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School Choice: Current Legislation

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School Choice: Current Legislation

SUMMARY

Legislative proposals to provide parents with 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.

School choice has been an active issue during the past several Congresses. The 108th Congress enacted a school voucher program for the District of Columbia — the DC School Choice Incentive Act — as part of the FY2004 Consolidated Appropriations Act. The 107th Congress expanded the federal role in supporting elementary and secondary (K-12) school choice by authorizing distributions from Coverdell Education Savings Accounts (ESAs) to be used for K-12 education expenses (including private school tuition), and by enacting the No Child Left Behind Act (NCLBA), which amended and extended the Elementary and Secondary Education Act (ESEA). School choice is supported under the following ESEA programs.

— Title I-A: public school choice for students attending schools that do not make adequate yearly progress (AYP) for two or more years;

— Title I-A: supplemental education services for low-income students attending schools that do not make AYP for three or more years;

- Innovative Programs;
- Public Charter Schools Programs;
- Voluntary Public School Choice program;
- Magnet Schools Assistance programs;
- Fund for the Improvement of Education; and
- Unsafe School Choice: school choice for students who are victims of violent crimes or who attend unsafe schools.

During the first session of the 109th Congress, emergency federal aid for public and private schools enrolling students displaced by Hurricanes Katrina and Rita was approved for the 2005-2006 school year.

In the second session, Congress may consider school choice legislation to:

- authorize tax credits or deductions for families' K-12 education expenses, or tax credits for contributions to charitable organizations that support school choice;
- establish a new school choice program to fund vouchers for qualified K-12 educational expenses, such as private school tuition or supplemental educational services;
- revise the criteria specifying when or how school choice and supplemental educational services must be provided under ESEA Title I-A to children assigned to schools and local educational agencies (LEAs) identified for improvement; or
- amend the terms and conditions of the DC School Choice Incentive Act.

MOST RECENT DEVELOPMENTS

On December 30, 2005, the Hurricane Education Recovery Act was enacted as part of P.L. 109-148. Among other provisions, it authorizes the Secretary of Education to award temporary emergency impact aid to support the education of students displaced by Hurricanes Katrina and Rita, regardless of whether their parents chose to enroll them in public or non-public schools. Up to \$6,000 is authorized to be made available per displaced student [and up to \$7,500 per displaced student served under the Individuals with Disabilities Education Act (IDEA), Part B] for expenses incurred during the 2005-2006 academic year. The program sunsets August 1, 2006.

On May 4, 2006, the Senate approved H.R. 4939, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, which among other things would provide \$650 million to support the education of students displaced by the 2005 Gulf Coast hurricanes. Of that amount, \$300 million in supplemental funding would be provided to carry out the Temporary Emergency Impact Aid for Displaced Students program authorized under P.L. 109-148.

BACKGROUND AND ANALYSIS

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, by the end of the decade, 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.) NCES also has found that as of 2003, approximately 1.1 million students are being homeschooled in the United States, up from an estimated 850,000 in 1999. (U.S. Department of Education, National Center for Education Statistics, Issue Brief, *1.1 Million Homeschooled Students in the United States in 2003*, July 2004).

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 support 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 a wide array 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 electronic exchange of information 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 non-profit schools may be 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), the deductibility from taxation of certain contributions received by them or their parent organizations, and their tax-exempt status.

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 being implemented 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, Ohio, Florida, and Utah. 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 non-sectarian private schools. In the 1994-1995 school year, the program was expanded to include religiously affiliated schools. Students in kindergarten through grade 12 are eligible to participate. During school year 2004-2005, parents were eligible to receive vouchers set at the lesser of \$5,943 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 2004-2005 school year, 15,035 students attending 117 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 8 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 the allotment of scholarships. Students who received scholarships in prior years may continue in the program through grade 12. Parents of students attending private schools are reimbursed by the state for a percentage of tuition up to a maximum amount depending on grade level. Families with incomes below 200% of the poverty line may receive scholarships for 90% of tuition, up to a maximum of \$3,000 for grades K-8 and up to \$2,700 for grades 9-10. Families with incomes at or above 200% of the poverty line may receive scholarships for 75% of tuition, up to a maximum of \$2,250. Participating private schools must agree to charge students in families with incomes below 200% of the poverty line tuition of no more than 10% above 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 2004-2005 school year, 5,675 students received tuition scholarships (SchoolChoiceInfo.org. "Cleveland Scholarship and Tutoring Program Student Enrollment." (based on data reported by the Ohio Department of Education, available at [<http://www>].

schoolchoiceinfo.org/facts/index.cfm?ftp_id=5&fl_id=2].) No adjacent public school districts have elected to accept students under the program.

Since 2004, the Pilot Project Special Education Scholarship Program has operated in Ohio. Under the program, the Ohio Department of Education awards scholarships of up to \$20,000 to the parents of children who are in preschool through grade 12 and who have been identified as autistic and are entitled to receive special education and related services from their resident school district. The scholarships may be used to pay the costs of enrolling the child in a public or non-public special education program other than the one provided by the child's resident school district, but are limited to services specified in the child's individualized education program (IEP). The program was recently made permanent.

Also in Ohio, a new program, the Educational Choice Scholarship Pilot Program, will be implemented for the 2006-2007 school year. Under the program, students in kindergarten through grade 12 who are assigned to schools (outside of the Cleveland Municipal School District) that have been declared to be in a state of academic emergency for three consecutive years will be eligible to receive scholarships to assist in paying the costs of tuition to attend a private school. Scholarships will be awarded according to a lottery; however, students from families with incomes at or below 200% of the poverty level will be awarded scholarships first. The maximum value of scholarships will be \$4,250 for grades K-8, and \$5,000 for grades 9-12. Participating schools will be prohibited from charging scholarship recipients from families with incomes at or below 200% of the poverty level tuition in excess of the scholarship amount; however, schools will be permitted to charge other students the difference between the scholarship amount and their normal tuition amount. Up to 14,000 scholarships may be made available.

In Florida, since 1999, Opportunity Scholarships have been made available to pupils in grades K-12 assigned to low-performing public schools that receive an 'F' rating under Florida's A+ Education Plan for any two years during a four-year period. However, on January 5, 2006, the Florida Supreme Court ruled in *Bush v. Holmes* that the Opportunity Scholarship Program (OSP) is in violation of the Florida state constitutional requirement that the state provide a "uniform, efficient, safe, secure, and high quality system of free public schools." The program is being allowed to continue through the end of the 2005-2006 school year.

Under the Florida OSP, recipients of vouchers have been able to use them to pay either private school tuition or the costs of enrolling in another public school in the same or a neighboring county. Vouchers were valued at up to 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 were required to accept the scholarship as payment in full for tuition and fees. School districts have been 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. For school year 2005-2006, 15 public schools were designated as failing 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. (The program is not

affected by the ruling in *Bush v. Holmes*.) 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*, Center for Civic Innovation, no. 38, June, 2003).

In Utah, the Carson Smith Special Needs Scholarship Program authorizes the awarding of vouchers valued at up to \$5,700 per year to enable students with disabilities, aged 5 to 19, (and in certain instances, up to 22), to attend private schools. To be eligible to receive a scholarship, a student must either: (a) in the previous year have been enrolled in a public school, have an individualized education program (IEP), and have been accepted to an eligible private school; or (b) have been accepted into an eligible private school specializing in serving students with disabilities. (Utah Enrolled Bill H.B. 249, the Carson Smith Scholarships for Students with Special Needs Act, enacted March 10, 2005, codified at Utah Code Annotated §§ 53A-1a-701 to 53A-1a-710).

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. 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*, The Heritage Foundation, 2003. See also *NSBA Voucher Strategy Center*, National School Boards Association, 2004.)

The DC School Choice Incentive Program — enacted through federal legislation (described below) — is the first major school choice program to be implemented since the Supreme Court ruled in favor of the constitutionality of the Cleveland Scholarship and Tutoring Program in *Zelman v. Simmons-Harris* (536 U.S. 639 [2002]). Legislatures in a number of other states also have recently considered school choice legislation. Existing school choice programs continue to be challenged in the courts, with some of these challenges involving state constitutional prohibitions against the provision of state aid to support religious activities, such as education. In 2004, the U.S. Supreme Court decided two cases related to school choice (*Locke v. Davey* and *Hibbs v. Winn*). These decisions and those expected in cases currently before state and federal courts likely will affect the drafting of future school choice programs. (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 Angie A. Welborn.)

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 FY2006 appropriations.

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 in instances where they would not otherwise be eligible, 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 C.F.R. § 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.

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 an 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. (FY2006 appropriation: \$99.0 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 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. (FY2006 appropriation: \$214.8 million.)

Under Title V-B-2, funding may be provided 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. (FY2006 appropriation: \$36.6 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*, by David P. Smole.

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. They also allow funds to be used for tuition transfer payments, school enhancement in schools receiving transfer students, and public education campaigns. (FY2006 appropriation: \$26.3 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. (FY2006 appropriation: \$106.7 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. (FY2006 appropriation: \$11.7 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.

Services to Students Attending Private Schools. Funds provided under several ESEA programs are required to be used to provide applicable educational services, on an equitable basis, to eligible students enrolled in private schools. Services typically are provided to private school students either by the LEA or a private contractor according to terms agreed to after consultation with private school officials. This method of providing services to private school students is sometimes referred to as the “child benefit” model because private school students are able to benefit from publicly-funded services, yet the funding for and provision of these services remain under public control. Private school students are eligible to be served under the following ESEA programs: Title I-A (Education for the Disadvantaged), Title I-B-1 (Reading First), Title I-B-3 (Even Start Family Literacy), Title I-A (Migrant Education), Title II-A (Teacher and Principal Training and Recruiting Fund), Title I-B (Mathematics and Science Partnerships), Title II-D (Enhancing Education Though Technology), Title III-A (English Language Acquisition, Language Enhancement and Academic Achievement), Title IV-A (Safe and Drug-Free Schools and Communities), Title IV-B (21st Century Community Learning Centers), Title V-A (Innovative Programs), and Title V-D-6 (Gifted and Talented Students).

In contrast to the programs cited above, private schools may be eligible to apply to receive funds directly under a small number of discretionary federal grant programs. Finally, students parentally placed in private schools also are eligible to be served under the Individuals with Disabilities Education Act (IDEA).

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 RS21870, *Education Tax Benefits: Are They Permanent or Temporary?*, by Linda Levine.

DC School Choice Incentive Act. This is a federal demonstration 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 through FY2008. (FY2006 appropriation: \$14.9 million, of which \$1.0 million may be used for the funding and administration of assessments.) (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*, by David P. Smole.)

Temporary Emergency Impact Aid for Displaced Students. This is a temporary emergency aid program in which funding is made available to schools on a per-student basis, irrespective of whether parents have chosen to enroll their children in public or non-public schools. It is limited to schools serving students displaced by Hurricanes Katrina and Rita. Under the program, the Secretary of Education makes grants to SEAs, which in turn award funds to LEAs and Bureau of Indian Affairs (BIA)-funded schools on a per-student basis. LEAs and eligible BIA-funded schools may use these funds for the purpose of providing services and assistance to elementary and secondary schools enrolling displaced students during the 2005-2006 school year. LEAs serving areas in which displaced students enrolled in non-public schools prior to December 20, 2005 must deposit a proportionate amount of funds into student accounts on behalf of such students. Nonpublic schools, in turn, may access funds from student accounts to serve eligible students. Up to \$6,000 may be made available per displaced student (and up to \$7,500 per displaced student served under IDEA, Part B). The amount to be deposited into student accounts also may not exceed the cost of tuition and fees at the non-public school a student attends. Nonpublic schools must waive or reimburse tuition in order to access funds from student accounts. For FY2006, \$645 million has been appropriated. The program sunsets August 1, 2006.

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. Proposals also may be made to amend the

terms and conditions of the DC School Choice Incentive Act, such as to allow scholarship recipients to attend private schools located in Maryland or Virginia, in addition to the District of Columbia.

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, empowerment zones, or areas impacted by a natural disaster) 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). The DC School Choice Incentive Act is an example of a demonstration program targeted to children from low-income families in a discrete location.

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. 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 Internal Revenue Code (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*, by Linda Levine and David Smole.)

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 have failed to be enacted. The most controversial issues regarding publicly funded school choice have been the provision of

support (direct or indirect) to enable students to attend private, often religiously affiliated, schools. Coverdell ESAs and the DC School Choice Incentive Act Program are examples of federal programs that currently support the enrollment of students in private elementary and secondary schools. Concerns about such programs have included whether public funds should be used to provide support to private (especially religiously affiliated) schools and whether the existence of public funding for private school options effectively improves educational outcomes. School choice programs in which funding remains under public control have tended to be less controversial. Examples include public charter schools, the implementation of the school choice provisions under ESEA Title I-A, and the “child benefit” provisions of many ESEA programs.

Those who support school 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; for example, 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 109th Congress

Several proposals have been introduced in 109th Congress that would affect federal support of school choice at the elementary and secondary education levels. Bills include those that would amend the IRC of 1986 to support school choice through the creation of new tax credits or the expansion of existing credits, those that would amend existing school choice provisions under the ESEA, and those that would support the education of students displaced by Hurricanes Katrina and Rita who are enrolled in private as well as public schools. This section will be updated regularly as legislation is introduced and considered.

Selected House and Senate Bills. A selection of bills introduced during the 109th Congress is described below.

H.R. 224 (Strickland)

Comprehensive Learning Assessment for Students and Schools (CLASS) Act. Among other provisions, would amend the requirement under ESEA Title I-A that LEAs provide students attending schools identified for school improvement, corrective action, or restructuring with public school choice and supplemental educational services. LEAs would only be required to provide school choice and supplemental educational services to students who are members of student subgroups identified as not making AYP (as opposed to all students attending the school as is currently required). Introduced 2/9/2005; referred to the Subcommittee on Education Reform.

H.R. 403 (Paul)

Hope Plus Scholarship Act of 2005. Would amend the IRC by allowing the Hope Scholarship Credit (an existing higher education tax credit), to be claimed for qualified elementary and secondary education expenses (defined the same as for Coverdell ESAs). The bill would not amend the student eligibility requirements applicable to the Hope Scholarship program. Introduced 1/26/2005; referred to the House Committee on Ways and Means.

H.R. 404 (Paul)

Education Improvement Tax Cut Act. Would amend the IRC by authorizing a tax credit of up to \$3,000 (\$1,500 for married couples filing separately) for contributions to charitable organizations that provide elementary or secondary school scholarships. Introduced 1/26/2005; referred to the House Committee on Ways and Means.

H.R. 406 (Paul)

Family Education Freedom Act of 2005. Would amend the IRC by authorizing a tax credit of up to \$3,000 annually per dependent student for qualified educational expenses associated with the costs of attendance at a qualified elementary or secondary school. Qualified expenses would include costs associated with attendance at public, private, parochial, religious, or home schools. Introduced 1/26/2005; referred to the House Committee on Ways and Means.

H.R. 441 (Smith, C.)

Education, Achievement, and Opportunity Act. Would amend the IRC by authorizing a tax credit of up to \$2,500 annually per qualifying child for qualified elementary school educational expenses, and up to \$3,500 annually per qualifying child for qualified secondary school educational expenses. The credit would begin to be phased out for families with adjusted gross incomes (AGIs) above \$150,000. Introduced 2/1/2005; referred to the House Committee on Ways and Means.

H.R. 1506 (DeLauro)

No Child Left Behind Reform Act. Among other provisions, would amend the requirements of ESEA Title I-A to require that as part of school improvement, corrective action, or restructuring, public school choice transfers and supplemental educational services need only be made available to students who are members of a student subgroup that has failed to make adequate yearly progress. Introduced 4/29/2005; referred to the Subcommittee on Education Reform.

H.R. 1681 (Butterfield)

Quality Education for All Act. Among other provisions, would amend the public school choice provisions of ESEA Title I-A by making the obligation of LEAs to provide students the option to transfer to another public school subject to applicable state and local health and safety code requirements regarding facility capacity; by authorizing grants for school construction and renovation, with priority for LEAs experiencing difficulties meeting the ESEA Title I-A public school choice requirements due to capacity constraints; and by creating new requirements applicable to providers of supplemental educational services. Introduced 5/9/2005; referred to the Subcommittee on Education Reform.

H.R. 2426 (Green)

SCHOOL Act of 2005. Would amend the IRC by authorizing a tax credit for individuals of up to \$3,000 (\$6,000 in the case of a joint return), and for corporations of up to the lesser of 5% of tax liability or \$20,000 for contributions to qualified charitable organizations that provide elementary or secondary school scholarships. Students from families with incomes not exceeding 2.5 times the income threshold for eligibility to receive free or reduced priced lunches (462.5% of the poverty level) would be eligible to receive scholarships. The Secretary of Education would be required to certify scholarship granting organizations. Introduced 6/22/2005; referred to the Subcommittee on Education Reform.

H.R. 3753 (Musgrave)

Home School Non-Discrimination Act of 2005. Would clarify the requirements of several federal education programs, including Coverdell ESAs, regarding the treatment of home schools and students who have been homeschooled. Introduced 10/12/2005; referred to the Subcommittee on Education Reform.

H.R. 3958 (Melancon)

Louisiana Katrina Restoration Act. (Same as S. 1765 — see below.) Introduced 9/29/2005; referred to the House Committee on Education and the Workforce.

H.R. 4017 (Johnson, S.)

Hurricane Education Assistance Act. Among other things, would authorize funding for school vouchers to support the enrollment of displaced students in private elementary and

secondary schools during the 2005-2006 academic year. Vouchers would be limited to the lesser of \$7,500, 90% of a state's per-pupil expenditures for K-12 education, or the actual costs of tuition and fees at the private school. Introduced 11/7/2005; referred to the Subcommittee on Education Reform.

H.R. 4097 (Boehner)

Family Education Reimbursement Act of 2005. Would establish student accounts into which federal funds would be deposited for the purpose of reimbursing public and private schools for the actual costs of educating children displaced by Hurricanes Katrina and Rita during the 2005-2006 academic year. Funds would be made available for the actual costs of educating students enrolled in public or private schools, and would be portable so that funds could follow students who change schools. An amount of up to the lesser of \$6,700 — \$8,200 for students served under Part B of IDEA — or the actual cost to the school for educating the displaced student would be made available for each student. Introduced 10/20/2005; referred to the House Committee on Education and the Workforce. (On 10/27/2005, the House Committee on Education and the Workforce voted 26-21 not to agree to language similar to H.R. 4097 with regard to the Committee's instructions pursuant to H.Con.Res. 95.)

H.R. 4400 (Franks)

Children's Hope Act of 2005. Would amend the IRC to provide a federal tax credit of up to \$100 (\$200 in the case of a joint return) for contributions to education investment organizations that award grants or scholarships to students for qualified elementary and secondary education expenses. The federal credit could only be claimed by filers in states that have enacted a state tax credit for contributions to education investment organizations. The state tax credit must be for an amount of at least \$250, and the federal credit may only be claimed for contributions in excess of the amount claimed under the state credit. (Introduced 11/18/2005; referred to Committee on Ways and Means.)

S. 15 (Bingaman)

Quality Education for All Act. Among other provisions, would amend the public school choice provisions of ESEA Title I-A by making the obligation of LEAs to provide students the option to transfer to another public school subject to applicable State and local health and safety code requirements regarding facility capacity; by authorizing grants for school construction and renovation, with priority for LEAs experiencing difficulties meeting the ESEA Title I-A public school choice requirements due to capacity constraints; and by creating new requirements applicable to providers of supplemental educational services. Introduced 1/24/2005; read twice and referred to the Committee on Finance.

S. 75 (Cantwell)

The Educational Savings for Students Act of 2005. Would amend the IRC by increasing the limit on contributions to Coverdell ESAs from \$2,000 to \$5,000 per year. Introduced 1/24/2005; read twice and referred to the Committee on Finance.

S. 696 (Burns)

Rural Schools Geography Act. Would amend the ESEA Title I-A provisions for school improvement, corrective action, and restructuring, such that LEAs would not be required to offer public school choice to students in instances where it would be "impractical due to the distance to be traveled, a geographical barrier or hazard, the duration of the travel, or an

unusually high cost of travel.” Introduced 4/5/2005; read twice and referred to the Committee on Health, Education, Labor, and Pensions.

S. 724 (Dodd)

No Child Left Behind Reform Act. Among other provisions, would amend the requirements of ESEA Title I-A to require that as part of school improvement, corrective action, or restructuring, public school choice transfers and supplemental educational services need only be made available to students who are members of a student subgroup that has failed to make adequate yearly progress. Introduced 4/6/2005; read twice and referred to the Committee on Health, Education, Labor, and Pensions.

S. 848 (Bingaman)

Educational Reform Act of 2005. Among other provisions, would amend the public school choice provisions of ESEA Title I-A by making the obligation of LEAs to provide students the option to transfer to another public school subject to applicable State and local health and safety code requirements regarding facility capacity; by authorizing grants for school construction and renovation, with priority for LEAs experiencing difficulties meeting the ESEA Title I-A public school choice requirements due to capacity constraints; and by creating new requirements applicable to providers of supplemental educational services. Introduced 4/19/2005; read the second time; placed on the Senate Legislative Calendar under General Orders, Calendar No. 82.

S. 1691 (Craig)

Home School Non-Discrimination Act of 2005. Would clarify the requirements of several federal education programs, including Coverdell ESAs, regarding the treatment of home schools and students who have been homeschooled. Introduced 9/13/2005; read twice and referred to the Committee on Finance.

S. 1765 (Landrieu)

Louisiana Katrina Reconstruction Act. Among other provisions, would authorize grants in the amount of \$4,000 per displaced pupil to be made available to LEAs, and to private and parochial elementary and secondary schools for educational expenses related to receiving students displaced by Hurricane Katrina. Would authorize direct grants to LEAs, and to private and parochial elementary and secondary schools for use in restarting schools that serve areas declared a disaster in accordance with § 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act related to Hurricane Katrina. Would authorize grants to the Louisiana Department of Education for the awarding of subgrants to LEAs, early childhood education programs, and private and parochial schools for the repair, renovation, alteration, or construction of school facilities. Introduced 9/22/2005; read twice and referred to the Committee on Finance.

S. 1766 (Vitter)

Louisiana Katrina Reconstruction Act. (Same as S. 1765.) Introduced 9/22/2005; read twice and referred to the Committee on Finance.

S. 1842 (Landrieu)

Among other things, would authorize funding for school vouchers to support the enrollment of displaced students in private elementary and secondary schools during the 2005-2006 academic year. Vouchers would be limited to the lesser of \$7,500, 90% of a

state's per-pupil expenditures for K-12 education, or the actual costs of tuition and fees at the private school. Introduced 10/6/2005; read twice and referred to the Committee on Health, Education, Labor, and Pensions.

S. 1904 (Alexander)

Hurricane Katrina Elementary and Secondary Education Recovery Act. Would authorize the Secretary of Education to make emergency impact aid payments to state educational agencies (SEAs) for the 2005-2006 academic year. SEAs, in turn, would provide funds to local educational agencies (LEAs) and eligible Bureau of Indian Affairs (BIA)-funded schools for the instruction of students displaced by Hurricane Katrina who are enrolled in public schools, and for payment into accounts established on behalf of students enrolled in non-public schools for whom the school has previously waived or reimbursed the student's tuition and fees. An amount of up to \$6,000 would be made available per displaced student (up to \$7,500 for students served under IDEA, Part B), except that no more than the cost of tuition and fees charged at a student's non-public school could be paid into a student account. Payments would be made to LEAs and, as applicable, from LEAs to student accounts on a quarterly basis. Funding would be made available for the provision of instructional opportunities for displaced students; however, non-public schools would be specifically prohibited from using funds for religious instruction, proselytization, or worship. Introduced 10/20/2005; placed on the Senate Legislative Calendar under General Orders, Calendar No. 253. (Language similar to S. 1904 was incorporated into **H.R. 2863** and enacted as **P.L. 109-148**.)

President's FY2007 Budget Request. In his FY2007 budget request, the President requests continued funding for the following ESEA Title V programs: Innovative Programs, Public Charter Schools Programs (Charter Schools, State Charter School Facilities Incentive Grants, and Credit Enhancement Initiatives for Charter School Facilities), Voluntary Public School Choice, Magnet Schools, and Fund for the Improvement of Education. The President also proposes continued funding for the DC School Choice Incentive Act. In addition, the President requests funding to support school choice under ESEA Title I-E for a new America's Opportunity Scholarships for Kids Program.

America's Opportunity Scholarships for Kids Program. Under the proposed program, competitive grants would be available to states, LEAs, and non-profit organizations (including community and faith-based organizations) to establish programs under which scholarships would be awarded to low-income students assigned to schools identified for restructuring under ESEA Title I-A to enable them to either attend a private school of their choice or receive supplemental educational services. Scholarships would be valued at up to \$4,000 for school choice, and up to \$3,000 for supplemental educational services. The President requests \$100 million for the program.

FOR ADDITIONAL READING

CRS Report RL30165, *Educational Vouchers: Constitutional Issues and Cases*, by Angie A. Welborn.

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