



Jim Kelly

Bill Analysis
Legislative Service Commission

Am. S.B. 182
123rd General Assembly
(As Reported by S. Education)

Sens. Prentiss, Gardner

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 one site visit 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 appeals court, the program is to serve students in grades kindergarten 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 one site visit a year to every private school that accepts scholarship students. The bill requires the state Superintendent to direct the Department of Education to conduct these visits.

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

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.

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 December 20, 1999, the U.S. District Court for the Northern District of Ohio issued a summary judgment order invalidating the program on federal constitutional grounds, declaring that it impermissibly results in governmental advancement of religion because most registered private schools participating in it are parochial schools. The district court, however, permitted continued operation of the program pending the state's appeal to the U.S. Sixth Circuit Court of Appeals.³

Neither the state nor the federal legal challenges address the tutorial assistance portion of the program. Nor does the bill make any changes in that provision, which essentially requires the state Superintendent to provide grants to students who stay in the pilot project school district's schools to pay for tutors. The Superintendent must provide the same number of tutorial grants as scholarships in a given school year.⁴

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-02-99	p. 980
Reported, S. Education	01-06-00	p. 1284

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

³ *Simmons-Harris, et al., v. Zelman*, Case No. 1:99 CV 1740.

⁴ See R.C. 3313.975, not in the bill.

S0182-RS.123/rss

