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School Choice: Current Legislation

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School Choice: Current Legislation

SUMMARY

Legislative proposals to provide parents enhanced opportunities to select their children's schools are varied and widely debated. Many school choice proposals have been made with the intent of improving the quality and increasing the range of educational opportunities available to students. Some proponents of school choice suggest that the availability of more school choices will both provide more students with access to better schools and also induce public schools to improve through market competition. Some opponents express concerns about choice programs, such as the potential for redirecting public education funding and possible variation in the quality and availability of schools from which to choose.

The 108th Congress authorized and appropriated funds for a school voucher program for the District of Columbia as part of the FY2004 Consolidated Appropriations Act. This Congress also has seen bills introduced that would expand school choice, through means such as:

- authorizing school choice programs for students with disabilities; and
- authorizing federal tax credits for K-12 education expenses, or for contributions to organizations that provide students with scholarships to attend private schools.

The 107th Congress expanded the federal role in providing support for elementary and secondary (K-12) school choice through changes in federal tax policy and through enactment of the No Child Left Behind Act (NCLBA), which amended and extended the Elementary and Secondary Education Act (ESEA). Major new school choice initiatives of the 107th Congress included:

- authorization for distributions from Coverdell Education Savings Accounts (ESAs) to be used for K-12 education expenses, including private school tuition;
- public school choice for students attending Title I-A schools that do not make adequate yearly progress (AYP) for 2 consecutive years;
- supplemental education services for students attending Title I-A schools that do not make AYP for 3 consecutive years;
- school choice for students who are victims of violent crimes or attend unsafe schools; and
- the Voluntary Public School Choice program.

The 107th Congress also reauthorized the following ESEA programs that support public school choice:

- Innovative Programs;
- Charter Schools Programs;
- Magnet Schools Assistance programs; and
- Fund for the Improvement of Education.

In June 2002, the Supreme Court ruled that the Constitution allows for public funding of school vouchers used to support children's attendance at religiously affiliated schools, so long as their parents also have the opportunity of selecting from among options that include public and private secular schools. This ruling allayed previous concerns about the constitutionality of directing public funds to religiously affiliated schools. Still, some state constitutions prohibit public funding of religiously affiliated schools.

MOST RECENT DEVELOPMENTS

On February 25, 2004, the U.S. Supreme Court ruled in *Locke v. Davey* (540 U.S. ____ (2004)) that the State of Washington's practice of denying students from using Promise Scholarships to support study toward a postsecondary degree in theology is not in violation of the Free Exercise clause of the First Amendment. The court held that "there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause." While some had anticipated that the court's ruling might have broader implications, particularly on whether publicly funded K-12 school voucher programs might be required to include religiously affiliated schools among school choice options, the court's ruling was narrowly tailored to the issue of funding scholarships for the "religious training of clergy."

On January 23, 2004, the President signed P.L. 108-199 (H.R. 2673), the *Consolidated Appropriations Act, 2004*, which authorizes and appropriates \$14 million in funding for the *DC School Choice Incentive Act of 2003*, an elementary and secondary (K-12) scholarship program in the District of Columbia. According to the program, students who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty line will be eligible to receive scholarships valued at up to \$7,500 per year to support their attendance at private elementary or secondary schools located in the District of Columbia.

On January 20, 2004, the U.S. Supreme Court heard arguments in *Hibbs v. Winn*, (No. 02-1809) involving the Arizona tuition tax credit program. The case is a challenge to a ruling by the United States Court of Appeals for the Ninth Circuit that the Tax Injunction Act and principles of comity do not require federal courts to dismiss constitutional challenges to state tax credits that affect the administration of state tax systems. The Arizona tuition tax credit program had been challenged in federal courts on grounds that it violates the Establishment Clause of the First Amendment to the Constitution because it permits scholarships to be awarded for attendance at parochial schools. The court's ruling on this case may determine the extent to which state tax laws (including those supportive of school choice) may be challenged in federal courts.

BACKGROUND AND ANALYSIS

Introduction

According to the National Center for Education Statistics (NCES), during the 1990s, the proportion of the nation's school children attending schools of choice increased modestly, with the increase due primarily to greater numbers of children attending chosen public schools. Across all income levels, greater proportions of students attended public schools of choice in 1999 than in 1993. However, among students attending schools of choice (whether public or private), those from lower-income families were more likely to attend a public school of choice, whereas those from higher-income families were more likely to attend a private school. Despite modest growth in the exercise of school choice, three-quarters of elementary and secondary school students still attended a public school to which they were assigned. (U.S. Department of Education, National Center for Education Statistics, Statistical Analysis Report, *Trends in the Use of School Choice: 1993 to 1999*, May 2003.)

The federal government, and many states and localities have implemented numerous policies and programs that have enhanced parents' ability to select the schools their children attend, contributing to the modest growth in the exercise of school choice observed over the past decade. While many school choice policies and proposals have become popular and broadly supported approaches toward increasing students' access to diverse educational opportunities and effecting elementary and secondary education reform, others remain controversial and divisive.

This issue brief provides an overview of current local, state, and federal policies and programs that support school choice and identifies and summarizes recent federal school choice legislation. It is updated regularly to reflect congressional action on legislation concerning school choice and related developments in states and localities.

Methods of Supporting School Choice

Students from families with sufficient resources and capabilities may be considered able to choose from among the panoply of school options. For many students, however, the extent to which they and their parents can exercise school choice depends upon the scope of public policies and programs implemented at the federal, state, and local level. While existing federal, state, and local programs that support school choice with public resources have a variety of features, they generally fall into six broad categories.

Intradistrict Public School Choice. Students may choose among some or all the public schools within their home school district. Open enrollment plans, magnet schools (created to promote voluntary school desegregation), and alternative schools also are examples of intradistrict choice options.

Interdistrict Public School Choice. Students may choose to attend public schools outside their home school district. Included in this type are special school districts, such as secondary education districts providing vocational or technical education and training, and some magnet schools.

Charter Schools. Students may choose to attend public schools operating under charters granting them greater operational autonomy in exchange for increased accountability for outcomes. A charter school may be a school within a local educational agency (LEA) or may be considered its own independent LEA. Virtual charter schools function through the exchange of information electronically between student and teacher, such as from a student's home via the Internet, and typically do not have a common education facility.

Tax Subsidies. The federal and some state tax codes provide deductions or credits supportive of school choice. These include the exemption from taxation of income used for elementary and secondary education expenses, such as through federal Coverdell ESAs and certain state deductions or credits for educational expenses or contributions to school tuition organizations (STOs), which provide private scholarships to children. The federal tax code also allows deductions for interest paid on a home mortgage, as well as state and local taxes. These deductions act to subsidize the cost of families exercising their choice to reside in desired school districts or attendance areas, which often have higher property values and higher amounts of deductible local property taxes or home mortgage interest payments.

Subsidies to Private Schools. Private schools are able to provide educational services at more attractive prices partially as a result of the provision of selected publicly funded services to private school pupils (e.g., transportation, health, and special education services), and the deductibility from taxation of certain contributions received by them or their parent organizations.

School Vouchers and Supplemental Educational Services. Parents may be granted vouchers that they may use to pay a portion of or the total cost of full-time attendance at a private school. Vouchers are sometimes referred to as scholarships or tuition certificates. Parents also may be granted the opportunity to select the provider of supplemental educational or tutorial services for their children in much the same way as under a voucher program.

There are also privately financed choice options. For example, private groups (such as STOs) have established programs in many localities to help pay tuition and related costs for mostly low-income children to attend private elementary and secondary schools. Also, many families choose to homeschool their children.

Current State and Local School Choice Programs Involving Private Schools

Of policies and programs currently operating or proposed in states or localities, most involve only public schools — whether selected schools within an LEA or school district, all schools in an LEA, all public schools in a multi-LEA region or state, or charter schools. School choice programs in which vouchers are provided to a limited number of pupils for attendance at private (including religiously affiliated) schools currently exist in Wisconsin (Milwaukee), Ohio (Cleveland), Florida, and Colorado. In Maine and Vermont, public funding has long been provided to allow children who reside in areas without public schools to attend private schools.

The *Milwaukee Parental Choice Program* provides state funding for low-income students to attend private schools located within Milwaukee. When first implemented in school year 1990-1991, choice was limited to nonsectarian private schools. In the 1994-1995 school year, the program was expanded to include religiously affiliated schools. Students in kindergarten through grade twelve are eligible to participate. During school year 2003-2004, parents are eligible to receive vouchers set at the lesser of \$5,882 or the private school's per-pupil costs (for tuition, operating expenses, debt service, etc.), which they then submit to the school for payment. During the 2002-2003 school year, 11,621 students and 102 schools participated in the program. (State of Wisconsin, Department of Public Instruction, School Management Services).

The *Cleveland Scholarship and Tutoring Program*, first implemented in the 1996-1997 school year, allows students in kindergarten through grade 3 to apply to receive scholarships to enable them to attend a private school located within the boundaries of the Cleveland Municipal School District or a public school in an adjacent district, or to receive tutoring grants for tutorial services delivered by a private or governmental provider. Students from low-income families are given priority in participating in the program. Once accepted, students may continue to participate in the program through higher grades. Parents of students attending private schools or receiving tutorial services are reimbursed by the state

for an amount up to either 90% of the defined scholarship amount (for families with incomes below 200% of the poverty line), or 75% (for families with incomes at or above 200% of the poverty line), with the maximum K-8 scholarship amount set at \$3,000 for the 2003-2004 school year. The program was recently expanded to include high schools, with the scholarship amount for high schools set at \$2,700. Participating private schools must agree to charge students in families with incomes below 200% of the poverty line tuition of no more than 10% of the scholarship amount, all of which may be satisfied by in-kind contributions or services. Students in families with incomes at or above 200% of the poverty line may be charged the difference between the scholarship payment and the school's actual tuition. (Title 33, Ohio Revised Code, §3313.97). During the 2002-2003 school year, 5,147 students received tuition scholarships, and 1,112 received tutoring grants (SchoolChoiceInfo.org. "Cleveland Scholarship and Tutoring Program Student Enrollment," (based on data reported by the Ohio Department of Education at [http://www.schoolchoiceinfo.org/facts/index.cfm?ftp_id=5&fl_id=2].) According to arguments in *Zelman v. Simmons-Harris* (536 U.S. 639 (2002)) no adjacent public school districts have elected to accept students under the program.

In addition to these two local voucher programs, in 1999, the state of Florida implemented *Opportunity Scholarship* legislation, which authorizes the provision of vouchers to pupils in grades K-12 assigned to low-performing public schools that receive an 'F' rating for any two years during a four-year period. The vouchers may be used to pay either private school tuition or the costs of enrolling in another public school in the same or a neighboring county. For school year 2003-2004, nine public schools have been designated as failing schools. The amount of funding available for attendance at private schools is the lesser of the amount of funds that would be available to the public schools for the child's education — generally between \$3,600 and \$4,300 — or the tuition and fees at the private school. Participating schools must accept the scholarship as payment in full for tuition and fees. School districts are required to provide transferring students with transportation to public schools within the same district, but not to out-of-district public schools nor to private schools. (Floridachild.org, "Opportunity Scholarships — The Basics for Families," at [<http://floridachild.org/opportunityscholarships/basics.html>]).

Florida also operates the *John M. McKay Scholarships Program for Students with Disabilities*, distinct from the Opportunity Scholarship Program. Under this program, all pupils with disabilities who attend Florida public schools may receive a voucher to attend a public or private school of their family's choice. The value of the voucher is based on the amount of aid that would be available to the public schools for the child's education and is dependent on the nature of the pupil's disability. Generally it ranges between \$4,500 and \$21,000. (Alan Richard, "Florida Sees Surge in Use of Vouchers," *Education Week*, September 5, 2002). If the voucher amount is insufficient to cover the full cost of tuition and the school does not accept the voucher as payment in full, families are permitted under the program to make additional payments to the private school, although most families pay either nothing or less than \$1,000 above the voucher amount. During the 2002-2003 school year, 9,202 students participated in the program. (J.P. Greene and Greg Forster, *Vouchers for Special Education Students: An Evaluation of Florida's McKay Scholarship Program*, (New York: Center for Civic Innovation, No. 38, June 2003).

In April 2003, the *Colorado Opportunity Contract Pilot Program*, a state-wide school voucher program was enacted. However, on December 3, 2003, the Denver District Court

ruled that the program violated state constitutional provisions requiring local control of education. The ruling is expected to be appealed. According to the authorizing statute, school districts with at least eight schools that have earned “low” or “unsatisfactory” ratings according to state standards must participate in the program, while other school districts may participate voluntarily. Parents of students who are eligible for free or reduced-cost lunches and who are identified as low-performing students according to academic assessments are eligible to enter into an “opportunity contract” with their child’s school district to receive a voucher for payment toward their child’s tuition at a private school. To be eligible students also must have been continuously enrolled in a public school the year prior to participating in the program, or be entering kindergarten. The value of the voucher is the lesser of the educational cost per pupil at the private school or a specified percentage of the sending school district’s per-pupil operating revenues, varying by grade level: 37.5% for kindergartners, 75% for students in grades 1-8, and 85% for students in grades 9-12. After allocating funds to voucher recipients, sending school districts are able to retain any remaining per-pupil operating revenues (e.g., 63.5%, 25%, or 15%). In the first year of the program, a maximum of 1% of a district’s students may participate in the program. Over subsequent years, participation may gradually increase to 6%. (Title 22, Colorado Revised Statutes, Article 56).

Some states support private school choice through tax policy. Arizona provides tax credits to individuals for contributions to STOs that provide scholarships to students to meet the costs of private school attendance. (As previously noted, the Arizona tuition tax credit program is currently being challenged in federal courts.) Florida provides tax credits to corporations that fund organizations providing scholarships to low-income children. Pennsylvania also grants corporations tax credits for contributions to organizations that award scholarships allowing children to attend the school of their choice. Additionally, Illinois and Iowa allow individuals to claim a tax credit for certain educational expenses, including private school tuition; and Minnesota allows tax credits and deductions for similar expenses. (Krista Kafer, *School Choice 2003: How States are Providing Greater Opportunity in Education*, Washington, D.C., The Heritage Foundation, 2003. Also see NSBA Voucher Strategy Center, National School Boards Association, Alexandria, VA, 2004.)

While Colorado was the first state to enact a school choice program since the Supreme Court decided *Zelman v. Simmons-Harris*, legislatures in a number of other states are also considering school choice legislation. In addition, several existing school choice programs are being challenged in the courts. Some of these challenges involve state constitutional prohibitions against the provision of state aid to support religious activities, such as education. It is unlikely that these cases will be decided until the Supreme Court issues its opinion on *Davey v. Locke*, an appeal of a lower court ruling which found a provision of the Washington State constitution, which prohibited a state postsecondary education scholarship from being used to support the study of theology, to be in violation of the free exercise clause of the First Amendment. The Supreme Court’s ruling on *Davey v. Locke* may affect elementary and secondary education school choice programs that involve religiously affiliated schools. (For a more detailed review of legal issues relating to school choice, particularly vouchers, see CRS Report RL30165, *Education Vouchers: Constitutional Issues and Cases*, by David M. Ackerman.)

Current Federal Choice Programs

Currently, elementary and secondary education school choice is supported through several ESEA programs and through the federal tax code. The following provides a brief description of current federal school choice programs. Where appropriate, program descriptions include FY2004 appropriation amounts.

ESEA Programs

Local Educational Agency Plans (ESEA Title I-A). Schools with 25% low-income enrollment may be granted a waiver allowing participation in Title I-A if they are involved in desegregation programs under which students change schools (the threshold otherwise is generally 35% or higher). This provision was added to Title I-A in 1994.

School Choice as a Component of School Improvement (ESEA Title I-A). Students attending Title I-A schools identified for school improvement after failing to meet AYP standards for two consecutive years must be offered the opportunity to choose from among two or more schools within the same LEA that have not been identified for school improvement, corrective action, or restructuring, and that also have not been identified as persistently dangerous schools. The lowest achieving children from low-income families must receive priority in choosing schools. The U.S. Department of Education (ED) has issued regulations prohibiting LEAs from using lack of capacity as a reason for denying students the opportunity to transfer to a school of choice (34 CFR 200.44(d)). Schools identified for improvement also are required to implement school improvement plans.

Students attending Title I-A schools that are identified for a second year of school improvement after failing to meet AYP standards for a third consecutive year must continue to be offered the option of attending another eligible public school within the same LEA. Students from poor families who continue to attend a Title I-A school identified for a second year of school improvement must be offered supplemental educational services (i.e., tutoring) from a non-profit entity, a for-profit entity, or the LEA, unless such services are determined by the state education agency (SEA) to be unavailable in the local area. The SEA is required to maintain a list of approved supplementary education service providers (including those offering services through distance learning) from which parents can select. In instances where a school fails to meet AYP standards for four consecutive years, it must be identified for corrective action. If, after a year of corrective action, the school still does not improve, the LEA may begin planning to restructure the school, with one option being to reopen the school as a charter school. In instances where there are no eligible schools in the student's LEA, LEAs are encouraged to enter into cooperative agreements with surrounding LEAs to enable students to transfer to an eligible public school. LEAs may be required to expend an amount equal to 20% of their Title I-A grants on transportation for public school choice and supplemental educational services. (ED has calculated these amounts for FY2004 and posted them at [<http://www.ed.gov/about/overview/budget/titlei/fy03/index.html?src=rt>].)

In instances where a Title I-A LEA fails to make AYP for two consecutive years, the SEA is required to identify it for improvement, and require the LEA to develop and implement a new LEA education plan, with technical assistance provided by the state. If an LEA is identified for improvement, the SEA has the option of authorizing students attending a school in that LEA to transfer to eligible public school in another LEA, with transportation

costs provided by the sending LEA. If a Title I-A LEA does not meet AYP for four consecutive years, the SEA is required to take corrective action, which may consist of requiring the LEA to provide students the option of attending an eligible school in another LEA.

Innovative Programs (ESEA Title V-A). As means of achieving education reform, states may use Innovative Programs funds for the planning, design, and implementation of charter schools. LEAs may use Innovative Programs funds for magnet schools; for the planning, design, and implementation of charter schools; for school improvement activities; to promote, implement, or expand public school choice; and for supplemental educational services. (FY2004 appropriation: \$296.5 million; FY2005 budget request: \$296.5 million.)

Public Charter Schools (ESEA Title V-B-1&2). The Charter Schools Programs support increasing the number of charter schools by providing financial assistance for their planning, design, and implementation. Forty-one states, the District of Columbia, and Puerto Rico have charter school laws providing for the authorization of charter schools. In exchange for exemption from significant state and/or local rules, charter schools are expected to be held accountable for achievement of agreed-upon objectives. The Charter Schools Programs require that all students in a community served by a charter school be given an equal opportunity to attend.

Under Title V-B-1, the first \$200 million appropriated for the Charter Schools Programs is reserved for grants to states and eligible applicants for the planning, design, and implementation of public charter schools and for the dissemination of information about charter schools; for state revolving loan funds; and for national activities. The next \$100 million appropriated for Title V-B-1 is reserved for per-pupil facilities aid programs, in which competitive grants are awarded to states for purposes of establishing and administering programs dedicated to funding charter school facilities, in whole or in part, on a per-pupil basis. Fifty percent of funds appropriated in excess of \$300 million are reserved for each of the two uses. (FY2004 appropriation: \$218.7 million; FY2005 budget request: \$218.7 million.)

Title V-B-2 authorizes funding through FY2003 for grants to public or private entities (or a combination of the two) for the development of credit enhancement initiatives to assist charter schools in acquiring, constructing, or renovating facilities. (A one-year extension of the program is authorized under the General Education Provisions Act (GEPA) (20 U.S.C. 1226a)). (FY2004 appropriation: \$37.3 million; FY2005 budget request: \$100 million.) For additional information on funding for charter school facilities, see CRS Report RL31128, *Funding for Public Charter School Facilities: Federal Policy Under the ESEA*.

Voluntary Public School Choice Programs (ESEA Title V-B-3). These programs support school choice by providing competitive grants for transportation services in support of public school choice, and allow funds also to be used for tuition transfer payments, school enhancement in schools receiving transfer students, and public education campaigns. (FY2004 appropriation: \$26.8 million; FY2005 budget request: \$26.8 million.)

Magnet Schools Assistance (ESEA Title V-C). Magnet schools are schools with special programmatic and other features, and are designed to encourage voluntary

desegregation through the mechanism of parental choice. The Magnet Schools Assistance program supports school choice by offering students the opportunity to attend a public school with a special curriculum that attracts substantial numbers of students from differing racial backgrounds. (FY2004 appropriation: \$108.6 million; FY2005 budget request: \$108.6 million).

Fund for the Improvement of Education (ESEA Title V-D-1). The Fund for the Improvement of Education (FIE) provides the Secretary authority to support nationally significant programs aimed at improving the quality of elementary and secondary education at the state and local levels. Programs may be carried out directly by the Secretary, or through grants or contracts. Specifically authorized uses of FIE funds include, among others, the exploration of state and local public school choice programs. (FY2004 appropriation: \$280,452,851; FY2005 budget request: \$45 million.)

School Choice Offered to Pupils Attending Unsafe Schools. Each state receiving ESEA funding is required to allow pupils who attend chronically unsafe schools and those who are victimized on the grounds of an elementary or secondary school to transfer to a safe public school within the LEA.

Funding Allocations for Services to Students Attending Private Schools ESEA. Funds provided under several programs are required to be used to provide certain education services, on an equitable basis, to eligible pupils enrolled in private schools.

Coverdell Education Savings Accounts. Distributions from Coverdell ESAs may be used for elementary and secondary education expenses at public, private, or religiously affiliated elementary or secondary schools. Annual contributions to Coverdell ESAs are limited to \$2,000. For further information on this tax benefit, see CRS Report RS20289, *Education Savings Accounts for Elementary and Secondary Education*.

DC School Choice Incentive Act. This is a federal grant program under which ED funds the operation of a tuition scholarship program in the District of Columbia. Students who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty line are eligible to receive scholarships valued at up to \$7,500 per year to support their attendance at private elementary or secondary schools located in the District of Columbia. Priority in the awarding of scholarships goes to students attending schools identified for school improvement, corrective action, or restructuring under ESEA Title I-A. The program is authorized for five years. (FY2004 appropriation: \$14 million; FY2005 budget request: \$14 million.) (For a more detailed discussion of the DC School Choice Incentive Act of 2003, see CRS Report RL32019, *Proposals to Establish a K-12 Scholarship or Voucher Program in the District of Columbia: Policy Issues and Analysis*.)

Major Types of Proposals to Expand Federal School Choice Support

The range of school choice proposals that the U.S. Congress might consider is broad and can be clustered into at least four basic groups — choice options in existing programs, demonstration or targeted choice programs, block grants, and tax subsidies. These are *not* mutually exclusive. Each of these is briefly reviewed below.

Choice Options in Existing Programs. Advocates of school choice may seek to amend existing federal education programs in various ways, such as removing possible program barriers to choice, adding school choice to authorized uses of funds, expanding current choice provisions, or reconstituting programs to focus them on choice. They also may consider appropriations language directing how program funds may be spent. The primary examples of proposals in this category have involved ESEA Title I-A. As previously noted, Title I-A contains certain choice-related provisions authorizing or requiring public school choice and the provision of supplemental educational services for students attending poorly performing Title I-A schools. Previously attempted choice amendments to Title I-A also have endeavored to include private school enrollment among choice options. Additionally, over time the ESEA has been amended to be supportive of public school choice through the addition of the Innovative Programs, Public Charter Schools, Voluntary Public School Choice, and Magnet Schools programs. Some have proposed amending the Individuals with Disabilities Education Act (IDEA) to include a school choice component.

Demonstration or Targeted Choice Programs. Federal support for school choice might be designed to demonstrate the impact of school choice in a discrete number of locations (e.g., specific cities or a limited number of places around the country, such as low-performing LEAs, or empowerment zones) or to target choice in a similarly limited fashion to particular kinds of students or schools. The most frequent examples of this kind of proposal have sought to expand choice options for special groups of students (e.g., low-income students, victims of violence on school grounds) or those in certain types of schools (e.g., schools characterized by poor levels of academic performance).

Block Grants. Block grants are federal grants to states that provide an exceptionally 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. They are frequently proposed as the outcome for a consolidation of several existing federal education programs. Groups of existing programs might be transformed into block grants in selected states under “performance agreement” proposals (see CRS Report RL30835, *Elementary and Secondary Education: Accountability and Flexibility in Federal Aid Proposals*). Under a block grant, school choice might be an explicitly authorized use, a required use (perhaps of some specified portion of funding), or a precondition for participation (i.e., federal funds are available only to those implementing choice plans). At times, choice programs have been explicitly included among the authorized uses of funds under these block grant proposals or the authorities are sufficiently open for choice to be supported without explicit mention.

Tax Subsidies. Advocates of federal support for school choice often turn to the IRC in order to provide tax benefits — deductions, credits (refundable or non-refundable), or exemptions from taxation of certain income — for all or certain categories of families paying tuition or related costs for K-12 education. Coverdell ESAs are a current example of a tax subsidy supportive of elementary and secondary education school choice (these accounts also support postsecondary education expenses). Proposals also have been made to provide tax subsidies for contributions to STOs, which in turn would award private scholarships to enable children to attend schools of choice. Some see tax subsidies, especially tax credits, as an option to school vouchers. (For further information on proposals to support school choice through the federal tax code, see CRS Report RL31439, *Federal Tax Benefits for Families’ K-12 Education Expenses in the Context of School Choice*).

Why Is There Debate Over Federal Support of Expanded School Choice?

This section considers some of the issues that have framed the debate over school choice. Over the past several Congresses, many school choice proposals have been introduced and debated, often vigorously. Most failed to be enacted. The most divisive issue regarding publicly funded school choice is the provision of direct support to aid pupils attending private, often religiously affiliated, schools. Conclusive evidence about the impact of private school choice remains elusive; however, proponents and opponents alike often cite conflicting findings from studies of the Milwaukee and Cleveland voucher programs and some privately financed voucher programs to support their views. There is currently relatively little opposition to federal support of some choice options that include only public schools, as under the ESEA Title V programs: Innovative Programs, Charter Schools Programs, Voluntary Public School Choice Programs, and Magnet Schools Programs. However, the reaction to the ESEA Title I-A school choice provisions requiring LEAs to provide intradistrict public school choice (including transportation) to students assigned to schools identified for school improvement and to offer supplemental education services to students from low-income families assigned to schools identified for a second year of school improvement has been mixed.

Those who *support* choice proposals that include private schools have argued that in view of the apparent institutional rigidity and resistance to change in many public school systems, the most effective way in which the federal government can help to improve educational performance, especially for pupils in low-income families, is to increase such pupils' opportunities to select from a range of schools, including private and religiously affiliated schools. Proponents frequently state that helping at least some pupils from low-income families "escape" their current, often poor-performing public schools provides an immediate benefit to those pupils, and helps to provide such pupils with a degree of educational choice and opportunity that those from more affluent families already have. Competition through choice, it is argued, also would stimulate major improvements in the performance of many public school systems serving large numbers of poor children. Finally, while recognizing the possibility that new forms of government regulation may accompany public funding, some proponents of school choice programs argue that this threat can be limited through statutory prohibitions, especially if the aid is provided indirectly (i.e., through pupils' families). Supporters have likely been encouraged by the U.S. Supreme Court's ruling in *Zelman v. Simmons-Harris*.

Opponents of federal school choice proposals that include private schools tend to focus on the limitations of the choice options being proposed, and the potentially negative effects on public schools and their pupils, including diversion of attention and resources away from the goal of public school system reform. Many of the current choice proposals generally involve only a portion of the potentially eligible pupil population — e.g., they would be available only in one or a few localities, or only for a selected number of pupils in low-income families nationwide. In addition, they often are limited in the proportion of private school tuition and fee costs that may be covered, and/or the maximum voucher or scholarship per pupil. While these amounts may cover a substantial share of the costs of attending some private — especially elementary — schools, they are typically sufficient to pay the full costs of attending only the least expensive types of private schools. Further, some opponents argue that substantial governmental regulation of private schools will inevitably accompany

Federal school choice programs, even if Federal financial assistance is provided indirectly. Finally, some opponents argue that the effects of competition on public school systems are more likely to be negative than constructive, including a reduction in funds that are linked to enrollment levels, abandonment of public schools by pupils whose families are most alert to the choices available to them, and unequal constraints on public schools (e.g., the public schools must continue to serve numerous and diverse hard-to-educate pupils who might be rejected by private schools).

LEGISLATION

Proposals in the 108th Congress

In the 108th Congress, numerous bills have been introduced to increase federal support of school choice at the elementary and secondary education level. Proposals include those that would amend the Internal Revenue Code (IRC) of 1986 to support school choice through the creation of new tax credits or the expansion of existing credits; those that would provide federal funding of voucher or scholarship programs to be used to provide select students (e.g., students with disabilities, or low-income students in the District of Columbia) with the opportunity to attend public or private schools of choice; and those that would amend existing school choice provisions under the ESEA.

Selected House and Senate Bills. A selection of bills introduced during the 108th Congress explicitly supporting school choice and which saw significant committee or floor action is provided below. A description of the President's FY2004 Budget proposal to increase school choice is also provided.

H.R. 2556 (Davis, et al.)

DC Choice Incentive Act of 2003. Authorizes the establishment of a program under which the Secretary of Education would award grants to entities for the operation of scholarship programs in the District of Columbia. Grantees would award scholarships of up to \$7,500 per academic year to students who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty level to enable them to attend private elementary or secondary schools located in the District of Columbia. Authorizes the appropriation of \$15 million for FY2004 and such sums as necessary through FY2008. Introduced June 23, 2003; referred to Committee on Government Reform. Ordered to be reported (amended) by the Yeas and Nays (21-20), July 10, 2003.

H.Amdt. 90 to H.R. 1350 (DeMint)

Amends the IDEA to provide that in states with publicly funded school choice programs for students with disabilities, federal funds may be used to supplement state funding for a child's attendance at a private school. Provides that authorization of a parent to exercise private school choice under such a program fulfills the state's obligation to provide a free appropriate public education to the parent's child while the child is enrolled in the private school; and provides that acceptance by a private school of IDEA funding deems it to be providing a free appropriate public education and to be in compliance with Section 504 of the Rehabilitation Act of 1973. Introduced April 30, 2003; failed by recorded vote: 182-240.

H.Amdt. 92 to H.R. 1350 (Musgrave)

Amends the IDEA to allow LEAs to meet their responsibilities with respect to the education of students enrolled by their parents in private schools by offering the parents of such students certificates valued at the lesser of the per-pupil amount of federal funds available for such students, or the cost of special education and related services. Introduced April 30, 2003; failed by recorded vote: 176-247.

H.Amdt. 368 to H.R. 2765 (Davis)

Authorizes a school voucher program in the District of Columbia. Students from families with incomes not exceeding 185% of the poverty line would be eligible to receive scholarships valued at up to \$7,500 per year to support their attendance at private elementary and secondary schools in the District of Columbia. Offered September 5, 2003; agreed to by recorded vote: 209-208. H.R. 2765 agreed to by recorded vote: 210-206.

H.R. 2673 (Bonilla) (P.L. 108-199)

Consolidated Appropriations Act, 2004. Provides for a federal payment of \$40 million for school improvement, including \$13 million to improve public school education, \$13 million to expand quality charter schools, and \$14 million for the DC School Choice Incentive Act of 2003. The DC School Choice Incentive Act of 2003 authorizes the establishment of a competitive grant program under which the Secretary of Education would award grants to one or more entities for the operation of scholarship programs in the District of Columbia. Students who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty level would be eligible to receive scholarships valued at up to \$7,500 per academic year to support their attendance at private elementary or secondary schools located in the District of Columbia. Conference report H.Rept. 108-401 agreed to in House by recorded vote: 242-176; and in the Senate by recorded vote: 65-28.

S. 1583 (DeWine)

FY2004 District of Columbia Appropriations Act, Title II — DC Student Opportunity Scholarship Act of 2003. Provides for a federal payment of \$40 million for school improvement, including \$13 million to improve public school education, \$13 million to expand quality charter schools, \$13 million for the DC Student Opportunity Scholarship Act, and \$1 million for administration. The DC Student Opportunity Scholarship Act authorizes the establishment of a competitive grant program under which the Secretary of Education would award grants to entities for the operation of scholarship programs in the District of Columbia. Students who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty level would be eligible to receive scholarships valued at up to \$7,500 per academic year to support their attendance at private elementary or secondary schools located in the District of Columbia. Introduced September 4, 2003; Reported by Committee on Appropriations (S.Rept. 108-142); Placed on Senate Legislative Calendar under General Orders.

Administration Proposal FY2005 Budget. In its FY2005 budget request, the Administration requests increased funding for Credit Enhancements for Charter School Facilities and continued funding for the following ESEA Title V programs: Charter Schools Programs, Innovative Programs, Voluntary Public School Choice, Magnet Schools, and Fund for the Improvement of Education; and the DC School Choice Incentive Act. The

Administration also proposes the establishment of a new Choice Incentive Fund to promote school choice in elementary and secondary education.

Choice Incentive Fund. The Choice Incentive Fund would provide competitive awards to states, LEAs, and CBOs that expanded opportunities for parents of children who attend low-performing schools to attend higher-performing public schools (to include charter schools) or private schools. Priority would be given to applicants that would provide expanded school choice opportunities to large numbers of students. The Administration is requesting \$50 million to fund the program.

FOR ADDITIONAL READING

CRS Reports

CRS Report RL32019, *Proposals to Establish a K-12 Scholarship or Voucher Program in the District of Columbia: Policy Issues and Analysis*, by David P. Smole.

CRS Report RS20289, *Education Savings Accounts for Elementary and Secondary Education*, by Bob Lyke and James B. Stedman.

CRS Report RL30165, *Educational Vouchers: Constitutional Issues and Cases*, by David M. Ackerman.

CRS Report RS21254, *Education Vouchers: An Overview of the Supreme Courts Decision in Zelman v. Simmons-Harris*, by Christopher Jennings.

CRS Report RL30835, *Elementary and Secondary Education: Accountability and Flexibility in Federal Aid Proposals*, by Wayne Clifton Riddle.

CRS Report RL31439, *Federal Tax Benefits for Families K-12 Education Expenses in the Context of School Choice*, by Linda Levine and David Smole.

CRS Report RL31489, *Individuals with Disabilities Education Act: Possible Voucher Issues*, by Richard N. Apling, Nancy L. Jones, and David Smole.

CRS Report RS21273, *The Law of Church and State: Public Aid to Sectarian Schools*, by David M. Ackerman.

CRS Report RL30805, *School Choice: Legislative Activity by the 104th Through 106th Congresses*, by James B. Stedman.

CRS Report RL31329, *Supplemental Educational Services for Children from Low-Income Families*, by David P. Smole.