

# CRS Issue Brief for Congress

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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 school choice will both provide more students with access to better schools and also induce public schools to improve as a result of market competition. Some opponents express concern about potential negative effects of choice on public schools and their pupils, including the redirection of public education resources and an erosion of the ideal of a common public education.

The 107<sup>th</sup> 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 107<sup>th</sup> Congress include:

- 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 schools that fail to make adequate yearly progress (AYP) for 2 consecutive years;
- supplemental education services for students attending schools that fail to 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.

Public school choice also continues to be supported under the ESEA through reauthorization of the Innovative Programs, Charter Schools Programs, and Magnet Schools Assistance programs. During floor debates of the NCLBA, both the House and Senate rejected amendments that would have authorized federal aid to support school choice programs involving private schools.

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 allays previous concerns about the constitutionality of directing public funds to religiously affiliated schools. Still, many state constitutions may prohibit the transfer of public funds to religiously affiliated schools.

In the 108<sup>th</sup> Congress, several bills have been introduced to expand the range of school choices available to the nation's schoolchildren. Proposals include:

- authorizing federal funding for voucher programs to be operated in the District of Columbia or in select localities with low-performing schools;
- authorizing federal tax credits for K-12 education expenses, or for contributions to organizations that provide students with scholarships to attend private schools; and
- authorizing school choice programs for students with disabilities.



## **MOST RECENT DEVELOPMENTS**

On July 10, 2003, the House Committee on Government Reform approved H.R. 2556, the *DC Parental Choice Incentive Act of 2003*. The bill would authorize the establishment of a competitive grant program under which the Secretary of Education would award grants to eligible 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. The bill would authorize the appropriation of \$15 million for FY2004 and such sums as necessary through FY2008.

On February 3, 2003, in his FY2004 budget request, the President proposed several initiatives that would expand federal support of elementary and secondary education school choice. Proposed new programs include a refundable tax credit for 50% of up to \$5,000 for certain costs associated with attendance at a different school for families of pupils assigned to public schools that fail to make AYP; and a choice incentive fund that would provide competitive awards to states, local educational agencies (LEAs), and community-based organizations (CBOs) that expanded opportunities for children to attend schools of choice. The President also proposed funding for two existing charter school facilities programs that did not receive funding during the 107<sup>th</sup> Congress: the per-pupil facilities aid program and credit enhancements for charter school facilities.

On June 27, 2002, the United States Supreme Court ruled in *Zelman v. Simmons-Harris* (2002 U.S. LEXIS 4885), concerning a school voucher program in Cleveland, Ohio, that the Constitution allows for public funding of school vouchers used to support the attendance of children at religiously affiliated schools, in instances where parents have the opportunity of selecting from among options that also include public and private secular schools. This decision overturns a lower court ruling which found the Cleveland voucher program to be in violation of the Establishment Clause of the First Amendment to the Constitution.

## **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 most of the increase due to greater numbers of children attending chosen public schools. Across all income levels, greater proportions of students were reported to be attending 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. 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.

**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. A virtual charter school is one that functions through the exchange of information electronically between student and teacher, such as from a student's home and which has no common education facility.

**Tax Subsidies.** The federal and certain state tax codes provide for 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.

Privately financed choice options also exist. For example, programs have been established in a number of localities by private groups (such as STOs) to help pay tuition and related costs of private elementary and secondary school attendance for pupils, most of whom come from low-income families. Some parents also 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. Currently, two localities, Milwaukee and Cleveland; and two states, Florida and Colorado, have choice programs which provide vouchers for attendance at private (including religiously affiliated) schools for a limited number of pupils.

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. Under the program, parents receive vouchers to cover the school's per-pupil costs (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 with the value of the voucher set at the lesser of \$5,783 or the private school's per-pupil costs (State of Wisconsin. Department of Public Instruction. *Milwaukee Parental Choice Program (MPCP): MCPC Facts and Figures for 2002-2003*. February 2003).

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 percent of the cost of tuition (for families with incomes below 200 percent of the poverty line), or 75 percent (for families with incomes at or above 200 percent 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 allow students to continue to receive scholarships worth up to \$2,700 for high school tuition. (Ebony Reed, "High School Freshmen Can Use Vouchers This Fall," *The Plain Dealer*, June 30, 2003). Participating private schools must agree to charge low-income parents tuition of no more than 10% of the scholarship amount, all of which may be satisfied by in-kind contributions or services. 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](http://www.schoolchoiceinfo.org/facts/index.cfm?ftp_id=5&fl_id=2)].) According to testimony in *Zelman v. Simmons-Harris*, 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 2 years during a 4-year period. The vouchers may be used to pay either the full cost of private school tuition or the costs of enrollment 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 based on that generated by the child for the public schools — generally between \$3,600 and \$4,300. 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 is generated by that child 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 into law. School districts with at least eight schools that received "low" or "unsatisfactory" ratings according to state standards must participate in the program, while other school districts may participate voluntarily. Under the program, parents of students who are eligible for free or reduced-cost lunches and who are identified as low-

performing students according to academic assessments will become 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, the percentage that may participate gradually increases 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. 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. (Robert E. Moffit, Jennifer J. Garrett, and Janice A. Smith, *School Choice 2001: What’s Happening in the States*, Washington, D.C., The Heritage Foundation, 2001. Also see National School Boards Association, at [[http://www.nsba.org/novouchers/vsc\\_state.cfm](http://www.nsba.org/novouchers/vsc_state.cfm)].)

Colorado was the first state to enact a school choice program since the Supreme Court decided *Zelman v. Simmons-Harris*; however, legislatures in a number of other states also are 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 hears *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* likely will 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 FY2003 appropriation amounts.



**Elementary and Secondary Education Act Programs (as Amended by P.L. 107-110).**

**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).** Pupils attending public schools that fail to meet adequate yearly progress (AYP) standards for two consecutive years must be offered the choice of attending a higher performing public school within their LEA, unless prohibited by state or local law or policy. The lowest achieving children from low-income families must receive priority in choosing alternate schools. The U.S. Department of Education 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.

Pupils attending public schools that fail to meet AYP standards for a third consecutive year must continue to be offered the option of attending another higher-performing public school within the same LEA. Pupils from poor families who continue to attend a school that has failed to make AYP for a third consecutive year must be offered supplemental educational services 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 4 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 schools in the LEA that have made AYP, LEAs are encouraged to enter into cooperative agreements with surrounding LEAs to enable students to transfer to a successful 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 an LEA fails to make AYP for 2 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 also has the option of authorizing students attending a school in that LEA to transfer to a higher-performing public school in a different LEA, with transportation costs provided by the sending LEA. If an LEA does not meet AYP for 4 consecutive years, the SEA is required to take corrective action, which may consist of requiring the LEA to provide students the option of attending a higher-performing school in another district.

**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. For school year 2003-2004, \$382.5 million is appropriated for these programs (FY2003: \$97.5 million annual appropriation, and \$285 million advance appropriation).

**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. Charter schools are authorized through charters entered into by different community groups and school authorities. They are authorized by law in 40 states, the District of Columbia, and Puerto Rico. In exchange for exemption from significant state and/or local rules, these 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 are 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 funds appropriated in excess of \$300 million are reserved for each of the two uses. For FY2003, \$198.7 million is appropriated for Title V-B-1.

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 1-year extension of the program is authorized under the General Education Provisions Act (GEPA) (20 U.S.C. 1226a)). For FY2003, \$24.8 million is appropriated. 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. For FY2003, \$25.8 million is appropriated for these programs.

**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. For FY2003 \$109.3 million is appropriated for these programs.

**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. For FY2003, \$318.1 million is appropriated for FIE programs.

***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.*** On June 7, 2001, the President signed into law P.L. 107-16 (H.R. 1836), the Economic Growth and Tax Relief Reconciliation Act of 2001; and on July 26, 2001, P.L. 107-22 (S. 1190). This legislation provides that Coverdell ESAs (previously Education Individual Retirement Accounts, which were investment accounts for saving to meet higher education expenses) be renamed and extended to cover elementary and secondary education expenses. Annual contributions to Coverdell ESAs previously were limited to \$500, and distributions from these accounts excluded from gross income if used for qualified higher education expenses. P.L. 107-16 increases the annual contribution limit to \$2,000 and expands qualified uses of distributions to include certain elementary and secondary education expenses at public, private, or religiously affiliated elementary or secondary schools. These changes affect tax years beginning after December 31, 2001 and will lapse after December 31, 2010. The Joint Tax Committee estimates that from 2002-2006, tax expenditures for the exclusion from taxation from earnings on Coverdell ESAs will total \$2.5 billion (Joint Committee on Taxation. Estimates of Federal Tax Expenditures For Fiscal Years 2002-2006. JCS-1-02. January 17, 2002. p. 24). For further information, see CRS Report RS20289, *Education Savings Accounts for Elementary and Secondary Education*.

## **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. (See CRS Report 95-344, *Federal Support of School Choice: Background and Options* for a more thorough discussion and analysis of the broad types of federal policy options (but not specific bills) regarding school choice.)

***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 currently 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 its 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 fashioned 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 empowerment zones, high-poverty LEAs, or the District of Columbia) 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 students in specific kinds 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 federal income tax system 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 a viable option to school vouchers, which supporters have not been successful in having enacted through federal legislation. (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 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. 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, proponents 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 typically 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 pay 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, opponents frequently argue that substantial new forms of governmental regulation will

inevitably accompany new forms of governmental financial assistance to them, even if the assistance is indirect. Finally, they 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 108<sup>th</sup> Congress

In the 108<sup>th</sup> Congress, a number of 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.

**House and Senate Bills.** Brief descriptions of a selection of bills introduced during the 108<sup>th</sup> Congress that contain provisions explicitly supporting school choice are provided below, as is a description of the administration's proposal to increase school choice, which was included in the President's FY2004 Budget. Bills in which the support for school choice is incidental or that would extend education tax benefits currently scheduled to expire are not addressed.

#### **H.R. 120 (Hoekstra, *et al.*)**

*Voluntary Opportunities for Increasing Contributions to Education Act.* Amends the IRC to allow a non-refundable tax credit of up to \$500 per year for individuals (\$1,000 for joint filers) and \$100,000 for corporations for 75% of qualified charitable contributions made on behalf of elementary or secondary schools, including contributions to STOs. Introduced January 7, 2003; referred to Committee on Ways and Means.

#### **H.R. 282 (Hoekstra, *et al.*)**

*Education Freedom Act.* Amends the IRC to allow a tax credit of up to \$250 per year for individuals (\$500 for joint filers) and \$50,000 for corporations for 50% of qualified charitable contributions to education investment organizations which make grants for qualified elementary and secondary education expenses, or to public, private, or religious elementary or secondary schools. Elementary and secondary school expenses would be expanded to include home school expenses. Introduced January 8, 2003; referred to Committee on Ways and Means.

#### **H.R. 385 (Shadegg)**

*Leave No Child Behind Tax Credit Act of 2003.* Amends the IRC to allow a non-refundable tax credit of up to \$250 (\$500 for joint filers) for contributions to STOs that

award scholarships for the purpose of assisting children to attend elementary or secondary schools. Introduced January 27, 2003; referred to Committee on Ways and Means.

**H.R. 499 (Smith, Christopher)**

*Education, Achievement, and Opportunity Act.* Amends the IRC to allow a refundable income tax credit for qualifying education expenses incurred for each qualifying child of a taxpayer to attend a public or private elementary or secondary school. Qualifying expenses include tuition and fees (except for non-academic fees), tutoring, special needs services for students with disabilities, transportation, and academic testing. A credit of up to \$2,500 would be allowed for elementary school expenses, and up to \$3,500 for secondary school expenses. Introduced January 29, 2003; referred to Committee on Ways and Means.

**H.R. 611 (Paul, et al.)**

*Education Improvement Tax Cut Act.* Amends the IRC to allow a non-refundable tax credit of up to \$3,000 (\$1,500 in the case of a married individual filing separately) for contributions to STOs that award scholarships for the purpose of assisting children to attend elementary or secondary schools. Also, amends the IRC to allow a non-refundable tax credit of up to \$3,000 (\$1,500 in the case of a married individual filing separately) for qualified school materials contributions to elementary or secondary schools or to school materials organizations. Introduced February 5, 2003; referred to Committee on Ways and Means.

**H.R. 612 (Paul, et al.)**

*Family Education Freedom Act of 2003.* Amends the IRC to allow a non-refundable tax credit of up to \$3,000 for qualified elementary and secondary education expenses at a public, private, or home school. Introduced February 5, 2003; referred to Committee on Ways and Means.

**H.R. 615 (Paul, et al.)**

*Hope Plus Scholarship Act of 2003.* Amends the IRC with respect to the Hope Scholarship Credit (currently available for postsecondary education expenses) to include as qualified tuition and related expenses, elementary and secondary education expenses and contributions to the school (other than a home school) attended by a taxpayer's dependent. Introduced February 5, 2003; referred to Committee on Ways and Means.

**H.R. 684 (Flake, et al.)**

*District of Columbia Student Opportunity Scholarship Act of 2003.* Establishes the District of Columbia Scholarship Fund, managed by a publicly appointed board of directors, for the purpose of awarding scholarships to District of Columbia residents from families with incomes not exceeding 185% of the poverty line for attendance at elementary and secondary schools (including private schools) in the District of Columbia and seven surrounding jurisdictions or for the receipt of supplemental educational services. Limits scholarship awards to \$5,000 for students from families below the poverty line and \$3,750 for students above the poverty line. Limits scholarships for supplemental educational services to \$800. Introduced February 11, 2003; referred to Committee on Government Reform.

**H.R. 947 (Weiner, et al.)**

*School Capacity Relief Act.* Amends the ESEA to allow LEAs to prohibit the transfer of students under public school choice provisions to schools that are at or above capacity or in which the transfer of such students would increase average class size to a level above that

prescribed by the state. Requires LEAs, to the extent practicable, to establish cooperative agreements with other LEAs to accept transfer students in instances where all the public schools in the LEA are ineligible to accept them. Authorizes grants to increase the school capacity of high-performance schools in LEAs in which a significant number or percentage of students attend schools identified for school improvement, corrective action, or restructuring. Introduced March 17, 2003; referred to Subcommittee on Education Reform.

**H.R. 1373 (DeMint, et al.)**

*IDEA Parental Choice Act of 2003.* Amends the IDEA to authorize funding for grants, contracts, and cooperative agreements with eligible entities to support the planning, design, and implementation of state school choice programs for students with disabilities. In states with school choice programs for students with disabilities, authorizes the use of IDEA funding to supplement state funding; 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. Authorizes the use of IDEA funding to support the accommodation of students with disabilities who are eligible to receive supplemental education services under the ESEA. Introduced March 20, 2003; referred to Subcommittee on Education Reform.

**H.R. 1575 (Paul)**

*Help and Opportunities for Parents of Exceptional Children Act of 2003.* Amends the IRC to provide a non-refundable credit of up to \$3,000 per child with a disability for qualified educational expenses associated with the child's attendance at a public, private (including religiously affiliated), or home school. Introduced April 2, 2003; referred to Committee on Ways and Means.

**H.R. 2147 (Andrews)**

Amends the Charter Schools Program (ESEA Title V-B-1) to require the Secretary and SEAs to give priority in awarding grants to applicants implementing charter schools that present evidence that the charter school will provide a racially integrated educational experience and of outreach by the LEA to diverse students. Introduced May 19, 2003; referred to Committee on Education and the Workforce.

**H.R. 2347 (Franks, et al.)**

*Children's Hope Act of 2003.* Amends the IRC to allow a non-refundable tax credit of up to \$100 (\$200 for joint filers) for contributions to STOs that award grants primarily to students from low-income families for qualified elementary and secondary education expenses. Eligibility to claim the credit would be limited to taxpayers in states that provide state qualified scholarship tax credits of at least \$250 per taxpayer for contributions to STOs. Introduced June 5, 2003; referred to Committee on Ways and Means.

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

*DC Choice Incentive Act of 2003.* 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. 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.R. 2732 (Musgrave, *et al.*)**

*Home School Non-Discrimination Act of 2003.* Amends provisions of the Higher Education Act of 1965 (HEA), IDEA, IRC, and Family Educational Rights and Privacy Act of 1974 (FERPA) with respect to home schooling. Supports school choice through home schooling by allowing distributions from Coverdell ESAs to be used for elementary or secondary education expenses at any home school which is treated as either a home school or a private school under State law. Introduced July 15, 2003; referred to Committees on Education and the Workforce, and Ways and Means.

**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.

**S. 4 (Gregg, *et al.*)**

*Opportunity for Every Child Act of 2003.* Authorizes federal funding for education certificates to be awarded to students eligible for free or reduced price meals who are assigned to schools identified for school improvement and who are unable to transfer to a school not identified for school improvement to enable them to attend a private school. Eligible state, local, or non-profit entities may award federally funded education certificates that do not exceed the amount of per pupil expenditures in a recipient student's LEA.

Establishes the District of Columbia Scholarship Fund, managed by a publicly appointed board of directors, for the purpose of awarding scholarships to District of Columbia residents from families with incomes not exceeding 185% of the poverty line for attendance at elementary and secondary schools (including private schools) in the District of Columbia and seven surrounding jurisdictions or for the receipt of supplemental educational services. Limits scholarship awards for students from families below the poverty line to the lesser of District of Columbia per pupil expenditures or the cost of attendance at the school attended; limits scholarships for supplemental educational services to \$800.

Amends the IRC to allow families with a child otherwise assigned to a school identified for school improvement to claim a refundable tax credit of up to 50% of the first \$5,000 in expenses incurred to enroll their child in a public or private school not identified for school improvement. Introduced February 14, 2003; referred to Committee on Health, Education, Labor, and Pensions.

**S. 1078 (Landrieu, et al.)**

*Stable Transitions in Education for Armed Services' Dependent Youth Act.* Establishes a 5-year demonstration program to assist states and LEAs in establishing high quality military charter schools which enroll primarily military dependent elementary and secondary school students. Introduced May 19, 2003; referred to Committee on Health, Education, Labor, and Pensions.

**Administration Proposal—FY2004 Budget.** In its FY2004 budget request, the administration proposes two new school choice initiatives: a refundable tax credit for 50% of up to the first \$5,000 in costs associated with attending a different public or private school, and paid by the taxpayer, for families whose children are assigned to a public school that has failed to make AYP according to ESEA requirements; and a choice incentive fund. The administration requests increased funding for the Public Charter Schools Programs, to include funding for per-pupil facilities aid programs and for credit enhancements for charter school facilities. Continued funding also is proposed for the following ESEA Title V programs: Innovative Programs, Voluntary Public School Choice, and Magnet Schools. Descriptions of existing ESEA Title V programs are provided above. The following provides a description of the administration's two proposed school choice initiatives.

***Refundable Tax Credit for Certain Costs of Attending a Different School for Pupils Assigned to Failing Public Schools.*** The administration proposes a refundable credit of 50% of the first \$5,000 of qualifying educational expenses associated with sending a qualifying student, who is a taxpayer's qualifying child, to a different qualifying elementary or secondary school. The refundable credit would apply toward both a taxpayer's regular and alternative minimum tax liabilities. In addition, a taxpayer could claim credits for more than one qualifying child. Qualifying expenses for the tax credit could not also be considered as qualifying expenses for distributions from Coverdell Education Savings Accounts. The Department of the Treasury estimates that receipt and outlay effects of the program would total \$3.32 billion over 5 years (FY2004 through FY2008).

Under the administration's proposal, qualifying educational expenses would include tuition and required fees, transportation expenses, and certain other expenses (such as academic tutoring, special needs services for special needs students, books, supplies, uniforms, room and board, extended day care, and computer technology equipment) associated with attendance at a qualifying school, but would exclude tuition and fees for any public school within the same LEA as a student's assigned local school. A qualifying school would be any public school (other than the local school), including a public charter school, that made adequate yearly progress during the prior year, a private elementary or secondary school, or a home school. A qualifying student is one who attended, at the close of the prior school year, a public elementary or secondary school identified as failing to make adequate yearly progress for that year according to the terms of the ESEA, as amended by P.L. 107-110. In addition, a student newly assigned to a school identified as failing to make adequate yearly progress for the prior school year also would be considered a qualifying student. Such

students generally would continue as qualifying students from year to year, even if their local school ceased to be identified as failing, until such time as they would be assigned to a different school that had made adequate yearly progress (e.g., being newly assigned to a successful high school for the 9<sup>th</sup> grade). A qualifying child would be defined as a taxpayer's son, daughter, stepson, stepdaughter, sibling, stepsibling (or descendant of such individuals), or foster child, who shared the same principal residence as the taxpayer for more than half of the tax year. (U.S. Department of the Treasury, *General Explanations of the Administrations Fiscal Year 2004 Revenue Proposals*, February 2003, pp. 40-42).

**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 \$75 million to fund the program. Of these funds, a portion would be reserved for school choice programs in the District of Columbia.

## FOR ADDITIONAL READING

### CRS Reports

- CRS Report 97-519, *Charter Schools: State Developments and Federal Policy Options*, by Wayne C. Riddle, James B. Stedman, and Steven Aleman.
- 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, *Educational 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 RL30372, *ESEA Title I Portable Grant Proposals: Background and Issues*, by Wayne Riddle.
- CRS Report 95-344, *Federal Support of School Choice: Background and Options*, by Wayne C. Riddle and James B. Stedman.
- 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 98-455, *Magnet Schools Assistance Program: Overview and Status*, by Carol Glover.
- CRS Report RL30805, *School Choice: Legislative Activity by the 104<sup>th</sup> Through 106<sup>th</sup> Congresses*, by James B. Stedman.
- CRS Report RL31329, *Supplemental Educational Services for Children from Low-Income Families*, by David P. Smole.