

# ALEC Model Legislation

## PARENTAL CHOICE SCHOLARSHIP PROGRAM ACT (UNIVERSAL ELIGIBILITY – ONE SCHOLARSHIP AMOUNT) AS PASSED BY THE EDUCATION TASK FORCE

**Summary:** This bill creates a scholarship program for all children to attend the public or non-public elementary or secondary school of their choice.

**Section 1:** (Title) Parental Choice Scholarship Program

**Section 2:** (Definitions)

- A) “Program” means the Parental Choice Scholarship Program created in this subchapter.
- B) “Eligible student” means the student was eligible to attend a public school in the preceding semester or is starting school in our state for the first time. <sup>1</sup>
- C) “Parent” includes a guardian, custodian or other person with the authority to act on behalf of the child.
- D) “Department” means the state Department of Public Instruction. <sup>2</sup>
- E) “Resident school district” means the public school district in which the student resides.
- F) “Participating school” means either a public school outside of the resident school district or any non-public school that provides education to elementary and/or secondary students and has notified the department of its intention to participate in the program and comply with the program’s requirements. <sup>3</sup>

**Section 3:** (Basic Elements of the Parental Choice Scholarship Program) <sup>4</sup>

- A) Any eligible student may apply to attend any participating school in the Parental Choice Scholarship Program.
- B) Eligible students may attend a participating school until their graduation from high school or their 21<sup>st</sup> birthday, whichever comes first.
- C) Any eligible student will qualify for an annual scholarship in an amount equal to the lesser of:
  - 1) the participating school’s annual cost per pupil, including both operational and capital facility costs; or
  - 2) the dollar amount the resident school district would have received to serve and educate the eligible student from state and local sources had the student enrolled there. <sup>5</sup>
- D) The scholarship is the entitlement of the eligible student under the supervision of the student’s parent and not that of any school.
- E) A participating school may not refund, rebate or share a student’s scholarship with a parent or the student in any manner. A student’s scholarship may only be used for educational purposes.
- F) Participating schools that have more eligible students applying than spaces available shall fill the available spaces by a random selection process, except that participating schools may give preference to siblings of enrolled students and previously enrolled scholarship students under this subchapter. <sup>6</sup>
- G) If a student is denied admission to a participating school because it has too few available spaces, the eligible student may transfer his scholarship to a participating school that has spaces available.
- H) Eligible students shall be counted in the enrollment figures for their resident school district for the purposes of calculating state aid to the resident school district. The funds needed for a scholarship shall be subtracted from the state school aid payable to the student’s resident school district. Any aid the school district would have received for the student in excess of the funds needed for a scholarship will be kept by the state. <sup>7</sup>
- I) The department shall adopt rules consistent with this act regarding:
  - 1) the eligibility and participation of non-public schools, including timelines that will maximize student and public and non-public school participation;

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- 2) the calculation and distribution of scholarships to eligible students; and <sup>8</sup>
- 3) the application and approval procedures for scholarships for eligible students and participating schools.

## **Section 4:** (Accountability Standards For Participating Non-Public Schools)

A) Administrative Accountability Standards. To ensure that students are treated fairly and kept safe, all participating schools shall:

- 1) comply with all health and safety laws or codes that apply to non-public schools;
- 2) hold a valid occupancy permit if required by their municipality;
- 3) certify that they will not discriminate in admissions on the basis of race, color, national origin, religion or disability; and <sup>9</sup>
- 4) comply with all state laws that apply to non-public schools regarding criminal background checks for employees and exclude from employment any people not permitted by state law to work in a non-public school.<sup>10</sup>

B) Financial Accountability Standards. To ensure that public funds are spent appropriately, all participating non-public schools shall:

- 1) demonstrate their financial accountability by:
  - a) submitting a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant; and <sup>11</sup>
  - b) having the auditor certify that the report is free of material misstatements and fairly represents the costs per pupil under section 3(C)(1). The auditor's report shall be limited in scope to those records that are necessary for the department to make payments to participating schools on behalf of parents for scholarships.
- 2) demonstrate their financial viability by showing they can repay any funds that might be owed the state, if they are to receive \$50,000 or more during the school year, by:
  - a) filing with the department prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of the Parental Choice Scholarships expected to be paid during the school year to students admitted at the participating school; or
  - b) filing with the department prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the Parental Choice Scholarships expected to be paid during the school year to students admitted at the participating school.<sup>12</sup>

C) Academic Accountability Standards. To ensure that schools provide academic accountability to parents of the students in the program, all participating schools shall regularly report to the parent on the student's progress.<sup>13</sup>

D) Participating School Autonomy. A participating school is autonomous and not an agent of the state or federal government and therefore:

- 1) the department or any other state agency may not in any way regulate the educational program of a participating school that accepts a Parental Choice Scholarship; and
- 2) the creation of this program does not expand the regulatory authority of the state, its officers or any school district to impose any additional regulation of non-public schools beyond those necessary to enforce the requirements of the program; and
- 3) participating schools shall be given the maximum freedom to provide for the educational needs of their students without governmental control.

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## **Section 5:** (Responsibilities of the Department of Public Instruction)

- A) The department shall ensure that eligible students and their parents are informed annually of which schools will be participating in the Parental Choice Scholarship Program. Special attention shall be paid to ensuring that lower income families are made aware of the program and their options.
- B) The department shall create a standard application that students interested in the Parental Choice Scholarship Program can use to submit to participating schools to establish their eligibility and apply for admissions. Participating schools may require supplemental information from applicants. The department shall ensure that the application is readily available to interested families through various sources, including the Internet.
- C) The department may bar a school from participation in the Parental Choice Scholarship Program if the department establishes that the participating school has:
  - 1) intentionally and substantially misrepresented information required under Section 4; or
  - 2) routinely failed to comply with at least three of the accountability standards established in Section 4; or <sup>14</sup>
  - 3) failed to comply with Section 3(E); or
  - 4) failed to refund to the state any scholarship overpayments in a timely manner.
- D) If the department decides to bar a participating school from the program, it shall notify eligible students and their parents of this decision as quickly as possible.
- E) The department shall adopt rules and procedures as necessary for the administration of the Parental Choice Scholarship Program.

## **Section 6:** (Responsibilities of Resident School Districts)

- A) The resident school district shall provide to the participating school that has admitted an eligible student under this program with a complete copy of the student's school records while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g)
- B) The resident school district shall provide transportation for the eligible student to and from the participating school under the same conditions as the resident school district is required to provide transportation for other resident students to non-public schools as per current law. The resident school district will qualify for state transportation aid for each student so transported.

**Section 7:** (Effective Date) The Parental Choice Scholarship Program will be in effect beginning with the fall semester of the next school year.

### **ENDNOTES FOR PARENTAL CHOICE SCHOLARSHIP PROGRAM (UNIVERSAL ELIGIBILITY)**

These notes are intended to provide guidance to legislators on some of the key policy questions they will encounter in drafting and debating school choice legislation. In particular, we would draw your attention to the program evaluation language contained in Endnote 15.

1. The definition for an eligible student in this model legislation includes all children of school age. The authors believe that all children should receive public support for their education regardless of whether they attend a public or non-public school, whether they are just starting school or have already dropped out. Please note that this inclusive definition will significantly increase the number of students in your state receiving public support for their education and thereby either increase the costs to taxpayers or reduce the level of assistance available to support each student. Legislators wishing to draft a bill that saves money will want to limit eligibility largely to students who attended a public school in the last year. This savings will occur because non-public school costs are generally much lower than public school costs. In fact, the difference in public and non-public school

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costs makes it possible for legislators to spend the same amount on education while extending eligibility for these scholarships to additional students including children who are attending school in the state for the first time (such as kindergarteners and new residents) and many low-income families (who generally use non-public schools at lower rates).

2. This bill designates the Department of Public Instruction as the agency regulating the Parental Choice Scholarship Program. The intent was to name the existing agency in the state that is responsible for public school finances and non-public school regulation. Alternatively, legislators may choose to create a new small agency to oversee the program if they are concerned about the hostility the program would face from the existing state education department.

3. This model legislation allows students to use a scholarship to attend a public school outside their district as well as a non-public school. The authors support giving parents the widest possible array of choices so that they can choose the school that best meets their child's needs. Making sure parents can choose either a public or non-public school is not only the right policy but also the best legal strategy. The US Supreme Court and various state courts have all cited this broad array of choices as an important part of the reason they have found school choice programs constitutional. The courts have reasoned that these scholarship programs are not an inappropriate subsidy of religious institutions because the purpose was secular (the education of children) and the parents were given many options including public schools, charter schools, non-public secular schools and non-public religious schools. If a state already has open enrollment or some other form of public school choice, then this legislation should be made consistent with the existing program. In fact, if a state already has a broad array of school choice options available to parents, then a state may be able to add an option for just non-public schools without encountering constitutional questions.

4. This model legislation allows schools to charge all students tuition and fees in excess of the scholarship amount. This will encourage greater participation by a handful of schools with average costs above the scholarship amount, and some believe direct payments from parents will encourage stronger ownership and involvement in their children's education. However, legislators may wish to place a cap on the tuition and fees that a poor student might be charged to ensure that all families can afford to participate in the program. Regardless, legislators will need to make sure that the amount of the scholarship plus the tuition and fees charged to the student do not exceed the school's costs for educating a student. Any payments above cost to a religious non-public school would be considered an impermissible subsidy of religion.

5. This model legislation bases the scholarship amount on the level of state and local support a student would have received for attending a public school in their resident district. Optimally, a voucher should equal the federal, state and local dollars that would have been available for the child at his resident public school. Unfortunately, tapping federal dollars may bring some unwanted federal regulations to choice schools. Similarly, legislators should be aware that using local dollars may violate the state constitution in some places (such as Colorado) and may be politically unviable in other states. In these cases, legislators could choose to fund scholarships by drawing an amount equal to the state and local support solely from the state's coffers. This option will significantly change the fiscal effect of the legislation and will likely result in added expenditures for the state. In some states, legislators have chosen to base the scholarship amount on the level of state support normally provided to a student. This will significantly lower the amount of the scholarship and thereby limit the number of schools that are willing to accept them.

6. The legislation requires participating schools that are oversubscribed to use a random selection process

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for determining which students gain admission. This random selection process will assure that students are admitted on an equal basis regardless of their educational attainment, athletic talents or life challenges. Critics of school choice often falsely allege that schools will “cream” the best students from the list and not take the more difficult challenges. In reality, existing school choice programs require this random selection process and experience shows the students they admit face greater challenges than the average public school student in their district.

The model legislation makes two exceptions from this random selection process in order to facilitate educational objectives. Children already attending the school on a scholarship are not required to join the lottery for admittance so as not to interrupt their educational experience. Similarly, the siblings of students already attending the school are exempted so families can send all of their children to the same school. A requirement that siblings join a random selection process could produce a logistical nightmare for parents when their children are all admitted to different schools. This would force many such families to unite their children by either choosing a much less desirable school without a waiting list or by exiting the program.

Legislators may wish to consider other preferences for admission including children who have been the victims of school violence or attend a failing school as defined in the No Child Left Behind Act.

7. The bill has been drafted so that any savings in the cost of educating a student shall accrue to the state. School choice legislation drafted in this manner has the political advantage of either reducing state expenditures or making more funds available for other public schools. Legislators should know that some local school districts will claim that because the state is capturing the savings the program is “draining resources” away from public schools. This would not be the case if the savings were used to increase state aids to public school districts.

8. It is important that the Department calculate the voucher in strict accordance with the definitions in the legislation. If the Department cannot be trusted to do this objectively, a more detailed description for determining the size of the voucher should be written into the law.

9. Private schools are already required to comply with nondiscrimination policies under federal law with respect to race, color, and national origin (42 USC 1981). In addition, if private schools are recipients of federal funds they are subject to nondiscrimination requirements under 42 USC 2000d (race, color, national origin) and 29 USC 794 (disability). The value of including a state prohibition based on religion and disability in this legislation is to head off arguments from school choice opponents that the private schools will “cream off” the best students or discriminate against students who don’t share their religious faith in admissions. These provisions may or may not be acceptable to some religious schools in a given state. Legislators may also wish to include language banning discrimination in hiring on the basis of race, color, national origin or disability. In doing so, however, legislators should take care not to interfere with the ability of religious institutions to hire individuals who share their religious beliefs.

10. We believe participating schools should be required to meet the same legal requirements as other non-public schools to ensure the safety of their students. Alternatively, schools could be required to conduct criminal background checks on existing and potential employees and then be given the flexibility to exclude from employment any people that might reasonably pose a threat to the safety of students. This alternative language would be valuable in two cases: 1) a small number of states prohibit discriminating against felons in hiring even for sensitive positions in schools, and this proposed language would give these schools clear authority to dismiss or not hire individuals who pose a risk to student safety; and 2) some religious schools see rehabilitation as part of their mission. In this case, the schools could hire someone with a criminal background who they believe is no longer a

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threat to students, such as someone who committed nonviolent crimes or has decades-old violations followed by a clean record. This alternative language would give schools the responsibility to do background checks, the power to exclude potential risks from the school, and the liability for their employment decisions.

11. The purpose of the financial information report is to make sure that the department can ascertain the costs of educating a student at the school and to ensure public funds are used appropriately. The legislation does not call for an independent audit because this would be unnecessarily expensive and invasive for many non-public schools.

12. The model legislation provides for two methods for schools to demonstrate financial viability to ensure that public funds are secure. The first method employs a market-based means of demonstrating viability. Private companies that issue surety bonds have a financial interest in making sure that the schools can repay any funds that might be owed the state. They will therefore conduct the checks necessary to protect their financial interest as well as the taxpayers' financial interests. Surety bonds can be expensive (one to three percent of the amount covered) or invasive for some institutions, so the legislation allows schools to demonstrate by some other means that they have the financial wherewithal to pay back any amount they might owe the state. This might include things like personal guarantees, reserve accounts or escrow accounts.

13. The authors believe that empowered parents are the best way to achieve academic accountability and that schools of choice are generally much more accountable for academic performance than assigned public schools. However, we recognize that some legislators may feel the need to demonstrate academic accountability more concretely or to mandate testing to ensure that parents are given useful measurements of their children's progress. In that case, we recommend that all participating schools be required to annually administer either the state achievement tests or nationally recognized norm-referenced tests in math and language arts or both to any student participating in the program in grades that require testing under the state's accountability testing laws. Most non-public schools already administer such norm-referenced tests so this provision should not be seen as burdensome. It is important, however, to give schools the ability to choose between a state test and the nationally recognized test. Many non-public schools would simply refuse to participate in the program if they were forced to administer the state tests, because it implies that they are no longer independent of the state. The reason many opponents to school choice promote state testing of non-public schools is, in fact, because they want to discourage school participation and quietly destroy the program.

Testing should take place at a time comparable to when public schools conduct state achievement tests. Participating schools should provide the parents of each student with a copy of the results and should provide the results to the state evaluator described in the additional note below in a manner that protects the identity and privacy of individual students. The purpose of this testing requirement should be to provide each parent with a measure of their student's progress and to allow the taxpayers to measure the achievements of the program. The number and scope of the tests should be carefully limited to ensure that there is sufficient information to demonstrate the achievements of the program without being so exhaustive or prescriptive as to end up dictating the curriculum at participating schools. The costs of the testing requirements for a non-public school must be included in the costs used to determine the size of the scholarships at that school.

14. The legislation allows schools to occasionally fail to meet an accountability standard so that an antagonistic regulator cannot shut down the program by banning schools with a modest occasional violation such as turning in a report late.

Additional Note: Some critics of school choice programs will demand that participating schools comply with all of

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the regulations placed on public schools in order to ensure “academic accountability” for the taxpayers. Of course, their real intent is to kill the program by driving schools from the program with burdensome regulations. Legislators sincerely wishing to demonstrate the program’s academic success to taxpayers could require a scientific evaluation of the program using the testing data proposed in endnote 13. It is crucial that the legislature give the oversight responsibility for this study to a trusted objective nonpartisan source like a legislative service agency. We have provided model language for such an independent evaluation of the program below. The outlined research would evaluate not only whether students who participate in the program are better off, but also, more importantly, whether the competition from non-public schools improves the performance of public schools. The outlined longitudinal study includes a comparison of students in the choice program with a similar cohort in the public schools for the duration of their education from kindergarten through high school. Unfortunately, a 13-year longitudinal study is likely to be quite expensive. Accordingly, the legislation allows the legislature (or a legislative service agency) to accept private grants to completely fund such a study. In some, states, the legislature is not allowed to accept such grants and another trusted agency would have to be selected. It will be tempting for legislators to further define the details of the study but they should take care not to dictate the methodology or the results in order to maintain the credibility of the research.

## **Section X:** (Evaluation of the Parental Choice Scholarship Program)

- A) The Legislative Service Agency may contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct a study of the program with funds other than state funds.
- B) The study shall assess:
  - 1) the level of parental satisfaction with the program;
  - 2) the level of participating students’ satisfaction with the program;
  - 3) the impact of the program and the resulting competition from non-public schools on the resident school districts, public school students, and quality of life in a community;
  - 4) the impact of the program on public and non-public school capacity, availability and quality; and
  - 5) participating student’s academic performance and graduation rates in comparison to students who applied for a scholarship under this program but did not receive one because of random selection.
- C) The researchers who conduct the study shall:
  - 1) apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study.
  - 2) protect the identity of participating schools and students by, among other things, keeping anonymous all disaggregated data other than that for the categories of grade level, gender and race and ethnicity.
  - 3) provide the Legislature with a final copy of the evaluation of the program.
- D) The relevant public and participating non-public schools shall cooperate with the research effort by providing student assessment results and any other data necessary to complete this study
- E) The Legislative Service Agency may accept grants to assist in funding this study.
- F) The study shall cover a period of thirteen years. The legislature may require periodic reports from the researchers. After publishing their results, the researchers shall make their data and methodology available for public review while complying with the requirements of FERPA (20 USC Section 1232 g).

Additional Note: It is fairly common for legislators to consider including severability clauses in new legislation. Legislators should make sure that if such clauses are included and exercised, the remaining legislation produces a program that is workable and achieves the original intent of the bill.