately-Established School Voucher Programs. In recent years, non-governmental programs have been established in a number of localities to help pay tuition and related costs of private elementary and secondary school attendance for pupils from low-income families. These programs have no relationship to governmental programs or agencies at the federal, state, or local levels, except that contributions to them may qualify for personal income tax deductions, as charitable contributions, and the programs may be tax exempt in other respects. These privately-established and -funded voucher programs are typically limited to one or a small number of localities, especially in core urban areas. Most of these programs are relatively small in scale, supporting at most several hundred pupils in a locality per year, although there are comparatively large programs in Indianapolis, Ind., and Milwaukee, Wis., and the San Antonio, Texas area.¹³ Several of these are coordinated by CEO America, a private organization which provides technical assistance and attempts to attract contributions to these programs in several localities.¹⁴

Federal Choice Programs. Several federal legislative authorities currently provide relatively limited support for school choice efforts. These are only briefly cited here; some are considered in more detail in the later analysis of federal options.¹⁵

The Magnet Schools Assistance program, authorized by the Elementary and Secondary Education Act (ESEA, Title V, Part A) supports magnet schools in local educational agencies (LEAs) that are implementing school desegregation plans. These schools, with special programmatic and other features, are designed to

¹¹ Voucher Plan in Cleveland is Overturned. *Education Week*. May 7, 1997. p. 1.

¹² Cleveland's Voucher Program Renewed for 2 Years. *Education Week*. July 9, 1997. p. 17.

¹³ Private Voucher Programs. *Education Week*. May 28, 1997.

¹⁴ On the Internet, see <http://www.ceoamerica.org/programs.html>.

¹⁵ Each of the programs described below is also covered in: *Improving America's Schools Act: An Overview of P.L. 103-382*, CRS Report 94-872, coordinated by James B. Stedman; and *Goals 2000: Overview and Analysis*, CRS Report 94-490, by James B. Stedman.

accomplish voluntary desegregation through the mechanism of parental choice. The FY1998 appropriation for this program is \$101 million.

The education for the disadvantaged program under ESEA Title I addresses school choice in several ways. Among them are provisions that: authorize a waiver allowing schools with 25% low-income enrollment to participate in Title I if they are involved in desegregation programs under which students change schools (otherwise, the threshold is 35%); and permit LEAs to use Title I funding to establish choice programs involving public schools with Title I programs. These provisions were added in 1994 and no information is yet available on the extent of their use.

Under the state systemic reform grants authorized by Title III of Goals 2000: Educate America Act, state educational agencies (SEAs) may use the funds available for state level activities (40% in initial year, 10% in subsequent years) for promoting public school choice, including magnet and charter schools. At this juncture, it is not known the extent to which Goals 2000 funds might be supporting school choice.

The Public Charter Schools program (ESEA Title X, Part C) provides federal assistance for implementation of state charter school programs. These schools are newly formed under the terms of charters entered into by different community groups and school authorities. In exchange for exemption from significant state or local rules, these schools are held accountable for achievement of agreed-upon objectives. The Public Charter Schools program requires that all students in the community served by a charter school be given an equal opportunity to attend. The FY1998 appropriation for this program is \$80 million.

Selected Options For New or Expanded Federal Support

This section provides a general overview of many of the legislative proposals concerning school choice that are before the 105th Congress, as well as those considered by the 104th Congress. That overview is followed by an analysis of the general framework of policy goals and assumptions that will apply to any legislative proposal. Some choice options are more consistent with certain goals and assumptions than others. This section concludes with analyses of several broad categories of options for federal support, some of which are reflected in the legislative proposals currently before the 105th Congress.

Legislative Proposals in the 105th Congress.¹⁶

Proposals on Which Legislative Action Has Occurred. The Senate-passed and initial conference versions of H.R. 2014, the Revenue Reconciliation Act of 1997, would have allowed withdrawals from newly-authorized, tax-advantaged education savings accounts for elementary and secondary education expenses, including private school tuition. While the elementary-secondary portion of this authorization was dropped from the enacted version of this legislation (P.L. 105-34), separate bills have been considered that would accomplish the same purpose, particularly H.R. 2646, the Education Savings Act for Public and Private Schools. *On October 23, 1997, the House passed H.R. 2646. The Senate adopted a revised version of this bill, including several provisions in addition to the education savings account language, on April 23, 1998.*¹⁷ During floor debate on H.R. 2646, the Senate considered, but did not adopt, an amendment offered by Senator Coats that would have increased the tax benefit for individual charitable contributions to privately-established school voucher programs.

The House- and Senate-passed versions of H.R. 2646 would expand the P.L. 105-34 authorization for Education Individual Retirement Accounts (IRAs), the earnings from which would be exempt from federal income taxes. These bills would raise the limit on contributions for beneficiaries under the age of 18 from \$500 to either \$2,500 per year (House version) or \$2,000 per year (Senate version), and allow tax-free proceeds from the accounts to be used to pay public or private elementary and secondary, as well as postsecondary, education expenses, including home schooling expenses, and computer hardware and software.

On November 7, the House passed H.R. 2616, the “Community-Designed Charter Schools Act of 1997”. This bill would revise the Public Charter Schools statute in several respects, primarily to extend and increase its authorization; give priority for grants to states that provide charter schools with financial autonomy, allow for increases in the number of charter schools, and periodically review the performance of such schools; and to expand technical assistance to charter schools, especially regarding their eligibility for federal aid programs. A similar bill, **S. 1380**, the “Charter School Expansion Act of 1997”, has been introduced in the Senate. As noted earlier, this legislation is relevant because charter schools are generally schools of choice. For a detailed description of H.R. 2616 and S. 1380, see CRS Report 97-519, *Charter Schools: State Developments and Federal Policy Options*.

¹⁶ A note regarding terminology used in legislative proposals, especially those involving private school choice options: these proposals employ varying terms to refer to aid that might be used to help pay the costs of private school tuition and related fees. While perhaps the most common such term is “voucher,” other terms frequently used include “certificate” and “scholarship.” While there are sometimes substantive differences implied by the use of different terms, these differences are typically very subtle. In the following discussion, we will use the terms employed in the text of the relevant proposed legislation without ourselves intending to imply substantive distinctions beyond those explicitly noted in our descriptions of the proposals.

¹⁷ For additional information, see *Education Savings Accounts for Elementary and Secondary Education*, CRS Report 97-852, by Bob Lyke.

The “District of Columbia Student Opportunity Scholarship Act of 1997” was introduced in the House as H.R. 1797 by Representative Armey, *et al.*, and in the Senate initially as S. 847, and later in slightly modified form as S. 1502 by Senator Coats, *et al.* The proposal is similar to one that was contained in the House-passed and conference versions of H.R. 2546 of the 104th Congress (see the next section of this report). FY1998 District of Columbia appropriations legislation (H.R. 2607), as initially passed by the House on October 9, 1997, incorporated a slightly modified version of the provisions of H.R. 1797; but H.R. 2607 as passed by the Senate¹⁸ on November 9 and the House on November 12 does **not** contain scholarship provisions. *S. 1502 was passed by the Senate on November 9, 1997, and in identical form by the House on April 30, 1998. The President has stated that he will veto the bill when he receives it.*

The following discussion is based on S. 1502, the District of Columbia scholarship bill on which action has most recently occurred; however, differences among the scholarship provisions of S. 1502, H.R. 2607 as passed by the House, S. 847, and H.R. 1797 are minor. S. 1502 would authorize the provision of scholarships to District of Columbia resident students in grades K-12 from low-income families to attend public or private schools in the District or nearby suburbs (“tuition scholarships”), or to pay the costs of supplementary academic programs outside regular school hours for students attending District of Columbia Public Schools (DCPS) (“enhanced achievement scholarships”). The authorized appropriation level for this program would be \$7 million for FY1998, rising to \$10 million for each of FY2000-FY2002, plus a one-time authorization of \$250,000 for program evaluation. The bill also appropriates \$7 million for FY1998. No more than 7.5% of the appropriations for any year may be used for program administration or any purpose other than aid to students.

This program would be administered by a non-governmental District of Columbia Scholarship Corporation. The Corporation’s Board would have 7 members — 3 appointed by the President from nominations by the Speaker of the House (in consultation with Minority Leader), 3 appointed by the President from nominations by the Majority Leader of the Senate (in consultation with Minority Leader), and 1 appointed by the Mayor. All Board members must be D.C. residents, and none may be D.C. or Federal Government employees (unless they are on leave). Board members would serve for 5-year terms, and would receive stipends of \$150 per day, up to \$5,000 per year. In carrying out its functions, the Board is to consult with the District of Columbia Board of Education or other entities with jurisdiction over the DCPS (such as the current Board of Trustees named by the District of Columbia Financial Responsibility and Management Assistance Authority), the Superintendent of the DCPS, and other scholarship programs in the District of Columbia.

¹⁸ The Senate version of the District of Columbia scholarship proposal (S. 847) was offered as a floor amendment to an earlier FY1998 District of Columbia appropriations bill, S. 1156, on September 25, 1997. On September 30, the Senate failed to invoke cloture on debate over this amendment (no. 1249); however, the Senate did not take final action on S. 1156, and later passed a version of H.R. 2607 without a scholarship provision.

Students in grades K-12 who are residents of the District of Columbia with family income below 185% of the standard federal poverty income threshold for families of the relevant size would be eligible for scholarships. During the initial years of the program (1997-99), first priority in the awarding of scholarships would go to students who have been attending DCPS schools (or are about to enter kindergarten in DCPS schools). In all years, priority would also be given to previous scholarship recipients. Thus, the proposal places an emphasis at first on pupils who are attending *public* schools in D.C., but pupils already in private school may receive scholarships after these first priority pupils are served in 1997-2000 (and previous recipients in 2001 and beyond). If funds are insufficient to provide scholarships to all eligible applicants, recipients would be selected by lottery.

There would be two types of scholarships: (a) “tuition scholarships” could be used to pay the costs of tuition and fees at a public or private (including a religiously-affiliated) school in D.C. or the inner ring of suburban jurisdictions¹⁹; and (b) “enhanced achievement scholarships” could pay the costs of tuition, fees, and transportation for “a program of instruction ... which enhances student achievement of the core curriculum and is operated outside of regular school hours to supplement the regular school program” (Section 4(c)(2)). The amount of *tuition scholarships* would be the lesser of \$3,200²⁰ or 100% of tuition²¹, fees, and transportation costs if family income is *below the poverty level*, and the lesser of \$2,400 or 75% of tuition, fees, and transportation costs if family income is *between 100% and 185% of poverty*. The amount of *enhanced achievement scholarships* would be the lesser of tuition, fees, and transportation or \$500 for all students with family income below 185% of poverty. In all cases, the bill states that scholarships would be considered to be aid to the student, not the institution.

In order for its students to be eligible for either a tuition or an enhanced achievement scholarship, an educational institution generally must have been in operation for at least 3 years, with at least 25 students. Alternatively, institutions may obtain provisional, 1-year, renewable certification after providing a variety of information to the Corporation (e.g., a business plan, course of study, list of the institution’s board of directors, etc.). Certification of eligibility may be revoked for “good cause” (such as failure to meet program requirements) or if 25% or more of the scholarship recipients at the school fail to “make appropriate progress” (Section 3(f)(2)(D)(i)(II)). Institutions must file annual reports on their budget; and may not discriminate on the basis of race, color, national origin, or sex, although schools may operate single-sex classes or institutions. It is explicitly provided that religiously-affiliated schools may give preference to members of a specific religion in admissions or employment, and that scholarship funds may be used for sectarian purposes by such schools. Further, the bill states that, “[N]othing in this Act shall affect the rights of

¹⁹ These include Montgomery and Prince Georges counties in Maryland, plus Arlington and Fairfax counties, and the cities of Alexandria, Fairfax, and Falls Church in Virginia.

²⁰ Each of the specific maximum dollar amounts for scholarships (\$3,200, \$2,400, and \$500) would be increased in the future by increases in the Consumer Price Index.

²¹ Participating schools may not charge scholarship recipients tuition and fees in excess of the amounts charged to other District of Columbia resident students attending the school.

students, or the obligations of the District of Columbia public schools, under the Individuals with Disabilities Education Act” (Section 8).

Participating educational institutions would be required to make annual reports to the Corporation containing a variety of data on student achievement, disciplinary actions, academic program, parental involvement, etc. The Corporation would also be required to submit an annual report to the Congress, including information on how program funds have been expended, and the initial achievement levels of scholarship recipients. The U.S. General Accounting Office would be required to contract for an evaluation of the scholarship program within 4 years of the bill’s enactment. The evaluation would include comparisons of scholarship recipients and similar but non-participating students in the DCPS with respect to test scores, graduation rates, parental satisfaction, and impact of the program on the DCPS. A one-time appropriation of \$250,000 would be authorized for the evaluation.

A final school choice bill on which action has occurred in the 105th Congress is **H.R. 2746**²², the “Helping Empower Low-income Parents (HELP) Scholarships Amendments of 1997”, sponsored by Representative Riggs, for himself and others. *On November 4, the House debated and did not pass this bill.* This proposal would amend ESEA Title VI, “Innovative Education Program Strategies”, to allow SEAs and LEAs to use funds for choice programs that include private schools, in accordance with state law. Under ESEA Title VI, funds may currently be used by SEAs and LEAs for such a wide variety of activities related to educational innovation or reform that it is often referred to as a “block grant” program.²³ States may reserve up to 15% of ESEA Title VI grants, while remaining funds must be allocated to LEAs under state-developed formulas; LEAs have “complete discretion” in determining the purposes for which funds are used, within the broad limits of activities authorized in the federal statute (Section 6303(c)). The FY1997 appropriation for ESEA Title VI was \$310 million.

H.R. 2746 would reduce the share of ESEA Title VI funds that may be reserved by SEAs from the current 15% to 10% in general. However, SEAs may reserve an additional 15% (beyond the 10%) *if* those funds are used for “voluntary public and private parental choice programs” for children in low-income families, which are authorized by state law, include 1 or more private schools²⁴, and are located in either high poverty or sparsely populated areas. Eligibility for such choice programs must be limited to pupils from families with income below 185% of the standard federal

²² Another bill, H.R. 2724, is virtually identical to H.R. 2746, except that the former bill includes provisions regarding the treatment of private school scholarships as income for purposes of federal personal income tax liability and eligibility for federal aid programs.

²³ For additional information on this programs and related topics, see *Elementary and Secondary Education Block Grant Proposals in the 105th Congress*, CRS issue brief 98013, by Wayne Riddle and Paul Irwin.

²⁴ While not explicitly listed among specific authorized activities (other than magnet schools), it may be assumed that public-only school choice programs could already be supported with ESEA Title VI funds, as long as the Title’s fiscal accountability (e.g., the requirement that federal funds supplement, and do not supplant, state and local revenues) and other general provisions were followed.

poverty income threshold. The amount of a scholarship provided under a qualifying choice program may not be less than 60% of the average expenditure per pupil (AEPP) for the LEA in which the child resides, or the amount of tuition charged by the school he or she chooses to attend, whichever is less; and may not be more than 100% of the AEPP. Choice programs must also give priority to aiding children who transfer from public to private schools, and may not exclude sectarian private schools.

H.R. 2746 would also add “voluntary public and private parental choice programs”, meeting the conditions described above, to ESEA Title VI’s list of authorized uses of funds by LEAs. However, a state that uses Title VI funds for choice programs could not require LEAs to use any of their Title VI funds for this purpose. Current provisions requiring equitable treatment of pupils attending private and public schools in Title VI programs would not apply to Title VI funds used for public-private school choice programs. The bill further states that scholarships provided under choice programs supported by ESEA Title VI funds are to be considered to be aid to the students receiving the scholarships, not to the school. H.R. 2746 also restates general statutory prohibitions against control by ED over the “curricula, program of instruction, administration, or personnel” of any public or private school that participates in choice programs supported under Title VI (Section 6405(b)).²⁵

The bill would require the Comptroller General of the United States to contract with an entity to conduct an series of annual evaluations of the public-private school choice programs supported under Title VI. The evaluations are to focus especially on parental satisfaction with the choice programs and a comparison of the achievement of pupils who receive choice scholarships with that of pupils who do not participate in the choice program. The evaluations would be funded through an existing authority for use of up to 0.5% of appropriations for any ESEA program (except Title I) for this purpose (Section 14701).

Proposals on Which No Legislative Action Has Yet Occurred. S. 1, the “Safe and Affordable Schools Act,” was introduced on January 21, 1997, by Senator Coverdell and several Members of the majority leadership of the Senate. This bill includes, among other provisions, three authorizations for increased federal support of school choice. First, Title I, Subtitle A of S. 1 would authorize the appropriation of \$50 million for FY1998 to provide demonstration grants for public/private school choice for pupils from low-income families who would otherwise attend unsafe schools. “Unsafe schools” are defined generally as schools with “serious crime, violence, illegal drug, and discipline problems” (Section 113(11)); applicants would specify how they would select such schools.

A wide variety of public and private/non-profit agencies or entities would be eligible for 20-30 total demonstration grants. Priority would be given to applicants that are already operating a public-private school choice program, and for programs

²⁵ Similar prohibitions, affecting all ED programs, may be found in several existing statutes, including the Department of Education Organization Act (Section 103), General Education Provisions Act (Section 438), Goals 2000: Educate America Act (Section 318-319), and Elementary and Secondary Education Act (Section 14512).

involving a diverse range of schools and pupils. Applicants must provide services in at least one high poverty LEA.²⁶ Aid would be provided in the form of “certificates” provided to the families of eligible pupils that could be used to pay the costs of tuition, fees, transportation and, for pupils eligible to be served under ESEA Title I, supplementary educational services at a school selected by the parents. The value of the certificate would not be considered federal aid to the school, nor taxable income to the parents. The amount of the certificate would be determined by the applicant agencies or entities, but could not exceed the average expenditure per pupil in the preceding year for the LEA operating the public school an aided pupil would otherwise have attended. Eligible schools of choice would include public and private (including sectarian) schools that comply with the anti-discrimination provisions of Title VI of the Civil Rights Act of 1964. The program would be evaluated by a non-federal entity under contract to the General Accounting Office.

Title I, Subtitle B of S. 1 would authorize the use of ESEA Title I, Part A (education for the disadvantaged) funds to pay costs of public/private school choice options for certain pupils. This provision would apply to pupils eligible to be served under Title I who become victims of violent crimes while on the grounds of their (public) school. In such cases, LEAs would be authorized (but not required) to use Title I funds to pay the “supplementary costs”²⁷ for pupils to attend another public or private (including sectarian) school within the state, selected by the pupil’s parents, and in accordance with state law. State education agencies would define “violent criminal offenses” for purposes of this authorization. Pupils would remain eligible for continuing assistance under this provision for at least 3 years, regardless of whether they would otherwise be deemed eligible for Title I assistance in the succeeding years. As was noted earlier in this report, the current ESEA Title I statute authorizes some use of Title I funds to support school choice activities, but only in limited circumstances involving only public schools. In general, provisions applicable to Subtitle A, described above — e.g., that payments do not constitute federal aid to recipient private schools or taxable income parents, that all participating schools must comply with Title VI of the Civil Rights Act of 1964, etc. — would also apply to ESEA Title I funds expended under Subtitle B.

Finally, S. 1 would authorize use of ESEA Title VI (Innovative Education Program Strategies) funds for public/private school choice programs similar to those described above. S. 1 has several elements that are similar to a number of public-private school choice demonstration program bills introduced in the 104th Congress (see below).

H.R. 1031, introduced by Representative Watts, Representative Flake, and Representative Tallent, and **S. 432**, introduced by Senator Abraham, Senator

²⁶ Specifically, LEAs that receive ESEA Title I concentration grants (in general, these have at least 6,500 poor school-age children or a school-age child poverty rate of at least 15%) and that are among the 20% of LEAs in their state receiving concentration grants that have the greatest number or highest percentage of poor school-age children.

²⁷ These are defined as including, in the case of public schools, the costs of supplementary educational services and transportation (if the school of choice is in a different LEA), and in the case of private schools, tuition, fees and transportation.

Lieberman, Senator DeWine, Senator Hutchinson, and Senator Coats, are identical proposals to provide public-private school choice to pupils from low-income families who reside in selected localities. Areas designated as “renewal communities” (up to 100 areas experiencing pervasive economic and other distress) would be required to offer such public-private school choice programs. These programs would provide scholarships to low-income students’ parents for private school tuition and fee costs, as well as transportation subsidies for scholarship students and students attending alternative public schools (including charter schools). The scholarships and transportation subsidies would be funded with federal appropriations and other funds raised at the state and local levels. The annual authorization would be \$200 million for each of FY1998-2002.

Among eligible renewal communities, 80% of funds would be allocated in proportion to the number of school-age children in low-income families (185% of federal poverty level), and 20% would be allocated in proportion to non-federal funds raised by the renewal communities from state and local revenues or private sources. This proposal would not supercede state law regarding aid to sectarian schools, but neither would state law be interpreted to limit the distribution of federal funds provided under this proposal to sectarian schools.

Under H.R. 1031/S. 432, the amount of the scholarship would be determined by grantees, but it would be at least the lesser of 60% of the average expenditure per pupil (AEPP) for the LEA or the tuition and fees charged by a participating private school, and the maximum would be the full AEPP. The AEPP would be adjusted to account for the additional costs of educating pupils with disabilities. Scholarships would not be considered to be taxable income to the parents of participating pupils or federal aid to participating schools. Participating schools must comply with Title VI of the Civil Rights Act, but would not otherwise be subject to regulation by ED beyond those regulations in effect on the date of enactment or established under this proposal. An evaluation of the program would be conducted by ED. This proposal is similar to H.R. 3467, introduced in the 104th Congress (see below).

H.R. 318, introduced by Representative Solomon, would authorize tax credits of up to \$1,000 per pupil per year for expenses of tuition, fees, books, supplies, and equipment for pupils attending private elementary or secondary schools, as well as public or private vocational schools, and institutions of higher education. **H.R. 1633**, the “Children’s Education Tax Credit Act”, introduced by Representative Pitts, would authorize an annual tax credit of up to \$450 for similar purposes, as well as home schooling expenses. A third bill, **H.R. 1816**, the “Family Education Freedom Act of 1997”, introduced by Representative Paul, would authorize a tax credit of up to \$3,000 per year for elementary and secondary education expenses, including those related to home schools. These bills are similar to H.R. 156, introduced in the 104th Congress (see below).

Legislative Proposals in the 104th Congress. The 104th Congress considered several legislative proposals that would have provided federal support for public and private school choice. The Congress considered a choice program that was included in the conference version of H.R. 2546, FY1996 appropriations legislation for the District of Columbia (D.C.). While the House passed original and conference versions of this legislation that included authorization for a private-public school

scholarship program, the Senate failed to invoke cloture on a filibuster against the legislation.²⁸ The conference version of H.R. 2546 would have supported two kinds of scholarships for low-income students residing in the District of Columbia. Tuition Scholarships would have been available to pay the tuition and mandatory fees for students choosing to attend D.C. private schools, including those that are religiously affiliated. The size of these scholarships could have been as high as \$3,000 for students from families at or below poverty, and as high as \$1,500 for students from families with incomes not in excess of 185% of the poverty level. Enhanced Achievement Scholarships would have been available to meet the tuition, fees, and transportation costs for students to receive services to enhance their academic achievement. These services would have been provided outside of regular school hours. These scholarships could have been as high as \$1,500 for students from families at or below the poverty level, and as high as \$750 for students from families with incomes not in excess of 185% of the poverty level. The authorized annual appropriation level for these two kinds of scholarships would have been \$5 million for FY1996, \$7 million for FY1997, and \$10 million annually for FY1998 through FY2000. For FY1996, the conference version of H.R. 2546 would have appropriated \$5 million.

As noted earlier, the Senate failed to invoke cloture on a filibuster against the conference version of H.R. 2546, and it was not adopted. However, both the conference version of H.R. 2546 and the FY1996 D.C. appropriations legislation that was finally enacted (H.R. 3019, P.L. 104-134) authorize the establishment of charter public schools in the District. These would be public schools that are provided with a great deal of autonomy and freedom from usual regulations in return for accountability in the form of specified student outcomes. Charter schools would be open to enrollment by all District pupils of the relevant grade level and subject specialization (if the school has one), and could not charge tuition to D.C. residents. They would be governed by a board of trustees, and could be established as new schools, or by conversion of existing public or private schools. Two charter schools began operation in D.C. in the 1996-97 school year.

Among other bills in the 104th Congress, three would have authorized federal grants for private school choice demonstration projects (H.R. 1640, introduced by Representatives Weldon and Riggs; S. 618, introduced by Senators Coats and

²⁸ *District of Columbia Public Schools: Status of Federal Legislation Affecting Them*, CRS Report 95-1030, by Wayne Riddle.

Lieberman; S. 1210 and S. 1904, both introduced by Senator Coats).²⁹ Under these bills, education “certificates” would have been made available to low-income students in the demonstration areas to help meet tuition, fees, and allowable transportation costs in public and private schools, including religiously affiliated schools. H.R. 1640 and S. 618 would have authorized \$30 million for FY1996 and such sums as may be necessary for FY1997 and FY1998, to fund a limited number of demonstration sites (10 to 20). S. 1210 and S. 1904 would have authorized \$600 million for FY1996 and such sums as may be necessary for FY1997 through FY2000, for at least 100 demonstration sites.³⁰

Other legislation would have funded private school choice programs in communities designated as empowerment zones under the Internal Revenue Code, as well as Los Angeles, Cleveland, and Washington, D.C. S. 1252, introduced by Senator Abraham for himself and others would have authorized \$12 million for FY1996 and such sums as necessary for FY1997 and FY1998 for choice programs open to low-income students residing in the eligible communities. A similar bill — S. 1533, introduced by Senator McCain — would have required the reservation of \$25 million from the appropriation each year for ESEA Title I for public-private school choice programs in high poverty localities. H.R. 3467, introduced by Representative Watts for himself and others, would have required designated “renewal communities” to administer school choice programs with provisions similar to those of H.R. 1031/S. 432 in the 105th Congress (described above), although H.R. 3467 had substantially higher appropriations authorization levels (rising to \$2.5 billion for FY2002).

Federal income tax credits for educational expenses at educational institutions, including private elementary and secondary schools, would have been authorized under other legislation introduced in the 104th Congress (H.R. 156, introduced by Representative Solomon). The credit for any individual could not have exceeded \$1,000.³¹

²⁹ Similar proposals have been offered in previous Congresses. In the 102nd Congress, one such proposal was offered by Senator Hatch, for himself and others, and with the explicit support of the Bush Administration, as a floor amendment to the Neighborhood Schools Improvement Act, S. 2, on January 23, 1992. In the 103rd Congress, on February 4, 1994, Senator Coats offered, for himself and others, an amendment to S. 1150, the Goals 2000: Educate America Act (P.L. 103-227). This proposal (“Low-Income School Choice Demonstration Act of 1993”) was virtually identical in its major provisions to the Hatch, et al., amendment described above. The third such proposal, entitled “Fight or Flight: Protecting American Students,” was offered during the 103rd Congress by Senators Dole, Coats, and Lieberman as an amendment to S. 1513, the Senate version of the Improving America’s Schools Act, on July 27, 1994. This third version would have authorized grants to states to make individual scholarships to students from low-income families attending “violence-prone” schools. None of these amendments was adopted.

³⁰ The option of choice demonstration programs is considered in some detail later in this report.

³¹ This bill is similar to H.R. 318 in the 105th Congress. The option of federal tax legislation to support school choice is considered in some detail later in this report.

General Framework for Consideration of Federal Options. An initial question for consideration of federal support for school choice is: what is the specific reason for proposing support for an expansion of school choice? Major alternatives here include: demonstrating and evaluating the effects of expanded school choice; eliminating possible barriers to choice that may be associated with some current federal policies or aid programs; increasing access of pupils to private schools; expanding school choice options for pupils who are educationally disadvantaged or come from low-income families; making a wide range of choices available to all pupils; or such broader goals as supporting state school reform initiatives or furthering voluntary desegregation of schools.

Another basic consideration is the assumed level of funds that will be available, and the corresponding program size or scope that would be consistent with this. If only relatively low annual appropriations are likely to be available, a program limited to a small number of localities may be indicated. Another alternative would be expanding school choice options under an existing program, without necessarily changing its funding level. In contrast, if a much larger level of funding is contemplated — either through federal appropriations or tax allowances (credits or deductions) — then a much more expansive program might be considered.

In addition, it should be kept in mind that virtually all of the variations described above with respect to current state and local programs and proposals — e.g., types of schools eligible, information and transportation services provided, etc. — might need to be specified in federal legislation, depending on the nature of the federal option. If the federal proposal is for a block grant that has school choice as one of many authorized activities, it might be necessary and appropriate to have very few details about the kinds of such choice that can be supported. Alternatively, in a proposal to demonstrate and evaluate the effects of school choice, it might be appropriate to have detailed provisions regarding the nature of programs to be supported, to assure that competition among types of schools is fair, or that the choice models being demonstrated meet the expectations of the legislation's proponents.

What Aspects of a Choice Program Should the Federal Government Subsidize? A key question underlying all possible forms of federal financial aid to school choice is what are the particular aspects of expanded school choice that a federal program should subsidize? This question involves both policy and budgetary issues. The factors involved in addressing the question are quite different for public school-only versus public-private school choice programs.

If a choice program involves **only public schools**, it may be argued that the federal government should, at most, help pay for the additional costs of operating a state or local school system with expanded school choice options, not the basic expenditures that would be paid from state and local revenues absent the enhanced choice. While there might be some difficulties or disputes over exactly what are these additional costs and whether there are any for which federal funds should not be used, this seems to be a relatively manageable task in the public school-only context. Major costs might include transportation, development and dissemination of information to parents, counseling, or possible costs of developing and implementing the distinctive school programs that often accompany and enhance expanded school choice. It might

also be suggested that even if only public schools are involved, federal support of choice should be limited to disadvantaged pupils, especially pupils from low-income families, under an assumption that students from more affluent families already have substantial opportunity to choose their schools through their choice of residence.

However, the question of what aspects of a choice program the federal government should subsidize becomes especially important and more complex if the choice options include **private schools**, raising significant issues of efficiency, cost, and fairness.³² With private school involvement, the potential costs are not simply marginal ones such as transportation, but also the basic costs of tuition and related fees. If full tuition and fees may be covered by federal aid, the net increase in public funds per pupil due to a choice program might be much higher than a program covering public schools only. But if only a portion of tuition and fees may be covered by the program, the aid may be of limited value to pupils from low-income families.³³

A related issue is whether there ought to be any **limit on the dollar value of a voucher**, or on the level of tuition that the voucher can be used to pay. While limits of this sort reduce the range of choices available, most proposals include some such limit — e.g., the expenditures per pupil for public schools in the state or locality — primarily in order to avoid having a large proportion of the aid go to a relatively small number of pupils at high cost schools, and to prevent spending more per pupil in private than public schools. A limit on voucher and/or covered tuition levels might also be appropriate to minimize an effect of tuition increases resulting from increased demand on a relatively fixed (in the short run) supply of private schools.

A related issue concerns **which pupils should be supported** — only for pupils from low-income families, or all pupils. Costs would be more limited, and the net increase in effective choice relative to expenditures would be greatest, if financial support were made available only to pupils in low-income families, who presumably have the fewest effective choices currently. This might also be considered to be the most equitable way to allocate limited federal funds, and would follow the model of most federal postsecondary student aid programs. Nevertheless, provision of

³² The question of the constitutionality of federal support for enrollment in private, religiously affiliated elementary and secondary schools is discussed in a following section on barriers to school choice.

³³ A secondary, more hypothetical issue related to costs and school choice is whether some possible forms of federal school choice legislation might constitute “unfunded federal mandates” in the eyes of some observers, if federal aid were insufficient to pay all of the increased costs of the school choice activities required under the program. For example, if a program required a participating locality to offer all families a broad range of choices among public and private schools, and federal aid was insufficient to pay the net increase in aggregate costs of transportation, private school tuition, etc., even an increase in public expenditures per pupil due to fixed costs, as pupils move out of public schools, then the result might be considered by some to be an unfunded federal mandate. However, in addition to arguing that such conditional requirements are not really mandates, opponents of this view might argue that it is unlikely to occur because private school tuition levels are currently substantially below average public school expenditures per pupil nationwide.

vouchers or other financial aid only to pupils from low-income families might seem unfair to the families and pupils thereby eliminated from eligibility for aid, especially those just above the income eligibility threshold. One possible way to reduce this concern would be provision of aid on a sliding scale, so that the amount changes gradually, rather than abruptly, with differences in family income.

A final question regarding **coverage of private school costs** is whether they should be paid on behalf of all pupils in eligible families (in terms of income or other factors), or only pupils **not** already attending private schools or other “schools of choice”³⁴ — i.e., those who switch schools under the program. The relative gain in exercise of choice would be greatest at a given funding level if families already sending children to private or other “schools of choice” are excluded. This approach would also avoid having federal funds supplant whatever private source aid may be currently provided to some low-income families to help them pay private school costs.³⁵ However, the provision of vouchers to some families in a locality and not to others of the same income level and other relevant characteristics might strike many as being inequitable. Further, the savings would presumably be only temporary, as pupil mobility and movement through the educational pipeline steadily increase the proportion of private and other “school of choice” pupils whose families initially enroll them in such schools after initiation of the federal choice program.

Selected Options for Federal Support. Selected options for a new federal school choice program or initiative are discussed individually below. The basic nature of each option is described, along with major potential advantages and disadvantages. The options are taken up in order of their general level of probable cost, beginning with those which are essentially costless, and ending with relatively expensive options (in terms of either appropriations or tax allowances).

Modify Current Policies or Programs to Remove Possible “Barriers” to School Choice. One option to expand school choice would be to remove possible barriers to choice that might result from existing federal programs or policies. While federal programs and policies may directly inhibit school choice only in rare instances, they sometimes indirectly limit the maximum provision of choice by states or LEAs.

Constitutional and Civil Rights Barriers. The primary indirect barriers to school choice in federal policy may be the most difficult to remove, since they derive from federal court interpretation of the Constitution and statutes in the sensitive and controversial areas of church-state relations and civil rights. For example, a variety

³⁴ The term, “schools of choice,” is used to refer to schools other than the public school at the relevant grade level serving a pupil’s residential area. “Schools of choice” include private schools as well as public schools other than the one a pupil would attend “by default” — i.e., public schools outside the pupil’s residential area or LEA, charter schools, etc.

³⁵ Some private schools offer at least some financial aid to pupils from low-income families. In addition, there are in some localities limited programs funded privately that offer private school tuition vouchers to some pupils from low-income families. See: Private Plans Seen Key to Showing Power of Vouchers. *Education Week*, November 25, 1992. And Albany Program Puts New Spin on Private Vouchers. Private Voucher Programs. *Education Week*. May 28, 1997.

of past Supreme Court decisions have substantially limited government aid to, or involvement with, religiously affiliated private schools. At least partially as a result of this, as well as various state constitutional provisions,³⁶ current school choice programs almost always limit participation only to public schools, or public and nonsectarian private schools. However, on June 23, 1997, in deciding the case of *Agostini v. Felton*, the Supreme Court reversed a 1985 ruling that prohibited LEAs from sending public school teachers into religiously affiliated private schools to provide ESEA Title I services to eligible children.³⁷ In addition, certain tax allowance and student assistance programs that include sectarian, private institutions have been approved by the Supreme Court in recent years,³⁸ and it is an open question whether a new form of aid to school choice that involves both public and private, including sectarian, schools would prevail over federal court challenges as well.³⁹

Federal courts and agencies have also been involved in efforts to decrease the racial segregation of pupils in the public schools of many localities. These efforts have had a substantial, yet mixed impact on school choice options. In several cases, efforts to meet desegregation goals through magnet schools and other school choice policies have expanded choice options for many families. Nevertheless, efforts to desegregate enrollments have in some instances constrained family choice of schools if exercise of the choice would increase segregation of pupils.

Other Options for Modification. Some current federal education assistance programs may also marginally limit school choice in selected cases. For example, since the program of aid for the education of disadvantaged children under Title I of the ESEA generally authorizes programs in relatively high poverty schools, there can be instances in which pupils who transfer from a high poverty school to a low poverty school may effectively lose access to Title I services.⁴⁰ The statute could be amended to require LEAs to continue providing Title I services to eligible pupils who transfer

³⁶ See: *Education Vouchers: The Constitutional Standards*, CRS Report 97-50, by David M. Ackerman. And *Choice Programs and State Constitutions: The Inclusion of Sectarian Schools*, CRS Report 92-260, by David M. Ackerman.

³⁷ See: *Title I, ESEA: Current Status and Issues*, CRS Report 96-380, by Wayne Riddle.

³⁸ See: *Mueller v. Allen*, 463 U.S. 388 (1983), in which a Minnesota state income tax deduction for certain private and public school expenses was upheld by the Supreme Court; and *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986), in which use of vocational rehabilitation funds to pay tuition at a religious seminary was upheld.

³⁹ A detailed analysis of what types of school choice programs might survive scrutiny by the federal courts is beyond the scope of this report.

⁴⁰ While Section 1115A allows Title I funds to be used for school choice programs, this provision is limited to schools eligible to participate in Title I, and has certain other limitations — e.g., Title I funds cannot be used to pay choice-related transportation costs, and both the sending and the receiving school must agree to a pupil's transfer. Further, Title I services could possibly be provided off-site to an eligible child who transfers from an eligible school serving her or his residential area to a non-eligible public school, but in practice this would be administratively difficult and is unlikely to occur.

to another school.⁴¹ More extensive revisions to extend choice options in Title I could be considered, as are discussed in the next section of this report.

The primary advantage of the option of removing barriers in existing programs is that it would not directly require any additional appropriations. The primary disadvantages are that the impact would be indirect and relatively small, and efforts to change federal court rulings would be difficult, controversial, and might not be effective.

ESEA Title I — Expansion of Current Choice Authority or Provision of Aid in the Form of Vouchers. This option is related to the previous one in that it involves modifying an existing program at little or no direct increase in federal costs, but it is discussed separately because it could lead to a basic change in the nature of the affected program, not just a relatively modest shift in one of its provisions. As noted above, the ESEA Title I program generally provides services only to **low-achieving pupils** attending public schools serving relatively low-income areas, or to low-achieving pupils residing in the areas served by such public schools, but who attend private schools. An existing authority (Section 1115A) to use Title I funds to pay some of the costs of providing choice among public schools already participating in Title I could be expanded to cover all public and private schools in a geographic area, to remove other constraints now placed on available choices (such as the requirement that both receiving and sending schools must agree to the transfer), and to pay a broader range of choice program costs (such as transportation).⁴² If extended to the maximum, this would have essentially the same advantages and disadvantages as the broader “voucher” approach (see below).

Another approach would be to allow the provision of Title I services in the form of vouchers that could be used by participating families to “purchase” educational services at a variety of public or private schools or possibly additional providers of supplementary educational services. The decision on whether to provide Title I aid as vouchers might be left to states or localities, or the entire program might be transformed into a voucher format nationwide. Proposals were made by the Reagan Administration to allow LEAs to use a portion of their Title I grants as vouchers;⁴³ however, these proposals were not adopted.

As with the first option, this option need not directly increase federal costs. Unlike that option, it might significantly increase choice options for a large number

⁴¹ Another Title I provision, Section 1113(a)(7), authorizes LEAs to select public schools, that would otherwise not be eligible, for Title I programs, if the schools are involved in desegregation plans, and if the percentage of children enrolled in the school from low-income families is 25% or more. While this may partially reduce a barrier to choice under Title I, it still limits the range of choices available to disadvantaged pupils, and only applies to school choice as part of formal desegregation programs.

⁴² Section 1115A was added to ESEA Title I in 1994, based on an amendment offered by Representative Boehner. Earlier versions of this amendment, that were offered during House Committee consideration but not adopted, would have been less restrictive.

⁴³ See: Vouchers for the Education of Disadvantaged Children: Analysis of the Reagan Administration Proposal. *Journal of Education Finance*, v. 12, summer 1986. p. 9-35.

of educationally disadvantaged children living in relatively low-income areas, given the relatively large scale of the program.⁴⁴ However, aid would not be limited to the poor, since a large proportion of Title I participants are not from low-income families themselves (unless the program were also revised to make low income a criterion for individual participation).

The main disadvantage is that the essential nature of Title I would be changed in ways that are untested and may be less effective than the current structure. Currently, the program attempts to concentrate aid on relatively high poverty schools. Services are almost always provided to groups of low-achieving pupils, and they may be provided on a schoolwide basis in very high poverty schools. This has been done not only because such schools are assumed to have the greatest needs, but also because of an assumption that Title I funds will have greater effect if concentrated in this manner. Under this option to expand choice opportunities, aid and services would be much more dispersed. It is an open question whether more dispersed services, combined with potential benefits of expanded school choice and attendance at lower poverty schools, will be more effective than the current strategy, the effectiveness of which has itself been limited.⁴⁵ A specific concern regarding the Title I voucher concept is that the current amount of funds per participating pupil (\$954 in 1992-93)⁴⁶ is significantly below the average tuition level for private schools (an average of \$3,116 for private elementary and secondary schools in 1990-91).⁴⁷ Thus, if a purpose in providing the vouchers is to enable families to use them to pay private school tuition, Title I aid would have to be supplemented from other sources, total funding would have to be increased, or the number of participating pupils would have to be reduced in order to raise grants per participant closer to average tuition levels.

Demonstration Program. The Congress may focus on legislation supporting projects to demonstrate the effects of expanded school choice in a limited number of localities, primarily in order to test the impact of broad choice while keeping the aggregate federal funding relatively low.⁴⁸ For example, aid might be provided to all, or to only low-income, families in a few LEAs to enable their children to attend any public school in their LEA, any public school in a larger geographic area (metropolitan area or state), or any public or qualified private school in a specified area. The authorized funding level could be adjusted to be consistent with the assumed number of participating LEAs and eligible families within them.

Grantees, which, among other entities, could be LEAs or other local units of government (e.g., cities, counties, etc.), would distribute aid in the form of vouchers or certificates to parents in eligible families. In order to constrain costs, eligibility

⁴⁴ The FY1998 appropriation for Title I grants to LEAs is \$7.4 billion.

⁴⁵ See *Title I, Education for the Disadvantaged: Perspectives on Studies of Its Achievement Effects*, CRS Report 96-82, by Wayne Riddle.

⁴⁶ U.S. Department of Education. Office of the Under Secretary. *State Chapter 1 Participation and Achievement Information—1992-93*. 1994. p. 14.

⁴⁷ U.S. Department of Education. National Center for Education Statistics. *Digest of Education Statistics*, 1995. p. 72.

⁴⁸ See previous section discussing legislative proposals in the 105th Congress.

might be limited on the basis of family income (e.g., only pupils in low-income families) or current school attendance (e.g., children who already attend private or other “schools of choice” might be excluded), although such limitations might raise issues of fairness. Vouchers might be used to pay tuition and fees for attendance at private schools, or to pay transportation and related costs of attending either private or “non-neighborhood” public schools. The recipient locality might also be allowed to use some funds for information dissemination or related activities.

Consistent with the demonstration nature of this option, provisions for a comprehensive evaluation of its effects should be included. Major provisions for the demonstration would presumably depend upon the specific policy questions the demonstration is intended to help resolve. For example, priority might be given to targeting grants on relatively low-income areas if the focus were on the effects of expanding choice among those who currently have the fewest options, or on the relative effectiveness of public versus private schools for disadvantaged pupils. Alternatively, it might be appropriate to include a broad geographic and income level mix among the recipient localities if the primary interest is in the effects of broadened choice in a representative group of localities. Whatever the type of area served, if the purpose of the demonstration were not only to estimate the response to expanded school choice options, but also to evaluate the relative effectiveness of public versus private schools for different types of pupils, it might be appropriate to include provisions intended to “level the playing field” between the two sectors (e.g., either increasing the regulation of participating private schools, or reducing the regulation of public schools; providing roughly equal expenditures per pupil in different types of participating schools, etc.),⁴⁹ or to assure that similar types of pupils attend both public and private schools (to the extent this is possible without unduly limiting family choice of schools).

Although this option would be relatively inexpensive in the aggregate (but costs per pupil might be substantial), it might provide a significant test of the effects of expanded school choice and/or the relative effectiveness of public versus private schools for certain types of pupils, and it might substantially increase the choice options for families in the affected localities. The main disadvantages are that the number of participating localities and families would be quite limited, there may be constitutional challenges if religiously-affiliated private schools participate, and it might be difficult to reconcile efforts to make the demonstration fair and valid with efforts to maximize school choice.

Expansion of Current Magnet Schools Assistance Program. The largest current federal program that supports school choice is the Magnet Schools Assistance program. Participation in Magnet Schools is limited to public schools in LEAs

⁴⁹ There has been substantial debate over the relative effectiveness of private versus public schools in stimulating academic achievement among pupils of various types, especially those from low-income families. Advocates of public schools often argue that in such “competition,” private schools have an advantage of being subject to fewer regulations (e.g., regarding education of disabled pupils, or labor-management relations) than public schools, while proponents of many private schools (other than the small, “elite,” high tuition part of the private sector) frequently argue that public schools benefit from higher levels of expenditures and instructional resources (equipment, laboratories, etc.) per pupil.

implementing formal desegregation plans, whether court-ordered, or adopted voluntarily and approved by the U.S. Secretary of Education under Title VI of the Civil Rights Act. If a LEA is unwilling or unable to meet this requirement — perhaps because it is located in a region with extremely few minority students, or has an almost all-minority enrollment and is unable to form a consortium with one or more LEAs with substantial nonminority enrollment — then it cannot receive Magnet Schools Assistance grants. In order to expand the range of eligible LEAs, this program could be revised to limit or remove its desegregation-related requirements, or a new program could be authorized that is similar to the existing one but has no special desegregation requirements (beyond the requirements that apply to all federal aid recipients).⁵⁰ If proponents wanted to emphasize the expansion of eligibility for Magnet Schools Assistance to LEAs not currently eligible because a very high proportion of their enrollment consists of minority pupils, making significant desegregation within the LEA infeasible, they may want to limit eligibility for a new program (or a portion of the grants thereunder) to such high minority enrollment LEAs.

The potential advantages and disadvantages of this approach are similar to those for the choice demonstration option above, especially those related to scale and cost, except that the focus would be on individual schools in a larger number of LEAs rather than on all eligible pupils in a smaller number of LEAs. Another difference is the emphasis on providing distinctive instructional programs in magnet schools. The existing magnet school program is limited to public schools, although a new program need not be so constrained. Finally, explicit use of the magnet schools model might lead to some confusion unless desegregation were a goal of the new proposal as well.

Expansion of Current Public Charter Schools Authority. Another, more recently adopted, authority that might be expanded to increase federal support of school choice is the Public Charter Schools program. Because they combine public funding with limited public regulation, and because some of the charter schools in states initiating this idea were originally private schools, the charter school concept is not easily contained within orthodox notions of either “public” or “private” schools.

As with the Magnet Schools program, this Public Charter Schools authority could be expanded to increase school choice options. Primary ways in which this could be accomplished include increasing the appropriations level (\$80 million for FY1998, representing rapid growth over the initial, FY1995 level of \$6 million), and adding more explicit requirements that all pupils residing in a LEA or broader area are eligible to enroll.

Although authority to establish charter schools is spreading rapidly among the states, it is a relatively new concept, and relatively few charter schools have been in operation for more than 2 years. This, combined with the somewhat anomalous

⁵⁰ Such a program was authorized during FY1989-1993, but was never funded, under Title IV, Part F, Section 4606 of the ESEA, Alternative Curriculum Schools. No funds could be appropriated for this program unless the Magnet Schools Assistance program appropriation for that year was \$165 million or more. There were minimum minority enrollment thresholds for eligible LEAs (or consortia) of 65%, and for eligible schools of 50%.

nature of charter schools, falling somewhere in between traditional notions of “public” and “private” schools, makes it especially difficult to foresee the implications of a substantial expansion of federal aid to charter schools. Nevertheless, this option would presumably share the advantages of relatively low cost, and a potentially substantial increase in choice options for a limited number of families, with the choice demonstration and magnet school options above. As with magnet schools, the instructional programs of charter schools are intended to be distinctive. It would also seem to share with the last two options the disadvantage of relatively small scope, at least presently. A unique aspect of this option is the combination of choice with deregulation in charter schools.

Block Grant With Choice as an Authorized Use of Funds. An option that would be broader in scale and funding overall than the preceding ones, although the share of those funds used specifically for school choice activities would likely be uncertain, would be a block grant consolidating many current federal elementary and secondary education programs, and including school choice among its authorized activities. Block grants may be defined as federal grants to states that provide a high degree of flexibility in the ways in which aid may be used, perhaps coupled with more specific requirements for accountability in terms of outcomes. Typically, block grants are developed through the consolidation of multiple, existing programs with more specific authorized uses of funds. There has been substantial discussion during the 105th Congress about the possible consolidation of several of the current federal elementary and secondary education programs into one or more block grants.⁵¹

There are at least three ways in which support for school choice might be incorporated into a block grant, especially a block grant supporting a variety of “school reform” activities. Under a block grant, school choice might be one of the explicitly authorized uses of any of the federal aid. This highly flexible version would perhaps be most consistent with the block grant approach, with its emphasis on state and local decisionmaking. However, it is possible that support for school choice in a block grant might be stated in stronger, less flexible terms, through either a minimum (or maximum) share of the funds that must be used for choice programs, or even a requirement that states or LEAs adopt certain school choice policies in order to be eligible for the block grant.

Inclusion of school choice support in a block grant for elementary and secondary education would have the advantages of placing choice in a broader school reform context, along with other activities deemed to be relevant to reform and authorized in the block grant; of potentially emphasizing both choice and state/local flexibility or authority; and of supporting increased choice without establishing a new “categorical” program. Such a block grant might also be part of a strategy to reduce overall federal spending for elementary and secondary education — i.e., increasing flexibility while reducing total spending from the previous level for the programs that are consolidated.

⁵¹ For more information on this topic, see: *Elementary and Secondary Education Block Grant Proposals in the 105th Congress*, CRS Issue Brief 98013, by Wayne C. Riddle and Paul M. Irwin. (Hereafter cited as *Education Block Grants*)

A disadvantage of the block grant approach to expanding school choice is that, unless one of the less flexible variations of this option were adopted, there would be no assurance that any funds would actually be used for school choice activities. Even if a minimum level of funding or state policy support for choice were required, such specificity would be inconsistent with the block grant strategy. It would also be inconsistent with the block grant approach to specify what types of school choice were acceptable (e.g., only choice that included private and public schools). Further, if funds were spread among all LEAs, as would typically occur under a block grant, the amount per pupil received by each LEA might be too low to add significantly to state and local resources in support of school choice, especially in view of the competing demands on those funds. Finally, at least in the past, broad federal block grants for education have experienced declines in funding over time, especially in comparison to programs where the activities or eligible population were more narrowly defined.⁵²

Tax Benefits for Elementary and Secondary Education Tuition and Fees.

Over the last several decades, proposals have often been made to provide tax benefits — deductions, credits, or exemptions from taxation of certain income — for families paying tuition or related costs for postsecondary, secondary, or elementary education.⁵³ While federal tax benefits are not currently authorized for private **elementary and secondary** education, private schools receive favorable tax treatment in other respects.⁵⁴ Limited tax deductions, credits, and savings incentives for certain **postsecondary** education expenses were enacted in 1997.⁵⁵ Two states — Iowa and Minnesota — authorize relatively small state income tax deductions or

⁵² See: *Education Block Grants* for additional, general advantages and disadvantages of federal block grants for elementary and secondary education.

⁵³ Tax deductions may be distinguished from tax credits as follows: A deduction would allow families to reduce their taxable income by an amount equal to some or all qualified expenses. Tax deductions are usually, but not necessarily, available only to taxpayers who itemize their deductions, as opposed to using the standard deduction. In contrast, a credit would directly reduce tax liability and might even be paid to families with no tax liability (a refundable credit). For general information on tuition tax credit and deduction concepts and previous proposals, see *Tuition Tax Credits*, CRS Report 93-124, by Bob Lyke. (Hereafter cited as *Tuition Tax Credits*)

⁵⁴ For example, the income of such schools is not subject to federal taxation, charitable contributions to the schools may be deducted from taxable income by the donors, and scholarships for students at such schools are not taxable income to the recipient or her/his family if they do not exceed the cost of tuition and related fees, books, etc.

⁵⁵ See *Tax Benefits for Education in the Taxpayer Relief Act of 1997*, CRS Report 97-915, by Bob Lyke.

credits for private elementary or secondary school tuition and fees plus certain expenses related to public school attendance.⁵⁶

Historically, most proposals for federal tax benefits related to private elementary and secondary education expenses would have authorized tax credits or deductions for tuition and related expenses. However, more recent attention and legislative activity have focused on proposals to exempt from taxation the income from education savings accounts if such income is used to pay tuition or other costs for pupils at both public and private schools. As was discussed earlier, H.R. 2646, the Education Savings Act for Public and Private Schools, was passed by the House on October 23, 1997, and is scheduled for Senate floor debate beginning April 20, 1998. This bill would expand the current authorization for Education Individual Retirement Accounts (IRAs), to allow tax-free proceeds from the accounts to be used to pay public or private elementary and secondary, as well as postsecondary, education expenses, including home schooling expenses, and computer hardware and software. It would also raise the limit on contributions for beneficiaries under the age of 18.⁵⁷

While maximum amounts, as well as income eligibility criteria, can be established for a deduction, credit, or education savings account, the tax benefit would presumably be available nationwide to all eligible families. Therefore, this sort of option is very broad in scope, and might increase choice options very substantially, if the maximum dollar value of the benefit were significant. Such tax benefits would alleviate what some advocates call the “double taxation” experienced by families that pay taxes for public school systems as well as private school tuition. Some would consider it advantageous that this form of aid to school choice would not be a “program,” with accompanying administrators, regulations, etc., (other than those involved with administering the tax allowance at the Internal Revenue Service), but would be an addition to taxpayer net income. Further, the benefits of a tax benefit would be dispersed broadly, principally on the basis of individual and family decisions.

A tuition tax benefit is potentially very expensive, although the spending would be primarily in terms of “tax expenditures,” not federal appropriations.⁵⁸ Unless public schools were allowed to charge tuition or other fees eligible for the tax allowance, most of the aid would go to families with pupils attending private schools. There might be a large increase in demand for private education, and a large increase in the tuition and fees private schools charge. There might also be a negative impact on those remaining in public schools, especially if pupils from the lowest income families, or those with disabilities or other educational disadvantages, are most likely

⁵⁶ In Minnesota, legislation was adopted in July 1997 that increased the previously preexisting tax deduction, and authorized a new tax credit for students from families with income of \$33,500 and below. The credit cannot be applied to private school tuition expenses, although it might be applied to other expenditures related to private school enrollment (e.g., transportation or textbooks). (Minnesota Expands Tax Breaks Tied to Education. *Education Week*. July 9, 1997. p. 14.)

⁵⁷ See *Education Savings Accounts for Elementary and Secondary Education*, CRS Report 97-852, by Bob Lyke.

⁵⁸ An exception might be the costs of the refundable portion of a tax credit for low-income families.

to remain in public schools. The oversight or monitoring of participating private schools might be virtually nonexistent. There may also be constitutional difficulties if religiously-affiliated private schools can participate, or if public schools do not receive a significant share of aid. Finally, authorization of new tuition tax allowances would be counter to recent proposals to simplify the federal income tax system and reduce special tax allowances within it.

Issues Regarding the Federal Options in General

The following section of this report provides discussion and analysis of two broad sets of issues that are related to all of the possible federal policy options considered above, as well as state and local programs. These are the basic questions of what are the effects of increased school choice, and what would be the net effect of new federal support of choice? In other words, why should choice be supported, and is greater federal aid likely to have a significant impact on the evolution of choice policies in states and localities, or would it probably be marginal to that process?

What are the Effects of School Choice? Although the federal government already supports school choice (see discussion above), the legislative debate over options for further federal support is likely to include, among other issues, consideration of educational and other effects of school choice. This debate may center on whether school choice positively affects students' academic achievement, and the distribution of students in terms of their racial/ethnic and family income characteristics. This section highlights some of the arguments made on either side of these particular issues. Congressional proponents and opponents of different choice programs are likely to find evidence to support their positions, but **definitive conclusions on the effects of choice on achievement and distribution of students remain out of reach**. Among the factors that preclude definitive conclusions are:

- the wide variation in school choice efforts currently underway (there is no single choice model to assess, and the consequences for achievement and the distribution of students are likely to depend upon the specific details of any particular choice program);
- the relative newness of the kinds of choice initiatives at the forefront of policymaking (such efforts as statewide public school choice have been established relatively recently, and voucher programs supporting public and private school choice are not only new but rare);
- the very nature of choice programs which involves self-selection by students and families, making it difficult to untangle cause and effect; and
- the resulting limitations of existing research on choice (these stem partly from the newness of choice initiatives and the lack of adequate controls on such factors as family background in many analyses of the effects of school choice).

A comprehensive treatment of the research and arguments advanced on the consequences of school choice is well beyond the scope of the present report.⁵⁹ The text below presents general arguments for and against choice in the particular areas under consideration. It must be stressed that, because of the many different approaches possible to school choice, the groups and individuals supporting or opposing choice also vary depending upon the particular approach under consideration.

Educational Quality. Choice proponents assert that, because choice opens up an educational marketplace requiring public schools to compete for students, those schools will either come to provide students with a higher quality education or will cease operation as more and more students leave. In creating this marketplace, choice, it is argued, shifts the balance of power in school systems from bureaucracies concerned primarily about their self preservation to parents whose interests are focused on academic quality. Further, private school choice advocates point to some evidence of higher levels of academic achievement in the private sector overall as evidence that a choice program, which would enable more students to have access to the private sector, would lead to higher overall levels of academic achievement.

Opponents counter that the competition generated by choice will not function so neatly with regard to educational quality. They are concerned that the loss of students and financial resources will leave some schools less able to improve but still responsible for educating many students unwilling or unable to leave; these may be primarily educationally and economically disadvantaged students. Opponents state that an educational marketplace can work to the disadvantage of some parents and students who are unlikely to receive adequate information with which to make educationally sound choices. Further, they suggest that choices may be made on the nonacademic, not the academic, features of schools. The academic superiority of private schools has also been challenged by choice critics who contend that, when

⁵⁹ The analysis which follows draws from previous CRS reports on school choice, as well as other sources. The consideration below on racial/ethnic and socioeconomic distribution of students is based largely on: *School Choice in 1993: Status and Issues*, CRS Report 93-1059, by James B. Stedman. More detail on the issues considered in this section are provided by: *Public School Choice: Recent Developments and Analysis of Issues*, CRS Report 89-219, by Wayne Riddle and James B. Stedman. Among the articles and reports marshaling arguments and evidence in favor of school choice are: Henderson, David R. *The Case for School Choice*. Hoover Institute, 1993; Allen, Jeanne. Nine Phoney Assertions About School Choice. *USA Today*, July 1993; and Greene, Jay P., et al. *The Effectiveness of School Choice in Milwaukee: A Secondary Analysis of Data from the Program's Evaluation*. Harvard University Program in Education Policy and Governance, Occasional Paper 96-3, Aug. 1996. Among the articles and reports that challenge evidence advanced in favor of choice are: *School Choice*. The Carnegie Foundation for the Advancement of Teaching, 1992; Rosenberg, Bella. Public School Choice: Can We Find The Right Balance? *American Educator*, summer 1989; Witte, John. Who Benefits from the Milwaukee Choice Program? in Elmore, Richard, et al. *Who Chooses? Who Loses? Culture, Institutions and the Unequal Effects of School Choice*. Teachers College, Columbia University, 1996. p. 118-137; and Metcalf, Kim K., et al. *A Comparative Evaluation of the Cleveland Scholarship and Tutoring Grant Program, Year One: 1996-97*. School of Education, Indiana University. March 16, 1998.

similar groups of student are compared, the private school advantages fade to insignificance.

Existing evidence specifically on the academic achievement effects of the current public-private voucher programs in Milwaukee and Cleveland is inconclusive and/or contradictory. Evaluations which find significant effects of these choice programs on pupil achievement have been criticized on methodological grounds, particularly with respect to ways in which pupil sample groups and/or test scores are adjusted for comparability. The relatively recent implementation of the Cleveland program, plus the high rate of pupil mobility and difficulties in obtaining all relevant pupil records in both programs have created serious difficulties for those attempting to evaluate these programs.

Racial and Ethnic Integration. Choice has strong historical links to school desegregation, both as an approach used in the 1950s and 1960s to thwart the dismantling of segregated school systems, and more recently in the form of magnet schools as a way to desegregate schools voluntarily. The consequences of expanded school choice programs for racial and ethnic segregation among students are being debated.

Proponents of choice argue that many minority students and parents do not have the economic and other resources necessary to select their schools, either by enrolling in private schools or moving to another school attendance area or school district. As a result, it is argued, racial and ethnic minorities are increasingly isolated in poorly performing schools. Choice would offer these parents the opportunity to select their children's schools, potentially ending racial isolation.

Critics counter that choice programs will encourage white flight, that is, the changing of schools by white students in order to avoid enrolling with minorities. Further, they contend that choice programs may include various barriers to full participation by minorities, such as inadequate dissemination of information about choice options and limits on subsidy of transportation costs.

Socioeconomic Distribution of Students. The arguments with regard to the consequences of choice for students from different socioeconomic backgrounds are similar to those made concerning minority segregation. Proponents assert that choice promotes equity by enabling economically disadvantaged students to have educational options, something usually reserved for those students and families with the requisite economic resources. Opponents reply that choice may exacerbate current inequities because the most disadvantaged students and families may be the least likely and least able to take the steps needed to change schools. Their inaction on behalf of their children, it is argued, may be only partly a function of limited economic resources.

Would Additional Federal Support of School Choice Have Significant Effects? As is apparent from the brief review of state and local developments regarding school choice, this is currently an active policy area in much of the Nation. This is occurring in spite of a lack of broad federal initiatives in support of school choice — just modest size programs such as magnet schools or the new (1994) initiatives on charter schools and choice within Title I programs, and some “bully pulpit” exhortations in support of choice, especially during the Reagan and Bush

Administrations. There are also relatively few barriers to school choice emanating from the federal government, with the possible exception of constraints arising from school desegregation orders (some of which also encourage choice through such mechanisms as magnet schools), or possible constitutional constraints on choice involving private, religiously-affiliated schools. Therefore, it may be asked whether new federal aid to school choice activities would have substantial impact — what additional effect might arise from federal action, beyond activity initiated by state and local actions? Opponents of new federal school choice programs will likely argue that additional federal aid would have little net effect, and that states and localities should continue to make their own decisions in this area with the federal government playing, in net, an essentially neutral role.

One reason why further federal action on school choice may be significant is that the perceived barriers to choice found in the policies or decisions of ED or federal courts could be reduced or completely removed, although, as noted above, there may be particular difficulty in removing barriers that arise from court decisions. Another rationale for federal action is that if expanded school choice is deemed by its proponents to be an essential part of school reform, then perhaps federal support of reform should include a substantial choice component to provide leadership to state and local efforts, even if the direct impact of the federal effort is relatively small.

Further, it is possible that some states or localities wishing to provide expanded school choice options may have insufficient resources to pay the attendant costs (transportation, etc.) without federal financial assistance. Alternatively, even relatively small amounts of federal aid may induce some localities to initiate choice programs where they otherwise might not have done so.

A particular respect in which federal aid to choice might have substantial impact is the inclusion of private schools among the choice options. Thus far, only a small number of school choice programs initiated by states or localities include private schools. As described in the preceding section of this report, several federal school choice options might include private schools; some might even focus most of the aid on private schools (e.g., tuition tax allowances). In this respect — inclusion of private schools, assuming any constitutional challenges could be successfully resolved — several congressional proponents of school choice seem prepared to expand choices more broadly than do the great majority of state and local governments, and a federal choice program might have a distinctive and substantial impact.