The Parental Choice Scholarship Program Act
(Means-Tested Eligibility)

Summary

The Parental Choice Scholarship Program Act creates a scholarship program that provides children from low- and middle-income families the option to attend the public or private elementary or secondary school of their parents' choice.

Model Legislation

Section 1. {Title} The Parental Choice Scholarship Program

Section 2. {Definitions}

(A) "Program" means The Parental Choice Scholarship Program created in this subchapter.

(B) "Eligible student" means any elementary or secondary student who was eligible to attend a public school in [state] in the preceding semester or is starting school in [state] for the first time[1] and is a member of a household whose total annual income does not exceed an amount equal to 2 times the income standard used to qualify for a free or reduced-price lunch under the national free or reduced-price lunch program established under 42 USC Section 1751 et seq.[2] Once a student receives a scholarship under this program, the student will remain eligible regardless of household income until the student graduates high school or reaches 21 years.

(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 or an organization chosen by the state.[3]

(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, a school run by another public entity, or any private 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.[4]

Section 3. {Basic Elements of The Parental Choice Scholarship Program}

(A) Any parent of an eligible student shall qualify for a scholarship from the state for their child to enroll in and attend a participating school.

(B) Any eligible student may attend a participating school until his or her graduation from high school or his or her 21st birthday, whichever comes first.

(C) Scholarship amounts shall be calculated according to the following schedule:[5]

(1) For students from households qualifying for the federal free or reduced-price lunch program, the scholarship amount shall be equal to the lesser of:

(a) the participating school's annual cost per pupil, including both operational and capital facility costs; or

(b) 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.

(2) For students from households with an annual income greater than the amount required to qualify for the free or reduced-price 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 student from state and local sources had the student enrolled there; or

(b) the participating school's annual cost per pupil, including both operational and capital facility costs.

(3) For students from households with an annual income of greater than 1.5 times the amount required to qualify for the free or reduced-price 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 student from state and local sources had the student enrolled there; or

(b) the participating school's annual cost per pupil, including both operational and capital facility costs.

(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) Eligible students who qualify for the federal free or reduced-price lunch program may attend any participating school in the Parental Choice Scholarship Program at no charge to the student. That is, the scholarship under this subchapter would cover the cost of all tuition and mandatory fees for such students. Participating schools may charge the difference between the scholarship amount and all tuition and mandatory fees for eligible students from households with incomes that exceed the annual income required to qualify for the free or reduced-price lunch program.[6]

(G) A participating school that has 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.[7]

(H) If a student is denied admission to a participating school because it has too few available spaces, the eligible student may transfer his or her scholarship to a participating school that has spaces available.

(I) A participating student shall be counted in the enrollment figures for his or her 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.[8]

(J) The Department shall adopt rules consistent with this Act regarding:

> (1) the eligibility and participation of private schools, including timelines that will maximize student and public and private school participation;
>
> (2) the calculation and distribution of scholarships to eligible students;[9] and
>
> (3) the application and approval procedures for scholarships for eligible students and participating schools.

Section 4. {Accountability Standards for Participating Schools}

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

(1) comply with all health and safety laws or codes that apply to private schools;

(2) hold a valid occupancy permit if required by their municipality;

(3) certify that they comply with the nondiscrimination policies set forth in 42 USC 1981;[10] and

(4) conduct criminal background checks on employees. The participating school then shall:

(a) exclude from employment any people not permitted by state law to work in a private school; and

(b) exclude from employment any people that might reasonably pose a threat to the safety of students.[11]

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

(1) demonstrate their financial accountability by:

(a) annually submitting to the Department 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;[12] and

(b) having an auditor certify that the report is free of material misstatements and fairly represents the costs per pupil, including the costs of the testing required in subsection 4(C)(1)(a). 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 to the participating school.[13]

(C) Academic Accountability Standards. There must be sufficient information about the academic impact Parental Choice Scholarships have on participating students in order to allow parents and taxpayers to measure the achievements of the program, and therefore:

(1) participating schools shall:[14]

(a) annually administer either the state achievement tests or nationally norm-referenced tests that measure learning gains in math and language arts, and provide for value-added assessment, to all participating students in grades that require testing under the state's accountability testing laws for public schools;

(b) provide the parents of each student with a copy of the results of the tests on an annual basis, beginning with the first year of testing;

(c) provide the test results to the state or an organization chosen by the state[15] on an annual basis, beginning with the first year of testing;

(d) report student information that would allow the state to aggregate data by grade level, gender, family income level, and race; and

(e) provide graduation rates of participating students to the Department or an organization chosen by the state in a manner consistent with nationally recognized standards.

(2) the state or an organization chosen by the state shall:

(a) ensure compliance with all student privacy laws;

(b) collect all test results;

(c) provide the test results and associated learning gains to the public via a state Web site after the third year of test and test-related data collection.[16] The findings shall be aggregated by the students' grade level, gender, family income level, number of years of participation in the scholarship program, and race;[17]

(d) provide graduation rates to the public via a state Web site after the third year of test and test-related data collection; and

(e) administer an annual parental satisfaction survey that shall ask parents of scholarship students to express:

(1) Their satisfaction with their child's academic achievement, including academic achievement at the school their child attended through the scholarship program versus academic achievement at the school previously attended;

(2) Their satisfaction with school safety at the schools their child attends through the scholarship program versus safety at the school previously attended;

(3) Whether their child would have been able to attend their school of choice without the scholarship; and

(4) Their opinions on other topics, items, or issues that the state finds would elicit information about the effectiveness of the scholarship program and the number of years their child has participated in the scholarship program.

(D) Participating School Autonomy. A participating, private 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, private school that accepts a Parental Choice Scholarship;

(2) the creation of The Parental Choice Scholarship Program does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of private schools beyond those necessary to enforce the requirements of the program; and

(3) participating, private schools shall be given the maximum freedom to provide for the educational needs of their students without governmental control.

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 the accountability standards established in Section 4 (A) or (B);[18] or

(3) failed to comply with Section 3(E); or

(4) failed to comply with Section 4(C); or

(5) 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. Participating students attending a school barred by the Department shall retain scholarship program eligibility to attend another participating school.

(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 a 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 an 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 private 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

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 Section X.

1. The definition for an eligible student in this model legislation includes children presently enrolled in a private school as well as children who have dropped out of school. The authors believe that all children from low- and middle-income families should receive public support for their education regardless of whether they are now attending a public or private school. 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 private school costs are generally much less than public school costs.

In fact, the difference in public and private school 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 kindergartners and new residents) and many of the low-income families whose children now attend private schools (because they generally use private schools at lower rates).

2. The definition for an eligible student is limited to those children in a household whose annual income does not exceed an amount equal to 2 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 private 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 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.

3. This bill designates the Department of Public Instruction as the agency regulating the Parental Choice Scholarship Program, though if your state has an existing school choice program, it could be administered in a different department. The intent was to name the existing agency in the state that is responsible for public school finances and private school regulation. Alternatively, legislators may choose to consider other capable departments, create a new small agency, or contract with a private nonprofit organization to oversee the program if they are concerned about the hostility the program would face from the existing state education department.

4. 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 U.S. 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.

5. 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 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 the 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.

Optimally, a voucher should equal the federal, state, and local dollars that would have been available for the child at his or her 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 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. 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.

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

8. 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.

9. 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.

10. Under 42 USC 1981, private schools are already prohibited from discriminating with respect to race, color, and national origin. 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). If you choose to include language banning discrimination in hiring on the basis of race, color, national origin, or disability, take care not to interfere with the ability of religious institutions to hire individuals who share their religious beliefs.

11. The model legislation provides schools with the tools they need to ensure that students will be safe. The schools are required to conduct criminal background checks on existing and potential employees, and then they are given the flexibility to determine from this information whether the employee might pose a risk to students. This language is valuable in two cases: 1) a small number of states prohibit discriminating against felons in hiring even for sensitive positions in schools, and this language would give 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 threat to students, such as someone who committed nonviolent crimes or has decades-old violations followed by a clean record. This language would give schools the responsibility to do background checks and the power to exclude potential risks from the school.

12. 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.

13. 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.

14. The authors believe that empowered parents are the best way to achieve academic accountability. Clear and consistent information about the academic performance of participating students will help empower parents and will also provide the public and policymakers with the information they need to evaluate the effectiveness of the program and participating schools. Therefore, all participating schools should be required to annually administer either the state achievement tests or nationally norm-referenced tests that demonstrate learning gains in math and language arts. Most private 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 norm-referenced test. Many private 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 private schools' students is, in fact, because they want to discourage school participation and quietly destroy the program.

Participating schools should provide the parents of each student with a copy of the results and should provide the results to the state or an organization chosen by the state, as described in Endnote 15, 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 achievement 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 private school must be included in the costs used to determine the size of the scholarships at that school. If legislators would like an extensive longitudinal study, refer to Endnote 17 and its suggested language to create such a review.

15. Like in Endnote 3, if legislators are concerned about the hostility the program would face from the existing Department of Public Instruction, they may choose to create a new small agency or contract with a private nonprofit organization to oversee the academic accountability responsibilities of the state. Allowing an organization chosen by the state to oversee this program allows for the flexibility to implement market-based models of academic accountability. In these cases, test results could be reported to a consumer organization, such as GreatSchools.net, where parents can assess participating schools' test results and compare schools to which they may send their children.

16. The purpose of administering tests is to create transparency in participating students' academic progress and to demonstrate learning gains. These learning gains can only be demonstrated when the public has access to more than one school year. When this information is made public in the first year, the media and opponents often attack school choice programs, noting that participating students are not performing as well as their public school counterparts. This effect is natural because often the students who participate in choice programs are not doing well in public schools and are academically far behind their participating school counterparts, and it will take them a few years to catch up to grade level.

It is important to note that there are multiple ways to achieve the goal of academic accountability in school choice programs. Policymakers must consider the goal of releasing the academic data in order to choose the most effective reporting process. For instance, if the goal is to see how the program is affecting participating students' learning gains, scores of participants statewide should be evaluated and released. If the goal is to evaluate participating school outputs as a tool to help parents choose the best school, scores should be released by participating school. You might also consider a sliding scale approach, where the more participating students a school enrolls, the greater its obligations for transparency and accountability.

17. Legislators sincerely wishing to demonstrate the program's academic success to taxpayers could require a scientific evaluation of the program using the testing data established in Section 4(C). It is crucial that the legislature give the oversight responsibility for this study to a trusted objective nonpartisan source like a legislative

service agency or a trusted research university department. We have provided model language for such an independent evaluation of the program in Section X 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 private 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 at least five years of their education. Unfortunately, a 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.

18. 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.

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 private 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 private 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, family income level, race and ethnicity.

(3) provide the Legislature with a final copy of the evaluation of the program.

(D) The relevant public and participating private 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 five 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 exorcised, the remaining legislation produces a program that is workable and achieves the original intent of the bill.