

Model Legislation

THE SMART START SCHOLARSHIP PROGRAM

Summary: This bill creates a scholarship program that helps children from low- and middle-income families attend the public or non-public 4 year-old preschool program or 5 year-old kindergarten program of their choice.

Section 1: (Title) The Smart Start Scholarship Program

Section 2: (Definitions)

- A) “Program” means the Smart Start Scholarship Program created in this subchapter.
- B) “Eligible child” means a child who:
 - 1) is old enough to attend kindergarten in this state or, in the case of a child who wishes to attend pre-school, is one year younger than the attendance age for kindergarten in this state. ¹
 - 2) resides in our state while receiving a scholarship under this subchapter.
- 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. ²
- E) “Resident school district” means the public school district in which the child resides.
- F) “Participating school” means either a public school outside of the resident school district or any non-public school that offers kindergarten or preschool programs and has notified the department of its intention to participate in the program and comply with the program’s requirements. ³

Section 3: (Basic Elements of the Smart Start Scholarship Program)

- A) Every eligible child will qualify for a scholarship to attend a participating school.
- B) Parents may choose whether they want their kindergartener to attend a full day or half-day program. ⁴
- C) Parents may choose whether they want their preschooler to attend a full day or half-day program and whether they want their preschooler to attend the program every day or less often. ⁵
- D) Scholarship amounts shall be calculated according to the following schedule for full day kindergarten. The scholarship amount shall be reduced by 50% for half-day kindergarten programs and by a proportionate amount for part-time preschool programs. ⁶
 - 1) For children from households qualifying for the federal free or reduced-price lunch program, the scholarship amount shall be equal to the lesser of:
 - a. One hundred percent of the dollar amount the resident school district would have received to serve and educate the eligible child from state and local sources had the child enrolled there; or
 - b. the participating school’s annual cost per child, including both operational and capital facility costs.
 - 2) For children from households with an annual income greater than the amount required to qualify for the free or reduced lunch program but less than 1.5 times that amount, the scholarship amount shall be equal to the lesser of:
 - a. Seventy-five percent of the dollar amount the resident school district would have received to serve and educate the eligible child from state and local sources had the child enrolled there; or
 - b. the participating school’s annual cost per child, including both operational and capital facility costs.

- 3) For children from households with an annual income of greater than 1.5 times the amount required to qualify for the free or reduced lunch program but less than 2.0 times that amount, the scholarship amount shall be equal to the lesser of:
 - a. Fifty percent of the dollar amount the resident school district would have received to serve and educate the eligible child from state and local sources had the child enrolled there; or
 - b. the participating school's annual cost per child, including both operational and capital facility costs.
- 4) For children from households with an annual income of greater than 2.0 times the amount required to qualify for the free or reduced lunch program but less than 2.5 times that amount, the scholarship amount shall be equal to the lesser of:
 - a. Twenty-five percent of the dollar amount the resident school district would have received to serve and educate the eligible child from state and local sources had the child enrolled there; or
 - b. the participating school's annual cost per child, including both operational and capital facility costs.
- E) The scholarship is the entitlement of the eligible child under the supervision of the child's parent and not that of any school.
- F) A participating school may not refund, rebate or share a child's scholarship with a parent or the child in any manner. A child's scholarship may only be used for the purposes of education and school readiness.
- G) Eligible children who qualify for the federal free or reduced lunch program may attend any participating school in the Smart Start Scholarship Program at no charge to the child. That is, the scholarship under this subchapter would cover the cost of all tuition and mandatory fees for such children. Participating schools may charge the difference between the scholarship amount and all tuition and mandatory fees for eligible children from households with incomes that exceed the annual income required to qualify for free or reduced lunch program. A participating school may not require a child to enroll in or charge any fee for supplemental services as a condition of admitting the child through the Smart Start Scholarship program.⁷
- H) Participating schools that have more eligible children 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 children and previously enrolled scholarship children under this subchapter.⁸
- I) If a child is denied admission to a participating school because it has too few available spaces, the eligible child may transfer his scholarship to another participating school that has spaces available.
- J) Eligible children 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 child's resident school district. Any aid the school district would have received for the child in excess of the funds needed for a scholarship will be kept by the state.⁹
- K) The department shall adopt rules consistent with this act regarding:
 - 1) the eligibility and participation of non-public schools, including timelines that will maximize participation by eligible children, public and non-public schools;
 - 2) the calculation and distribution of scholarships to eligible children;¹⁰ and
 - 3) the application and approval procedures for scholarships for eligible children and participating schools.

Section 4: (Accountability Standards For Participating Schools)

- A) Administrative Accountability Standards. To ensure that children 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;¹¹ and
 - 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.¹²

- 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;¹³ and
 - b) having the accountant certify that the report is free of material misstatements and fairly represents the costs per child under section 3(D). The accountant'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 scholarships expected to be paid during the school year to children 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 scholarships expected to be paid during the school year to children admitted at the participating school.¹⁴
- C) Academic Accountability Standards. To ensure that schools provide academic accountability to parents of children in the program, all participating schools shall regularly report to the parent on the child's progress.¹⁵
- 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 Smart Start 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 enrolled children without governmental control.

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

- A) The department shall ensure that eligible children and their parents are informed annually of which schools will be participating in the Smart Start 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 children interested in the Smart Start 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 Smart Start 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;¹⁶ or
 - 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 children 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 Smart Start Scholarship Program.

- F) The department shall work with other state and local agencies administering education and school readiness programs to:
- 1) minimize duplicate regulation, licensing, and monitoring;
 - 2) maximize the receipt of federal funds;
 - 3) coordinate state services and grants for younger children to ensure the efficient use of all funds for these programs;
 - 4) coordinate state grants to ensure that no provider receives state funds in excess of the scholarship limits per child established by the legislature.¹⁷

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 child'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 child attending a full day kindergarten or pre-school program 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: (Evaluation of the Smart Start Scholarship Program)¹⁸

- 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 effectiveness of the program in advancing the academic preparedness of the participant;
 - 3) the impact of the program on public and non-public school capacity, availability and quality;
 - 4) the impact of the program on child care capacity, availability and quality;
 - 5) the impact of the program and the resulting competition from non-public schools on the resident school districts, and child care providers.
- 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 age, 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 non-public schools shall cooperate with the research effort by providing the data necessary to complete this study.
- E) The Legislative Service Agency may accept grants to assist in funding this study.
- F) 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).

Section 8: (Effective Date) The Smart Start Scholarship Program will be in effect beginning with the fall semester of the next school year.

FOOTNOTES FOR THE SMART START SCHOLARSHIP PROGRAM

The American Legislative Exchange Council provides its members with model legislation that reflects the Jeffersonian ideals of limited government and free markets. In the last few years, there has been a growing trend toward greater investments by state and local governments in early childhood education. In the next few years, most states will consider funding full-day kindergarten as well as pre-school programs for children 4 years old and younger. This model legislation is designed to help legislators who favor this policy goal achieve it with the most efficiency for taxpayers and the greatest satisfaction for parents.

ALEC strongly believes this policy goal can best be achieved through the use of vouchers. However, we recognize that in some states vouchers may not be constitutionally permitted or politically viable. In those states, legislators may wish to consider employing a tax credit approach like the one adopted in Pennsylvania in 2003. This expansion of the existing tax credit program for elementary and secondary education provides corporations with a 100% credit on the first \$10,000 contributed to scholarship granting organizations and up to 90% on the remaining contribution up to \$100,000. Each year, up to \$5 million in corporate tax credits may be claimed for tuition scholarships for pre-kindergarten programs for 3 and 4 year olds. Families of children receiving these scholarships must make less than \$50,000 plus a \$10,000 allowance for each dependent. In 2004, the first year of the program, 39 scholarship organizations were created.

The following 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.

1. The various states have a wide range of existing education opportunities for children ages 4 and 5. Some states publicly fund full day kindergarten and preschool while others provide funding only for half day kindergarten but not preschool programs. Each state sets its own standards for the age when children may enter kindergarten. The states with publicly funded preschool programs usually choose to make them available to children a year younger than the state's eligibility age for kindergarten. The authors have drafted this model legislation to accommodate the existing ages used for eligibility in each state. While the model legislation is drafted to provide greater opportunities for both 4 and 5 year olds, a state could easily choose to offer these expanded opportunities at just one of these ages by eliminating either the kindergarten or the preschool language. To the extent that a state extends its existing opportunities for publicly funded kindergarten and preschool programs to include private schools, the state may see some savings since many private programs are less expensive than the existing state aids to public programs. If the Smart Start Scholarship Program is used to provide educational opportunities to large numbers of children who were previously unaided, then the costs to the taxpayers are likely to increase, or the level of assistance presently available to support existing students will have to be decreased.

2. This bill designates the Department of Public Instruction as the agency regulating the Smart Start Scholarship Program. The intent was to name the existing agency in the state that is responsible for public school finances and private school regulation. Some states have created separate state agencies for the regulation of early childhood learning programs, and they may wish to consider designating that agency as the lead regulator. 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 private 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 private 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, private secular schools and private 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 private schools without encountering constitutional questions.

4. The authors believe that the decision about whether a child attends kindergarten for the full day or just half of the day should be made by the child's parent and not the state. The scholarship amount should be adjusted to reflect the choice made by the child's parents.

5. Preschool programs are offered in a variety of formats to meet the needs of children and their families. While some families may wish to send their four year old to a preschool for the full day every day, others will choose to send their child for just a few hours two or three days a week. The parent should make this decision not the state. The scholarship amount should be proportionately adjusted to reflect the time the child spends in the preschool program each week.

6. In general, this model legislation bases the scholarship amount on 1) the annual total income of the student's household; and 2) the costs for educating the student. Families whose annual income is less than the federal Free and Reduced Lunch Program (FRL) income standard would receive a scholarship that entirely covers the costs of attending the participating school as long as that amount is less than amount of state and local support the resident school district would have received had the student enrolled there. Families with incomes greater than the FRL standard would have their scholarships reduced to reflect the greater ability of the family to contribute toward their education. Legislators may adjust the percentage of eligible costs covered by a scholarship to reflect the situation in their state.

The model bill limits scholarship assistance to those children in a household whose annual income does not exceed an amount equal to 2.5 times the income standard used to qualify for the federal Free and Reduced Price Lunch Program (FRL). The authors chose this standard for several reasons; 1) the FRL Program is familiar to both schools and many parents; 2) the verification procedures are simple and familiar to school administrators; 3) the income guidelines are used for a number of existing state and federal programs; 4) the federal government annually adjusts the income guidelines; and 5) the income guidelines are adjusted for family size.

The authors chose to use a multiple of this familiar income standard to recognize that many low and middle-income families cannot afford the choice of a non-public school. Experience suggests that most parents' ability to choose a private school is quite limited until the household income approaches \$75,000 for a family of four. We have chosen a multiple of 2.5 times the FRL standard to reflect this reality. Legislators may wish to use different multiples of this standard but should keep in mind the financial burden many middle class families face in paying for private schools.

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 solely 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.

7. This model legislation prohibits participating schools from charging tuition and fees for the poorest students, those from households whose incomes are below the FRL standard. The model legislation allows schools to charge students from households whose income is above the FRL standard tuition and fees in addition to the scholarship amount. This will encourage participation by the greatest number of schools while making sure that poor families' options are not limited by their income. Legislators may wish to make it clear that schools can seek in-kind contributions for tuition and fees from student households above the FRL standard. However, legislators should also make sure that the amount of the scholarship plus the tuition and fees charged to students above the FRL standard does not exceed the school's costs for educating a student. Furthermore, schools should not be allowed to get around these provisions by requiring students to enroll in and pay for supplemental programs as a condition of their admission.

8. The legislation requires participating schools that are oversubscribed to use a random selection process for determining admissions. This random selection process will assure that students are admitted on an equal basis regardless of their educational attainment, athletic talent 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.

9. 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 education programs. 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 reinvested in increased state aids to public school districts.

10. 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.

11. 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 and national origin) and 29 USC Sec. 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.

12. 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 determine from this information whether the employee might pose a risk to students. This is important for two reasons: 1) a small number of states prohibit discriminating against felons in hiring even for sensitive positions in schools. This legislation would give these schools clear authority to dismiss or not to hire individuals who pose a risk to student safety; and 2) many 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 threat to students. This might include nonviolent crimes or decades old violations followed by a clean record. This alternative language would give the schools the responsibility to do background checks, the power to exclude potential risks from the school, and the liability for their employment decisions.

13. 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 private schools.

14. 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 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.

15. 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. Therefore, we believe each parent should be provided by the school with some measure of their student’s progress. We also believe that taxpayers should be able to measure the achievements of the program through an objective evaluation. Therefore, we recommend states adopt the evaluation language detailed in Section 7 of the model legislation.

16. 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.

17. Many states already have a number of programs that promote school readiness and early childhood learning. Legislators will want to make sure potential providers of kindergarten and preschool programs are not burdened with duplicate and contradictory regulations. States should strive to regulate programs based upon their offerings. (For example, day care regulations should only apply to programs offering day care services and not to those offering only educational programming.) States should also ensure that providers do not harvest funds from multiple programs in excess of the cost of the services provided. Legislators will also want to make sure that they maximize the receipt of federal funds for these various programs and ensure that all funds are spent efficiently. This may require legislators to review existing programs supporting early childhood learning to see whether consolidation, collaboration or elimination make sense.

18. It is crucial that the legislature give this study oversight responsibility to a trusted objective nonpartisan source like a legislative service agency. A large study like this can 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 will 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.

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.

