



Jim Kelly

Bill Analysis

Legislative Service Commission

S.B. 182

123rd General Assembly
(As Introduced)

Sen. Prentiss

BILL SUMMARY

- Eliminates the state Superintendent of Public Instruction's authority to approve for participation in the Pilot Project Scholarship and Tutorial Assistance Program private schools that do not meet the minimum standards in effect for chartered nonpublic school on July 1, 1992.
- Requires the Department of Education to conduct at least three site visits a year to every private school that accepts scholarship students.

CONTENT AND OPERATION

Background: current law

(sec. 3313.976(A))

The Pilot Project Scholarship and Tutorial Assistance Pilot Program (commonly called the "voucher" program), which currently operates only in the Cleveland City School District, awards scholarships to parents of elementary school students to attend a public school in an adjacent school district or a private school located in the Cleveland district. In the 1999-2000 school year, while a constitutional challenge is pending in federal district court, the program is to serve students in grades one through six (see **COMMENT**).

In order for a student to use a scholarship at a private school, the private school must be registered with the state Superintendent of Public Instruction. To qualify for registration the private school must meet a number of statutory criteria, including meeting all minimum state standards for chartered nonpublic schools that were in effect on July 1, 1992.¹ But the law allows the state Superintendent to

¹ A private school need not actually have a state charter to participate, but only meet the 1992 minimum standards for one. Having a state charter is not required to operate a private school anywhere in Ohio. But having a charter qualifies a private school's

waive this one requirement for a private school as long as it meets all of the other statutory requirements, which are that it (1) commits in writing to follow all requirements for the program including certain admission restrictions, (2) does not discriminate on the basis of race, religion, or ethnic background, (3) enrolls at least ten students per class and 25 students in all classes offered, (4) does not advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion, (5) does not provide false or misleading information about the school to parents, students, or the public, and (6) agrees not to charge tuition to low-income scholarship recipients beyond that permitted by law.

Elimination of authority to register schools that do not meet charter standards

(sec. 3313.976(A)(3))

The bill eliminates the state Superintendent's authority to register private schools that do not meet the minimum standards for chartered nonpublic schools in effect on July 1, 1992. As a result, every private school that wishes to accept the scholarship students would have to meet those standards. Presumably, any private school that does not meet them and is accepting scholarship students when the bill takes effect would be removed from the program.

Mandatory site visits to every registered private school

(sec. 3313.976(B)(1))

Under the bill, the Department of Education must conduct at least three site visits a year to every private school that accepts scholarship students. One visit must occur before classes start in the fall, one must occur in October, and one must occur in March. The bill requires the state Superintendent to direct the Department of Education to conduct these visits.

students to benefit from assistance purchased with state Auxiliary Service funds and qualifies the school for state reimbursement for some administrative costs of state mandates. Graduates of chartered nonpublic schools must pass the ninth grade proficiency tests to receive their diplomas.

COMMENT

Status of constitutional challenges to the scholarship program

State challenge resolved in May, 1999

On May 27, 1999, the Ohio Supreme Court invalidated the program, holding that it did not violate the Establishment clauses of the U.S. and Ohio Constitutions (forbidding excessive state entanglement with religion), but that the 1995 law establishing the program was invalid because its enactment violated the "one-subject" rule of Article II, Section 15(D) of the Ohio Constitution. The law was included in Am. Sub. H.B. 117 of the 121st General Assembly, which was the general operating appropriations act for the 1995-1997 fiscal biennium.² The 123rd General Assembly subsequently repealed the 1995 law and reenacted similar provisions through Am. Sub. H.B. 282, the state education budget for the 1999-2001 biennium. The legislation specified that its repeal and re-enactment of the program's statutes constituted a continuation of the program operating during the 1998-1999 school year. It took effect June 29, 1999.

Status of pending federal challenge as of October 18, 1999

On August 24, 1999, U.S. District Court Judge Solomon Oliver, Jr., issued an injunction suspending the program while the federal district court for the Northern District of Ohio considers a federal civil suit challenging the program's constitutionality. The judge's order noted that "there is no substantial possibility" of the case being resolved in the state's favor. The judge amended the order on August 27, allowing students who were enrolled in the 1998-1999 school year to continue while the case is pending. No new students (primarily kindergartners) may join the program while the order is in effect.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-02-99	p. 980

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² Simmons-Harris v. Goff, 86 Ohio St.3d 1.