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School Choice: Current Legislation

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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 increasing the range and quality of educational opportunities available to pupils, including those from low-income families, those who attend low-performing schools, and those whose families seek an education provided by an entity other than their local public school. Some proponents of school choice suggest that the availability of school choice also will improve public schools through market competition. Some opponents express concern about potential negative effects 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 Supreme Court recently 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.

During the 107th Congress, a number of bills have been introduced that would support school choice through tax deductions or credits. Most recently, H.R. 5193, the Back to School Tax Relief Act of 2002, which would provide an above-the-line tax deduction for K-12 education expenses, was approved by the Committee on Ways and Means. Also, the President's FY2003 budget includes a proposal for a refundable tax credit for families' costs associated with enrolling their children in a different school, if they are assigned to a public school that fails to make AYP.

Currently, the federal government supports school choice under three major program areas: ESEA Title I-A — Improving the Academic Achievement of the Disadvantaged; ESEA Title V — Promoting Informed Parental Choice and Innovative Programs (both amended and reauthorized under the No Child Left Behind Act (NCLBA) — P.L. 107-110); and Coverdell Education Savings Accounts (amended under P.L. 107-16 and P.L. 107-22).

As part of ESEA Title I-A accountability provisions, students attending schools identified for school improvement after failing to make adequate yearly progress (AYP) for 2 consecutive years must be provided intradistrict public school choice, consistent with state law. Further, students from poor families attending schools that fail to make AYP for 3 consecutive years must be provided the option of obtaining supplementary or tutorial services from providers of their choice. Additionally, public school choice must be made available to pupils who are victims of violent crimes or who attend unsafe schools. ESEA Title V authorizes funding for the Public Charter Schools Program to assist charter school start-up and for facilities, and also authorizes the use of Innovative Programs funds for activities to promote, implement, or expand public school choice. Previously, during floor debates of the NCLBA, both the House and the Senate rejected amendments that would have authorized federal aid to support private school choice programs.

P.L. 107-16 amended Education Individual Retirement Account authority to increase the annual contribution limit to $2,000 and to permit these accounts to be used for K-12 school expenses, including the cost of attendance at private schools. These accounts have since been renamed Coverdell Education Savings Accounts.

MOST RECENT DEVELOPMENTS

On September 5, 2002, the House Committee on Ways and Means approved H.R. 5193, the Back to School Tax Relief Act of 2002, which would authorize an above-the-line income tax deduction for up to $3,000 of K-12 education expenses for individuals with modified adjusted gross incomes of $20,000 or less ($40,000 if filing jointly). Under H.R. 5193, individuals would be able to claim the deduction for broadly defined expenses associated with the enrollment of a dependent child in a public, private (secular or religiously affiliated), or home school.

On June 27, 2002, the United States Supreme Court ruled in Zelman v. Simmons-Harris, *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.*

On February 4, 2002, in his FY2003 budget request, the President proposed two new initiatives that would be supportive of elementary and secondary education school choice: a choice demonstration fund to support research, demonstration, and study of expanded educational opportunities for low-income families, to include private schooling; and a refundable tax credit for certain costs associated with attendance at a different school for families of pupils assigned to public schools that fail to make adequate yearly progress.

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. Students from all income levels were reported to be attending public schools of choice in greater proportions in 1999 than in 1993. However, among students attending schools of choice, those from lower-income families are more likely to attend a chosen public school, whereas those from higher-income families are 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 attend a public school to which they are assigned. (U.S. Department of Education. National Center for Education Statistics. *The Condition of Education, 2001*, Table 41-1.)

The federal government, as well as 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 begins with an overview of current local, state, and federal policies and programs that support school choice. It then identifies and summarizes recent federal school choice legislation. This brief will be 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 extant federal, state, and local programs that support school choice with public resources have a variety of features, they generally fall into six broad categories.

***Intra*district 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 are examples of intradistrict choice options.

***Inter*district 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 Education Savings Accounts 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 programs also exist. These 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

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 — operate choice programs involving vouchers for attendance at private (including religiously affiliated) schools for a limited number of pupils from low-income families.

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. For the 2002-2003 school year, the voucher amount is the lesser of $5,785 or the private school's per-pupil costs.

The *Cleveland Scholarship and Tutoring Program*, first implemented in the 1996-1997 school year, is designed to allow students from low-income families in kindergarten through the 3rd grade to apply to receive compensation to attend a private school located within the boundaries of the Cleveland City School District, to attend a public school in a district adjacent to the Cleveland City School District, or to receive tutorial services from a private or governmental provider. Once accepted, students may continue in the program through the 8th grade. Parents of students attending private schools or receiving tutorial services are reimbursed by the state for up to 90% of the cost of tuition. Participating private schools agree to charge low-income parents no more than 10% of the cost of tuition (the amount not covered by the voucher), all of which may be satisfied by in-kind contributions or services. The maximum value of the voucher has remained at $2,250 since the program was first implemented. No adjacent public school districts have elected to accept students under the program.

In addition to these two local voucher programs, the state of Florida has implemented *Opportunity Scholarship* legislation, which authorizes the provision of vouchers to pupils assigned to low-performing public schools to pay either the full cost of private school tuition or the costs of enrolling in another public school in the same or a neighboring county. Opportunity Scholarships in Florida have been awarded to students who had attended either of two failing elementary schools in the 1999-2000 school year. Currently, 10 public schools have been designated as failing schools. Children from these 10 schools will be eligible to attend non-failing schools in school year 2002-2003. The amount of funding available for attendance at private schools is based on that generated by the child for the public schools — generally between $3,500 and $3,900. The school district is required to provide transportation to public schools within the same district, but not to out-of-district public schools nor to private schools.

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. Families may make additional payments to the private school 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. Approximately 9,000 pupils are expected to participate during the 2002-2003 school year (Alan Richard, "Florida Sees Surge in Use of Vouchers," *Education Week*, September 5, 2002).

A limited number of localities have implemented policies under which selected educational services may be provided either by regular public schools or by alternative public or private providers, as selected by parents and students. The alternative providers of *supplemental educational or tutorial services* frequently are private, for-profit firms (*Title I Monitor*, July 2001). This differs significantly from other forms of school choice discussed in this issue brief, since it involves only selected instructional services, not entire school programs.

Some states support 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.

Legal Challenges to State and Local Programs. There have been numerous recent challenges to state and local programs involving public-private school choice. Most recently, on August 5, 2002, a Florida circuit court judge ruled Florida's Opportunity Scholarship Program unconstitutional in *Holmes v. Bush*, finding that the Florida Constitution prohibits the use of public money to fund religious schools or institutions. (An appeal has been filed and it appears that pending the appeal, the program will be allowed to continue.) This decision flows from an October 3, 2000 ruling by Florida's First District Court of Appeals (2000 Fla. App. LEXIS 12658) that remanded the case back to the circuit court after ruling that the Florida Opportunity Scholarship program does not violate Article IX, Section 1 of the Florida Constitution and reversing an earlier ruling by a state circuit court judge. The August 5, 2002 ruling is based on a challenge to the program under a different section of the Florida Constitution. The Florida Constitution, like many state constitutions, contains provisions prohibiting the provision of public funds to religious institutions or organizations, including religiously affiliated schools.

On June 27, 2002, the U.S. Supreme Court ruled in *Zelman v. Simmons-Harris* (2002 U.S. LEXIS 4885) that the school voucher program in Cleveland, Ohio, in which publicly funded school vouchers may be used to pay for the attendance of disadvantaged children at religiously affiliated schools, is not in violation of the Establishment Clause of the First Amendment to the Constitution, in instances where parents themselves 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 unconstitutional.

On February 8, 2001, in *Toney v. Bower*, an Illinois appellate court upheld under the Illinois Constitution a state tax credit for 25% of qualified K-12 educational expenses over $250 (with a maximum credit of $500; 2001 Ill. App. LEXIS 248). The Illinois Supreme Court has declined a petition to review the case. More thorough analysis of these and other recent cases involving legal challenges to school choice programs can be found in CRS Report RL30165, *Educational Vouchers: Constitutional Issues and Cases*, and CRS Report RS21273, *The Law of Church and State: Public Aid to Sectarian Schools*.

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.

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 2 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, or by capacity constraints. Such schools also will be required to implement school improvement plans. The lowest achieving children from low-income families will receive priority in choosing alternate schools.

Pupils attending public schools that fail to meet AYP standards for a third consecutive year will continue to be offered the option of attending another higher-performing public school within the same LEA, and among these pupils, those from poor families will be offered supplemental educational or tutorial 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 will be required to maintain a list of approved supplementary education service providers from which parents can select. In instances where a school fails to meet AYP standards for 4 consecutive years, it will 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. (Also, in proposed regulations, ED has provided that LEAs may offer supplemental educational or tutorial services to children from low-income families in instances where they attend a school that has failed for two consecutive years to make AYP and where there are no other public schools in the LEA that have not been identified for school improvement, corrective action, or restructuring).

In instances where an LEA fails to make AYP for 2 consecutive years, the SEA will be required to identify it for improvement, and require that 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 will have 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 will be 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 2002, $385 million are appropriated for these programs (FY2002: $100 million; and FY2003 advance appropriation: $285 million).

Charter Schools Programs (ESEA Title V-B-1&2). 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 39 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.

The potential scope of the Charter Schools Programs was expanded by the authorization of a per-pupil facilities aid program through which matching funds may be provided for charter school facilities in states that provide funds for charter school facilities on a per-pupil basis, and by the authorization of funding for grants to entities for the development of credit enhancement initiatives to assist charter schools in acquiring, constructing, or renovating facilities. The FY2002 appropriation for the Charter Schools Programs is $200 million; however, none of these funds were allocated for either the per-pupil facilities aid program, or the credit enhancement initiatives. The FY2001 appropriations legislation included one-time funding of $25 million for a program to demonstrate ways of leveraging financing for charter school facilities similar to that now contained in the Charter Schools Programs.

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 FY2002, $25 million were 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 FY2002, $110 million were appropriated for this program.

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. The ESEA also authorizes funding for states to provide subgrants to LEAs to pay for capital expenses related to the provision of equitable Title I-A services to students attending private schools; however, for FY 2002, no funds were appropriated for these purposes.

Tax Benefits for K-12 Education Expenses — P.L. 107-16, H.R. 1836. 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 Education Savings Accounts (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 Education Savings Accounts 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. 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 past and current proposals in this category involve ESEA Title I-A. As noted, Title I-A has certain choice-related provisions. These proposals have sought, among other things, to authorize or require school choice or supplemental services grants under Title I-A for special groups of students or schools, such as for victims of violence on school grounds or for students enrolled in poorly performing schools. Choice amendments to Title I-A have also endeavored to include private school enrollment among its choice options. Additionally, as previously noted, the Innovative Programs, Public Charter Schools, Voluntary Public School Choice, and Magnet Schools programs promote school choice.

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) 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 Education Savings Accounts are a current example of a tax subsidy supportive of elementary and secondary education school choice (these accounts also support postsecondary education expenses). Others have proposed offering 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*).

Proposals in the 107th Congress

Administration Proposal — FY2003 Budget. In his FY2003 budget request, the President proposed two new initiatives supportive of school choice: a school choice demonstration fund; and a refundable tax credit for costs associated with attending a different public or private school for families whose children are assigned to a public school that fails to make adequate yearly progress for 1 year. The President also proposed to continue funding for the following ESEA Title V programs: Innovative Programs, Charter Schools, Voluntary Public School Choice, and Magnet Schools. In addition, he proposes to provide $100 million in funding for credit enhancements for charter school facilities, which were not funded for FY2002. Current ESEA Title V programs are described above. The following provides a description of the administration's two proposed school choice initiatives.

Choice Demonstration Fund. The Choice Demonstration Fund would provide funding for school choice demonstrations and research into the achievement effects of school choice options on students, schools, and districts. The administration's proposal specifies the inclusion of school choice options that would benefit low-income students and that include private schools. Grants totaling $50 million would be made to SEAs, LEAs, institutions of higher education, governmental agencies, or other public or private entities for school choice demonstrations and research.

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.

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 9th 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 Administration's Fiscal Year 2003 Revenue Proposals,* February 2002, pp. 14-16).

H.R. 5193. The Back to School Tax Relief Act of 2002 (approved by the Committee on Ways and Means on September 5, 2002), would amend the Internal Revenue Code by adding an above-the-line income tax deduction for elementary and secondary education expenses to an existing deduction for higher education expenses without otherwise amending its terms. The bill would allow individuals with modified adjusted gross incomes that do not exceed $20,000 ($40,000 if filing jointly) to deduct qualified K-12 expenses of up to $3,000 per return. Qualified expenses are the same as those of Coverdell Education Savings Accounts, except the K-12 deduction would exclude room and board and would explicitly include expenses incurred in connection with enrollment or attendance at a home school as determined under state law.

For further information and an analysis of these and other proposals for expanded federal tax benefits for K-12 education expenses, 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 is not available; 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. In contrast, 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.

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 likely will be 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

The following is a selection of legislation with provisions explicitly supporting school choice that received significant action during the 107th Congress. Bills in which the support for school choice is incidental, such as proposals broadly supporting the renovation and construction of elementary and secondary schools that include charter schools, and bills that were not debated on the floor of the Senate or House, or reported by committee, are not included.

P.L. 107-16, H.R. 1836 (Thomas)
Economic Growth and Tax Relief Reconciliation Act of 2001. Signed into law June 7, 2001.

P.L. 107-110, H.R. 1 (Boehner *et al.*), S. 1 (Jeffords)
No Child Left Behind Act. Signed into law January 8, 2002.

H.R. 5193 (Schaffer *et al.*)
Back to School Tax Relief Act of 2002. The bill would authorize an above-the-line income tax deduction for up to $3,000 in elementary and secondary education expenses (for costs associated with a child attending a public, private, or home school) for individuals with modified adjusted gross incomes of $20,000 or less ($40,000 if filing jointly). Approved (22-14) by the Committee on Ways and Means, September 5, 2002.

H.R. 5203 (Hulshof)

Education Savings and School Excellence Permanence Act of 2002. The bill would have made permanent certain provisions of Coverdell Education Savings Accounts that are applicable to elementary and secondary education expenses and that are due to sunset in 2010. It also would have amended the definition of qualified elementary and secondary education expenses to specifically include expenses associated with a beneficiary's attendance at a home school. Failed (213-188) under suspension of the rules.

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, *Education Vouchers: An Overview of the Supreme Court's 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 RL30663, *The Reading Excellence Act: Implementation Status and Issues*, by Gail McCallion.

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

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