

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass.

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February 2, 2009

Congressional Research Service

Report RL33506

School Choice Under the ESEA: Programs and Requirements

David P. Smole, Domestic Social Policy Division

January 22, 2008

Abstract. This report examines selected programs and requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA), as they relate to school choice. It begins with an overview of how school choice is currently exercised in the United States. It then identifies and describes ESEA programs and requirements that are supportive of school choice. It also provides brief descriptions of other federal school choice programs authorized separately from the ESEA to provide an overview of the extent of federal support for school choice in elementary and secondary education. The report concludes with a discussion of school choice issues in the context of ESEA reauthorization.

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CRS Report for Congress

School Choice Under the ESEA: Programs and Requirements

Updated January 22, 2008

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Prepared for Members and
Committees of Congress

School Choice Under the ESEA: Programs and Requirements

Summary

The term “school choice” is often used to describe the practice of parents exercising a role in selecting the schools their children attend. The choices available to and made by families may be shaped by many factors, including their preferences for education, their place of residence, their perceptions of school quality, their financial resources, their children’s interests and abilities, and public policies. This report examines the role of federal policy in the area of school choice — specifically, selected programs and requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA).

The ESEA contains numerous programs and requirements that may be considered as supporting or facilitating school choice. Equitable participation requirements in most ESEA programs ensure that children whose parents enroll them in private schools are able to benefit from federal programs to a similar extent as children enrolled in public schools. Programs such as the Voluntary Public School Choice program, the Magnet Schools program, the Unsafe School Choice Option, and public school choice under Title I-A help create new public school options so that parents may have the opportunity to transfer their children to schools that are higher-performing or that offer academic programs that are not available at their children’s assigned public schools. The Public Charter Schools programs support the opening of new charter schools to provide increased opportunities for school choice. Report cards on school performance and safety help keep parents informed as they evaluate the school choices they have made or may make in the future.

Most ESEA programs are authorized through FY2008, and bills to amend and extend the ESEA are likely to be considered during the 110th Congress. As ESEA reauthorization is considered, future directions for federal school choice policy may be a topic of debate. This could involve an examination of whether the existing number and mix of school choice programs is optimal, and if not, whether existing programs should be consolidated or eliminated, or whether new programs should be created. Options for ESEA reauthorization include expanding choice options in existing programs — for example, to include public schools in neighboring districts or perhaps private schools; authorizing new demonstration or targeted choice programs; and combining existing programs into block grants.

This report will be updated periodically to reflect significant legislative developments.

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School Choice Under the ESEA: Programs and Requirements

The term “school choice” is often used to describe the practice of parents exercising a role in selecting the schools their children attend. The choices available to and made by families may be shaped by many factors, including their preferences for education, their place of residence, their perceptions of school quality, their financial resources, and their children’s interests and abilities. Public policies often can have a significant effect in influencing the school choices available to parents. For example, public policies determine the structure of public elementary and secondary education finance systems, school catchment areas, required education curricula, and procedures for selecting or changing schools. Increasingly, policies and programs specifically supportive of school choice are being implemented in the states. These include open enrollment programs, magnet schools, charter schools, controlled choice programs, school vouchers, and tuition tax credits. While state and local governments are primarily responsible for education policy in the United States, the federal government, through several programs and requirements, also influences the ability of parents to select the schools their children attend.

This report examines selected programs and requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA), as they relate to school choice. It begins with an overview of how school choice is currently exercised in the United States. It then identifies and describes ESEA programs and requirements that are supportive of school choice. It also provides brief descriptions of other federal school choice programs authorized separately from the ESEA to provide an overview of the extent of federal support for school choice in elementary and secondary education. The report concludes with a discussion of school choice issues in the context of ESEA reauthorization.

School Choice in the United States

In the United States, school choice is exercised in many ways. One of the most common is for parents to choose their children’s schools by moving to a neighborhood or school catchment area served by a particular school. The National Center for Education Statistics (NCES) estimates that as of the 2002-2003 school year, for public elementary and secondary school students in grades K-12, 26% of their families had moved to their neighborhood so that they would be eligible to attend their current school. Not all parents, however, may have the same capacity or inclination to select their children’s schools by moving to a different neighborhood. For example, greater percentages of parents who are college graduates (29%), or who have attended graduate or professional school (35%), chose their children’s schools by moving to a different neighborhood than did parents whose highest level of

educational attainment is less than a high school education (22%), a high school education or its equivalent (24%), or vocational/technical education or some college after high school (24%).¹

School quality is often closely associated with the socioeconomic status of a neighborhood, regardless of whether parents moved to their neighborhood specifically so their children could attend the local school or for other reasons. Often, this is because neighborhoods are coterminous, or nearly so, with school catchment areas. Schools and LEAs that serve neighborhoods with predominately high-income and highly educated residents are often better funded and able to provide students with more educational resources than schools in neighborhoods with predominately low-income and poorly educated residents. These differences may arise as a result of many factors, including stronger tax bases and greater tax efficiency in wealthy LEAs, which can lead to higher per-pupil expenditures; inequitable teacher allocation and salary differentials between low-poverty and high-poverty schools within LEAs; and differences in voluntary parental and community support for schools, both monetary and non-monetary. Some school choice policies and programs have been created in response to the practice of assigning students to schools based on their place of residence and as a means of providing increased choices to families with limited resources and few options.

According to NCES, the percentage of children enrolled in assigned public schools has declined since the early 1990s, decreasing from 79.9% in 1993 to 73.9% in 2003.² Meanwhile, the percentage of children enrolled in public schools of choice — public schools other than their assigned school — has increased, from 11.0% in 1993 to 15.4% in 2003. (The remainder were reported as being enrolled in private schools.) Greater percentages of children who are black (24.0%), or whose parents have less than a high school education (19.7%), are enrolled in public schools of choice than children on average (15.4%). NCES also estimates that the parents of more than half (51.4%) of all students in grades 1-12 reported having the opportunity to enroll their children in a public school of choice. Among students whose parents could enroll them in public schools of choice, greater proportions of students who are black (42.2%), from families with incomes of \$15,000 or less (35.1%), or whose parents' educational attainment is less than high school (35.1%) were enrolled in public schools of choice than were white students (22.4%), students from families with incomes greater than \$75,000 (23.1%), or students whose parents attended graduate or professional school (26.2%).³ Students from upper-income and more

¹ U.S. Department of Education, National Center for Education Statistics, *Parent and Family Involvement in Education: 2002 — 03* (NCES 2005 — 043), by N. Vaden-Kiernan, and J. McManus, 2005, Table 14, at [<http://nces.ed.gov/pubs2005/2005043.pdf>].

² U.S. Department of Education, National Center for Education Statistics, *The Condition of Education 2006* (NCES 2006-071), Table 36-1, at [<http://nces.ed.gov/pubs2006/2006071.pdf>]. (Hereafter cited as ED, *The Condition of Education 2006*.) Also, see U.S. Department of Education, National Center for Education Statistics, *Trends in the Use of School Choice: 1993 to 1999*, (NCES 2003-031), by Stacey Bielick and Christopher Chapman, at [<http://nces.ed.gov/pubs2003/2003031.pdf>].

³ ED, *The Condition of Education 2006*, Table 36-2.

highly educated families were comparatively more likely to be enrolled in private schools of choice than were other students.

There is no clear consensus on the goals to be achieved through school choice policies and programs, nor the means toward achieving them. Some suggest that school choice policies should be adopted to provide parents with increased liberty or freedom in choosing a school or educational philosophy that they believe to be best-suited to meeting the needs of their child, and that the role of the government in assigning students to schools and regulating their operation should be drastically reduced. Proposals toward achieving this end include providing parents with vouchers that they could apply toward the costs of enrolling their children in public or private schools of their choosing.⁴ Others suggest that school choice policies should contribute to and enhance equity by leveling the playing field or even tipping the scales in favor of children from disadvantaged backgrounds, with special needs, or who are currently assigned to underperforming or poor-quality schools so that they have access to a range of schools of the quality enjoyed by their more advantaged peers. Some supporters of this approach call for limiting or controlling the choices available to individuals based on their socioeconomic characteristics, with an aim toward achieving systems of schools in which each school reflects, more or less, the overall diversity of its local educational agency (LEA).⁵ Still others believe that school choice can be a means of reforming the current system of publicly funded elementary and secondary education through market competition by forcing underperforming schools to compete for students. According to this approach, it is presumed that schools would either improve to meet the demands of parents and attract students, or be forced to close if the schools are unable to attract students and funding. The market approach is commonly associated with voucher programs and charter schools.

The various forms in which school choice can be provided often lead to both praise and condemnation. The balance between support for and opposition to school choice can turn, for instance, on whether school choice is perceived as providing parents with increased opportunities to select desirable schools for their children, or as interjecting another level of uncertainty into one of the most important decisions parents will make for their children. There are also differing perceptions about whether increased opportunities for school choice would likely diminish, perpetuate, or exacerbate existing socioeconomic inequities between schools and LEAs. Under the traditional policy of school assignment by catchment area, parents are typically guaranteed the opportunity to enroll their children in their neighborhood public school. This practice confers a great benefit to families that happen to reside in desirable school catchment areas. Public school choice programs can be structured so that they provide families the opportunity to enroll their children in schools perceived to be of higher quality, irrespective of their place of residence. Options often include higher-performing traditional public schools, magnet schools, and charter schools.

⁴ See for example, Milton Friedman, "The Role of Government in Education," Chapter 6 in *Capitalism and Freedom*, Chicago: University of Chicago Press, 1962.

⁵ See for example, Richard D. Kalenberg, *All Together Now: Creating Middle-Class Schools through Public School Choice*, Washington, DC: Brookings Institution Press, 2001.

School choice policies can lead to increased numbers of students — many of whom come from disadvantaged backgrounds — being afforded the opportunity to attend better performing or more desirable schools. However, even when offered the opportunity, not all students' parents take an active role in selecting schools under choice programs. Often, it is the children of parents who are most alert to and better able to evaluate school choice options who transfer schools under school choice programs.

School choice programs can also be perceived as both liberating, by providing families with greater opportunities to choose from a range of school options, and as threatening, by unsettling the practice of families being able to secure a desired level of school quality or peer group composition by moving to a particular LEA or school catchment area.⁶ Allowing families to choose schools can lead to the most desirable schools becoming oversubscribed, with less desirable schools facing declining enrollment. To address concerns about overcrowding, many school choice programs employ procedures such as admitting students by lottery, or managing school enrollment to achieve certain criteria for student diversity. These can lead to increased anxiety about school choice in general, and disappointment when students are not admitted.

In addition to providing the opportunity for parents to choose their children's schools, certain types of school choice programs might also permit some schools to select or otherwise limit the number or type of students they admit. For example, many private schools and some specialized public schools require students to meet competitive admissions requirements. Many charter schools also establish enrollment caps and become oversubscribed. While selective or restrictive admission practices could lead to some students being enrolled in schools better-suited to meeting their educational needs than their local public school, they also might lead to some students — for example, the most difficult-to-educate students or those whose parents are least well-equipped to navigate admissions processes — being relegated to schools of last resort.

School choice can be seen as an instrument of reform by providing parents with the option of withdrawing their children from underperforming or unresponsive schools, and by threatening the status quo by forcing schools and LEAs to respond to the demands of parents and market forces. Yet it also might be seen as a false hope and a questionable use of scarce resources if children are merely shuttled from one ineffective school to another at the expense of also providing them with the educational resources and attention necessary to succeed in learning.

School choice programs in which funding follows individual children from one school or LEA to another are viewed by some as the most promising reform proposals. Although some of these programs (e.g., intra-district choice, inter-district choice, magnet schools, and charter schools) permit parents to transfer their children from one public school to another, others such as school vouchers and certain tax

⁶ This is explained by Tiebout theory, which is often described as “voting with your feet.” See Charles M. Tiebout, “A Pure Theory of Local Expenditures,” *The Journal of Political Economy*, vol. 64, no. 5 (October 1956), pp. 416-424.

benefits also permit the use of public funds to support the enrollment of children in private schools.

Publicly funded school choice programs that support (directly or indirectly) the enrollment of students in private schools, particularly religiously affiliated schools, are the most controversial. Concerns include whether public funds should be used to support the education of children in religious or other private schools; whether public funding for private school education effectively improves educational outcomes; and whether control over public education funding and administration should be devolved from public agencies. There are also concerns that by accepting public funding, private schools might become subject to increased regulation and oversight, which potentially could detract from their ability to offer educational programs distinguishable from public schools. These concerns are often particularly acute with regard to religiously affiliated schools and where the separation of church and state also becomes an issue. School choice programs in which funding remains under public control have tended to be somewhat less controversial.

ESEA Programs and Requirements Supportive of School Choice

The ESEA contains a number of programs and requirements that may be considered as supporting school choice, and these all operate somewhat differently. The equitable participation requirements found in many programs ensure that children whose parents enroll them in private schools are able to benefit from federal programs to a similar extent as children enrolled in public schools. Programs such as the Voluntary Public School Choice program, the Magnet Schools program, the Unsafe School Choice Option, and public school choice requirements under Title I-A help create new public school options so that parents may have the opportunity to transfer their children to schools that are higher-performing or that offer academic programs that are not available at their children's assigned public schools. Some ESEA school choice options invoke aspects of market competition by giving parents the opportunity to select new schools for their children to attend while also putting pressure on underperforming schools to reform. These include the public school choice requirements under Title I-A, Public Charter Schools programs, and the Unsafe School Choice Option. The remainder of this section identifies and describes ESEA programs and requirements that are supportive of school choice.

Equitable Participation Requirements

Under the ESEA, many of the benefits provided to public school children and teachers must also be made available on an equitable basis to private school children, teachers, and other personnel. Equitable participation requirements, also known as "child benefit" requirements, have always been part of the ESEA and are the product of a significant compromise that was instrumental to the law's enactment in 1965.⁷

⁷ During the period when the ESEA (and precursor legislation) was being considered, groups
(continued...)

In general, ESEA equitable participation requirements specify that LEAs must coordinate with officials from private schools and make available services for the benefit of eligible private school students in a manner consistent with the services provided to public school students. Under current law, the primary attributes of these requirements are that eligible students enrolled in private schools may be served by or benefit from federally funded education programs; public school officials must consult with nonpublic school officials concerning the implementation of federally funded education programs; per-student funding must be equal for public school and private school students; funding and title to property and equipment must remain under public control; and federal funds may not be used for religious worship or instruction.

Private school students, teachers, and other personnel may be eligible to be served under the following ESEA programs in accordance with equitable participation requirements: Title I-A (Education for the Disadvantaged), Title I-B-1 (Reading First), Title I-B-3 (Even Start Family Literacy), Title I-C (Migrant Education), Title II-A (Teacher and Principal Training and Recruiting Fund), Title II-B (Mathematics and Science Partnerships), Title II-D (Enhancing Education Through Technology), Title III-A (English Language Acquisition, Language Enhancement and Academic Achievement), Title IV-A (Safe and Drug-Free Schools and Communities), Title IV-B (21st Century Community Learning Centers), Title V-A (Innovative Programs), and Title V-D-6 (Gifted and Talented Students).⁸ The Individuals with Disabilities Education Act (IDEA) also contains similar requirements for the provision of services to children who are placed in private schools by their parents.⁹

Title I-A. Title I-A is the largest of the ESEA programs under which private school children are served according to equitable participation requirements. According to data from Consolidated State Performance Reports, in school year 2004-2005, of the more than 20 million students served under Title I, 187,951,

⁷ (...continued)

such as the National Catholic Welfare Conference and the National Catholic Education Association were opposed to any legislation that would not provide support for the education of children in parochial schools, while groups such as the National Education Association, and Protestants and Other Americans United for the Separation of Church and State opposed legislation that would permit aid to parochial schools. Compromise legislation permitted federal funds to be used for the benefit of students enrolled in private schools, while requiring that the delivery of services remains under the control of a public agency.

⁸ ESEA §§ 1120, 5142, 5466, and 9501. See also U.S. Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, *The No Child Left Behind Act of 2001: Benefits to Private School Students and Teachers*, 2003, at [<http://www.ed.gov/nclb/choice/schools/privbenefits/benefitstops.pdf>].

⁹ For additional information, see CRS Report RL33368, *The Individuals with Disabilities Education Act (IDEA): Parentally Placed Children in Private Schools*, by Richard N. Apling and Nancy Lee Jones.

(0.94%) were students enrolled in private schools.¹⁰ Estimates from ED's Schools and Staffing Survey show that in the 2003-2004 school year, students attending 5,375 private schools (18.9% of all private schools) received Title I-A services. These students represent 3.2% of the private school student population.¹¹ ED does not report data on the number of private school children served under other ESEA programs.

Under Title I-A, only children who are educationally disadvantaged and at risk, or most at risk, of failing to meet the state's academic achievement standards, and who reside in eligible Title I-A attendance areas,¹² are eligible to receive services in accordance with the equitable participation requirements. Thus, the equitable participation requirements support school choice primarily by requiring that Title I-A services be made available to eligible children, irrespective of whether their parents have chosen to enroll them in public or private schools; in a broad sense, the services follow the child, while control over funding and the delivery of services remains with a public entity.

Reports on School Performance and Safety

The ESEA contains a number of provisions requiring states and LEAs to compile and disseminate information on public school performance and safety. The increased availability of school performance and safety information may support school choice by providing parents with objective information about the public schools in which their children are enrolled. And in instances where parents have the opportunity to choose from among a selection of schools, it may help parents make better-informed decisions about their children's education. For example, parents might use school performance and safety information as they evaluate whether to keep their children in their assigned public school, to transfer their children to another school under a public school choice program, or to move to a different neighborhood served by more desirable public schools.

Report Cards. Under Title I-A, states and LEAs are required to annually compile and disseminate report cards containing specified information for the state as a whole, for LEAs, and for schools. LEAs are also required to provide the parents

¹⁰ U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, *National Assessment of Title I, Final Report: Volume I: Implementation*, 2007, p. 153.

¹¹ U.S. Department of Education, National Center for Education Statistics. *Characteristics of Schools, Districts, Teachers, Principals, and School Libraries in the United States: 2003-04 Schools and Staffing Survey* (NCES 2006-313 Revised), 2006, Table 4, at [<http://nces.ed.gov/pubs2006/2006313.pdf>].

¹² The term "eligible attendance area" is defined at ESEA § 1113(a)(2) as "a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole." Counts of children from low-income status may be determined according to a number of different methods. The most common is to use eligibility for free or reduced-priced lunches under the Richard B. Russell National School Lunch Act. These are available to children in families with incomes of less than 185% of the poverty level.

of children in schools served under Title I-A with information on the professional qualifications of their children's teachers. At a minimum, report cards must contain the following information, as applicable, at the state, LEA, or school level:

- information on student achievement at each proficiency level on state academic assessments (e.g., basic, proficient, and advanced), in the aggregate and disaggregated, according to each student subgroup;¹³
- a comparison between actual student achievement levels and the state's adequate yearly progress (AYP) goal for each student subgroup;
- the percentage of students not tested, in the aggregate and disaggregated by student subgroup;
- trends in student achievement in each subject area for each grade level assessed for the most recent two-year period;
- aggregate information on any other indicators used in determining AYP;
- secondary school graduation rates;
- AYP data for LEAs, including the number and names of schools identified for school improvement; and
- information on the professional qualifications of teachers.

LEAs are also required to report additional information at the LEA and school levels. In the case of LEAs, report cards must show:

- the number and percentage of schools identified for school improvement, and for how long they have been identified; and
- a comparison of LEA and statewide student achievement as measured according to state academic assessments.

In the case of schools, report cards must show

- whether the school has been identified for school improvement; and
- a comparison of school, LEA, and statewide student achievement as measured according to state academic assessments and other AYP indicators.

School Safety. Under the Safe and Drug-Free Schools and Communities Act (Title IV-A), states are required to establish a Uniform Management Information and Reporting System (UMIRS) for the collection and reporting of information related to school safety. Under the UMIRS, the following information must be collected and made publicly available, with the first two items being reported to the state on a school-by-school basis:

¹³ For additional information on student academic assessment requirements and adequate yearly progress, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne C. Riddle.

- truancy rates;
- the frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions in elementary and secondary schools in the state;
- the types of curricula, programs, and services provided by the state's chief executive officer, the state educational agency (SEA), LEAs, and other recipients of funds under the Safe and Drug-Free Schools and Communities Act State Grants Program; and
- incidence and prevalence, age of onset, perception of health risk, and perception of social disapproval of drug use and violence by youth in schools and communities.¹⁴

Also, as part of the Unsafe School Choice Option (described below), states are encouraged to make information available to the public about schools identified as persistently dangerous.

Public School Choice as Part of School and LEA Improvement

Under Title I-A, public school choice requirements provide the parents of children enrolled in underperforming schools the opportunity to enroll their children in higher-performing public schools. In instances where a Title I-A school is identified for improvement after failing to make AYP for two consecutive years, all students enrolled in the school must be offered public school choice. Once identified for improvement, or subsequently identified for a second year of school improvement, corrective action, or restructuring, the LEA must continue offering public school choice to all students enrolled in the school until the school makes AYP for two consecutive years.¹⁵ As implemented under Title I-A, public school choice is defined as the opportunity for parents to choose their child's school from among two or more public schools within the same LEA that have not been identified

¹⁴ ESEA § 4112(c)(3). For additional information on the Safe and Drug Free Schools Act and the UMIRS, see CRS Report RL30482, *The Safe and Drug-Free Schools and Communities Program: Background and Context*, by Edith Fairman Cooper.

¹⁵ Under Title I-A, once a school is identified for a second year of school improvement, corrective action, or restructuring, students who are from low-income families also must be offered the opportunity to receive supplemental educational services. The opportunity to receive supplemental educational services is an alternative to public school choice. While not a school choice program, per se, parents who elect for their children to receive supplemental educational services are able to choose from among a number of private nonprofit, private for-profit, and public sector providers of supplemental educational services. Because supplemental educational services provide parents the opportunity to exert some control over the direction of public education funding, they have been perceived by some as potentially a precursor to school vouchers. For a more detailed discussion of supplemental educational services, see CRS Report RL31329, *Supplemental Educational Services for Children from Low-Income Families Under ESEA Title I-A*, by David P. Smole.

for school improvement, corrective action, or restructuring, and that also have not been identified as persistently dangerous schools.¹⁶

The lowest-achieving children from low-income families must receive priority in school choice. LEAs may not use the lack of capacity in schools not identified for improvement to deny public school choice to eligible students. In instances where there are no other public schools within an LEA to which a student may transfer, LEAs are encouraged to identify public school choice options outside of the LEA and to enter into cooperative agreements with surrounding LEAs to allow for student transfers. LEAs may offer students the option of transferring to public charter schools that are part of the LEA, and also may coordinate with local public charter schools that are considered separate LEAs and include them as options.

If required to offer public school choice, LEAs must expend up to an amount equal to between 5% and 15% of their Title I-A funding allocations to provide or pay for transportation for public school choice. Students who have transferred to a new school under public school choice must be permitted to remain in the receiving school until they complete the highest grade offered; however, LEAs must provide or pay for transportation only as long as the students' previous school remains identified for school improvement, corrective action, or restructuring.

If an LEA does not make AYP for two consecutive years, it is identified for improvement, and if it does not make AYP for two additional years, it is identified for corrective action. States are required to take corrective action for LEAs identified for corrective action, and may take corrective action for LEAs identified for improvement. There are certain specified corrective actions that a state can take, and among these is interdistrict public school choice: authorizing students attending a school in the LEA to transfer to an eligible public school in another LEA, with transportation costs provided by the sending LEA.¹⁷

During school year 2003-2004, ED estimates that public school choice was required to be offered to students attending 5,600 schools in 1,600 LEAs, but that school choice was actually made available to students in only 4,600 schools in 1,100 LEAs. In LEAs that provided the option for children to transfer to different schools, ED estimates that 2.75 million students were eligible to change schools, but that only 32,000 (1%) actually did.¹⁸ Data from Consolidated State Performance Reports show that by 2006-2007, 5.4 million students were eligible for public school choice and

¹⁶ For a discussion of ESEA Title I-A accountability requirements and AYP, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne C. Riddle; and CRS Report RL33371, *K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)*, coordinated by Gail McCallion.

¹⁷ Corrective actions that states can require of LEAs are specified in the ESEA at § 1116(c)(10)(C). If a state requires an LEA to offer interdistrict public school choice, it must be carried out in conjunction with one other corrective action.

¹⁸ U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Title I Accountability and School Improvement From 2001 to 2004*, 2006, p. 16, at [<http://www.ed.gov/rschstat/eval/disadv/tassie3/tassie3.pdf>].

that 119,988 (2.2%) transferred schools.¹⁹ During the 2003-2004 school year, 9% of the LEAs that offered public school choice reported having negotiated cooperative agreements with neighboring LEAs to permit students to transfer into schools located in other districts.²⁰

Innovative Programs

Also known as Federal K-12 Education Block Grants, Innovative Programs provide states and LEAs with broad flexibility in the use of federal funds.²¹ Innovative Programs funding may be used for certain specified types of activities, several of which are supportive of school choice. Innovative Programs funds are allocated to states in proportion to their respective populations of children aged 5-17. States generally must then subgrant at least 85% of their allocations to LEAs. From the amount retained by the state, up to 15% may be reserved for administration, and the remainder must be used for one or more specified purposes. For FY2008, no funding was provided for Innovative Programs.²²

State uses of funds for school choice-related activities include support for the planning, design, and initial implementation of charter schools. States may also use funds to support the implementation of the Unsafe School Choice Options (described below), including payment for reasonable transportation costs and tuition costs.²³

LEAs have broad discretion in using Innovative Programs funding for any of 27 different types of authorized activities. Several of these are activities that enhance the opportunity for students to change schools or support the creation of schools of choice. Specific authorized activities for LEAs include support for magnet schools; the planning, design, and implementation of charter schools; school improvement activities under Title I-A (e.g., public school choice, and supplemental educational services); activities to promote, implement, or expand public school choice; programs to provide same-gender schools and classrooms (consistent with applicable law); and implementation of the Unsafe School Choice Option. States generally are prohibited from exercising any control or influence over how LEAs use Innovative Programs funds. As previously discussed, equitable participation requirements allow for students enrolled in private schools to benefit from programs supported by Innovative Programs.

¹⁹ U.S. Department of Education, Mapping America's Educational Progress 2008, at [<http://www.ed.gov/nclb/accountability/results/progress/nation.html>].

²⁰ U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Title I Accountability and School Improvement From 2001 to 2004*, 2006, p. 21.

²¹ Innovative Programs are authorized under ESEA Title V-A. For additional information on Innovative Programs, see CRS Report RL31583, *K-12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs*, by Wayne C. Riddle.

²² Funding for Innovative Programs has declined significantly from \$385 million in FY2002 to \$99 million in each FY2006 and FY2007.

²³ ESEA Title V-A contains a reference to a non-existent § 9507. It appears that the intended reference is § 9532 — Unsafe School Choice Option.

Public Charter Schools

Public charter schools are public schools of choice. They are operated according to the terms of charters or contracts granted by public chartering agencies, such as LEAs or state boards of education. The terms of charters typically provide charter school operators with increased autonomy over the operation of schools, often including exemption from, or flexibility in the application of, many of the state or local regulations otherwise applicable to public schools. This increased autonomy is often granted in exchange for the expectation of increased accountability for results or outcomes. Funding for charter schools is normally provided on a per-pupil basis. As opposed to having neighborhood school catchment areas, enrollment in charter schools is normally open to applicants on an LEA-wide or even statewide basis, and parents must actively choose to enroll their children in charter schools. If charter schools become oversubscribed, students are normally admitted on the basis of a lottery. Forty states and the District of Columbia have charter school laws permitting the authorization of charter schools. Under the ESEA, support is provided to assist with the opening of new charter schools and for the funding of facilities.

Charter School Programs (Title V-B-1). Under the Charter School Programs, support is provided to assist in the creation of new public charter schools — and if sufficient funds are appropriated, support may also be provided for charter school facilities funding. The first \$200 million appropriated for the Charter Schools Programs is reserved for grants to states and eligible applicants for the planning, design, and initial implementation of public charter schools; for the dissemination of information about charter schools; for state revolving loan funds; and for national activities. The next \$100 million appropriated is reserved for the State Charter School Facilities Incentive Grants Program, in which competitive grants are awarded to states for the purpose of establishing and administering programs dedicated to funding charter school facilities, in whole or in part, on a per-pupil basis. Fifty percent of funds appropriated in excess of \$300 million are reserved for each of the two uses of funds. For FY2008, \$211 million was appropriated for Charter School Programs. The two programs are described below.

Public Charter Schools Program. The Public Charter Schools Program is designed to increase the number of public charter schools by supporting their planning, design, and initial implementation. SEAs in states that have enacted charter school laws are eligible to apply for competitive grants under the program. SEAs then award subgrants to individual charter schools. If an SEA does not participate in the program, individual charter schools may apply directly to ED for grants. Grantees and subgrantees may receive funding for up to three years. For charter schools served under the program, funding may be used for a maximum of 18 months for planning and program design and for a maximum of two years for the initial implementation of a charter school. SEAs may reserve up to 10% of their grant awards to establish revolving loan funds to be used to make loans to support the initial operation of charter schools until they begin to receive state and local funding. States also may reserve up to 10% of their grant funds for dissemination subgrants to charter schools for use in spreading information about the successful implementation of charter schools.

State Charter School Facilities Incentive Grants Program. The State Charter School Facilities Incentive Grants Program is one of two ESEA programs that provide support for charter school facilities.²⁴ Under the program, competitive grants may be awarded to states that have per-pupil charter school facilities aid programs specified in state law, and that annually provide financing on a per-pupil basis for charter school facilities. Grants awarded under the program may be provided over a five-year time frame to supplement state and local funding. In the first year of funding, no more than 90% of program costs may be met with federal funds. The share of federal funds then decreases to no more than 80% in the second year, 60% in the third year, 40% in the fourth year, and 20% in the fifth year. In FY2004, California, the District of Columbia, Minnesota, and Utah were elected to receive funding under the program. Each of these states has received continuation grants in FY2005, FY2006, and FY2007. For FY2008, of the \$211 million appropriated for Charter School Programs, \$11 million is available for State Charter School Facilities Incentive Grants.

Credit Enhancement Initiatives for Charter School Facilities Program (Title V-B-2). Under this program, funding is authorized for grants to public or private entities (or a combination of the two) for the development of credit enhancement initiatives to assist charter schools in acquiring, constructing, or renovating facilities. Award recipients are required to deposit their grant funds into a reserve account to be used for one or more of the following purposes:

- Guaranteeing, insuring, and reinsuring bonds, notes, loans, or other types of debt that will be used to assist charter schools to acquire, renovate, and construct school facilities needed to begin or continue the operation of these schools.
- Guaranteeing or insuring leases of personal or real property that are needed to begin or continue the operation of the charter schools.
- Facilitating financing by potential lenders, encouraging private lending, and other similar activities that directly promote lending to or for the benefit of charter schools.
- Facilitating the issuance of bonds by charter schools or other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance designed to obtain or attract investors (such as retaining bond counsel and underwriters and consolidating multiple charter school projects into a single bond issue).²⁵

The program operates by guaranteeing debt or leases so that charter schools can obtain facilities. Under the Credit Enhancement Initiatives for Charter School Facilities program, grants totaling \$161 million have been provided to 16 entities to

²⁴ The program is authorized at ESEA § 5205(b). For additional information on funding for charter school facilities, see CRS Report RL31128, *Funding for Public Charter School Facilities: Federal Policy Under the ESEA*, by David P. Smole.

²⁵ U.S. Department of Education, Office of Innovation and Improvement, *The Credit Enhancement for Charter School Facilities Program: Guidance*, March 24, 2005, p. 13, at [http://www.ed.gov/programs/charterfacilities/facilitiesguidance.pdf].

support the financing of charter school facilities. These funds have helped leverage \$407 million in financing and assisted a total of 138 charter schools.²⁶ In FY2008, no funding was appropriated for this program.

Voluntary Public School Choice Programs

Under the Voluntary Public School Choice (VPSC) programs, funds are awarded through competitive grants to SEAs, LEAs, or partnerships consisting of SEAs or LEAs (or both) and other public, for-profit, or nonprofit entities, for the establishment or expansion of public school choice programs. Grantees must use program funds to provide for the transportation of students to public elementary or secondary schools (including charter schools) that the students have chosen to attend. Grantees may also use program funds for any of the following activities:

- planning or designing a program (for up to one year),
- making tuition transfer payments to schools that students have chosen to attend,
- enhancing the capacity of high-demand schools to accommodate transfer students,
- carrying out public education campaigns to inform parents and students about the program, and
- paying for other reasonable implementation costs.²⁷

Program funds may not, however, be used for school construction.

In awarding grants, the Secretary of Education (Secretary) is required to give priority to entities that would provide the widest variety of choices to all students in participating schools, would have the greatest impact in allowing students from low-performing schools to transfer to higher-performing schools, and are partnerships seeking an inter-district approach to school choice. In FY2002, the Secretary awarded VPSC grants to 13 entities. These same entities continued to receive noncompetitive continuation grants, with additional funding being contingent upon satisfactory performance, through FY2006. In FY2007, the Secretary awarded VPSC grants to 14 entities under a new competition. For FY2008, \$25.8 million was appropriated for the VPSC programs.

ED reports that for FY2005, the parents of 862,396 students had the option of choosing to enroll their children in a school participating in the VPSC program; and that under the program, 1.9% of those students actually changed schools (approximately 16,400 students).²⁸ This represents a modest increase in student

²⁶ U.S. Department of Education, Office of Innovation and Improvement, Credit Enhancement for Charter School Facilities, Performance, at [<http://www.ed.gov/programs/charterfacilities/performance.html>].

²⁷ ESEA, § 5242.

²⁸ U.S. Department of Education, Fiscal Year 2006 Program Performance Report, ESEA: Voluntary Public School Choice — FY2006, March 8, 2007, at [<http://www.ed.gov/about/>].

transfers over FY2004, during which 755,387 students were eligible to attend VPSC schools, and 1% changed schools (approximately 7,500 students).²⁹ ED has established a performance target of 2.5% of students changing schools by FY2008. The Secretary is authorized to reserve not more than 5% of program funds to carry out an evaluation of the program; an evaluation is currently in progress.

Magnet Schools Assistance Program

The Magnet Schools Assistance Program (MSAP) is a competitive grant program under which funds may be awarded to LEAs and consortia of LEAs to assist in the desegregation of public schools. The program seeks to accomplish this purpose through the provision of grants to LEAs for the following:

- the elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority students;
- the development of magnet school programs to provide all students the opportunity to meet challenging academic content and achievement standards;
- the development of methods and practices to promote diversity and increase public school choices;
- courses of academic instruction within magnet schools;
- capacity building and professional development in magnet schools; and
- the goal of ensuring that all students in magnet school programs have equitable access to high-quality education.³⁰

LEAs and consortia of LEAs that are either implementing a court- or state-ordered desegregation plan, or that have voluntarily adopted and are implementing a desegregation plan approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 (or will do so if awarded a grant), are eligible to apply for MSAP grants. Under the program, magnet schools are defined as public elementary or secondary schools or education centers that offer special curricula capable of attracting substantial numbers of students with different racial backgrounds. Minority group isolation — which the program aims to eliminate, reduce, or prevent — is defined as occurring when minority group children constitute more than 50% of a school’s enrollment.³¹ In working toward achieving the purposes of the program, grantees may use program funds for specified activities, which include planning for the development, expansion, continuation, or enhancement of academic programs at

²⁸ (...continued)
reports/annual/2006report/g2eseavoluntary.doc].

²⁹ ED had previously reported 11% of students had changed schools under the VPSC program, but this was an average of averages across the 13 sites. The 1% figure is a recalculation of previously reported data.

³⁰ ESEA § 5301(b).

³¹ 34 CFR 280.4(b). “Minority group” means the following: American Indian or Alaskan Native, Asian or Pacific Islander, black (not of Hispanic origin), and Hispanic.

magnet schools; the acquisition of books, materials, or equipment; the compensation of highly qualified teachers and instructional staff; and professional development. Magnet school program funds may not be used for transportation expenses.³² In any fiscal year in which funds appropriated for the program exceed \$75 million, funds in excess of that amount must be used to award grants to LEAs or consortia of LEAs that did not receive a grant in the preceding fiscal year. Successful grantees are eligible to receive continuation awards, for a total of three years of funding.

The most recent cohort of grantees received awards in FY2007, and are eligible to receive continuation awards through FY2009. MSAP grants totaling \$100 million were awarded to 41 LEAs in 17 states to support magnet schools. ED's most recent evaluation of the program, completed in 2003, examined the cohort of grantees that first received funding in FY1998. ED found that more than 90% of MSAP schools were minority-isolated (i.e., minority students constituted more than 50% of enrollment), and were seeking to reduce or eliminate minority group isolation; whereas, less than 10% of MSAP schools were seeking to prevent minority group isolation, by keeping minority student enrollment below 50%.³³ In its study, ED also found that 57% of desegregation-targeted schools were successful in making progress toward preventing, reducing, or eliminating minority group isolation.³⁴ With respect to improving student achievement, while ED found that many MSAP schools made some progress toward meeting student achievement goals; success in improving student achievement was not significantly different than that of a set of matched comparison schools.³⁵

Fund for the Improvement of Education

The Fund for the Improvement of Education (FIE) provides the Secretary with authority to support nationally significant programs aimed at improving the quality of elementary and secondary education at the state and local levels. Programs may be carried out directly by the Secretary, or through grants or contracts with SEAs or LEAs, institutions of higher education, and other public and private entities. Specifically authorized uses of FIE funds include, among others, the funding of state and local programs designed to explore public school choice. Examples of school choice projects that have been funded through FIE include a University of Minnesota project to help states identify the most effective and efficient ways to create and administer school choice programs; and a project by the Center for Educational Innovation — Public Education Association to provide quality public school choice

³² Under the General Education Provisions Act, there is a general prohibition against the use of funds for busing. This language specifically prohibits the use of funds for the purposes of transporting students to overcome a racial imbalance in schools or for carrying out racial desegregation plans. (20 U.S.C. 1228.) Similar language appears annually in appropriations acts funding U.S. Department of Education programs.

³³ U.S. Department of Education, Office of the Under Secretary, *Evaluation of the Magnet Schools Assistance Program, 1998 Grantees*, 2003, p. IV-1, at [<http://www.ed.gov/rschstat/eval/choice/magneteval/finalreport.pdf>].

³⁴ *Ibid.*, p. IV-3.

³⁵ *Ibid.*, p. VI-1.

in five, inner-city LEAs.³⁶ The Secretary may award FIE funds both for successful competitive grant proposals and for meritorious unsolicited grant proposals. In recent years, most FIE funds have been awarded for unsolicited grants, and increasingly for directed grants (also commonly referred to as “earmarks”). For FY2008, \$121.9 million was appropriated for FIE programs.

Unsafe School Choice Option

The Unsafe School Choice Option (USCO) policy is established under Title IX-E-2, § 9532. Under the USCO policy, states are required to establish statewide policies under which any student who attends a persistently dangerous public elementary or secondary school, or who becomes a victim of a violent crime while in or on the grounds of the public elementary or secondary school he or she attends, must be offered the opportunity to transfer to another public school within the same LEA. States are required to annually certify compliance with USCO requirements in order to be eligible to receive ESEA funding. The USCO policy is administered by ED’s Office of Safe and Drug-Free Schools. In order to comply with the USCO policy, states are required to do the following:

- establish a state USCO policy (through consultation with a representative sample of LEAs within the state),
- identify persistently dangerous schools,
- identify types of offenses that are considered to be violent criminal offenses,
- provide a safe public school choice option, and
- certify compliance with USCO.³⁷

States were required to implement the USCO beginning with the 2002-2003 school year. Each state’s USCO policy is somewhat different. Most states establish some threshold number of violent offenses relative to school enrollment that must be exceeded for either two or three consecutive years in order for a school to be designated as persistently dangerous. Typically, states’ USCO policies identify which crimes or types of crimes constitute violent offenses, although these also often differ from state to state. Some state policies reference primarily felony offenses (e.g., homicide, manslaughter, aggravated assault, or sexual assault). Others also reference violation of weapon possession laws (e.g., Gun-Free Schools Acts) or drug possession laws. Some state policies also include student expulsions for offenses such as drug or alcohol possession, or violence.³⁸

³⁶ U.S. Department of Education, Grant Award Database, last updated May 29, 2006, at [<http://wdcrobcolp01.ed.gov/CFAPPS/grantaward/start.cfm>].

³⁷ U.S. Department of Education, *Unsafe School Choice Option: Non-Regulatory Guidance*, May 2004, p. 6, at [<http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.pdf>].

³⁸ For a compilation of criteria used by the various states to identify persistently dangerous schools, see Education Commission of the States, *Persistently Dangerous School Criteria*, compiled by Gloria Zradicka, September 2004, available at [<http://www.ecs.org/clearinghouse/52/98/5298.pdf>].

States have identified relatively few schools as persistently dangerous under the USCO policy. The U.S. Department of Education, Office of Safe and Drug-Free Schools reports that for 2003-2004, 47 schools were identified as persistently dangerous (5 states); for 2004-2005, 39 schools were identified as persistently dangerous (4 states); and for 2005-2006, according to preliminary reports, there were 41 schools identified (7 states).³⁹ A review of the implementation of the USCO policy found that in Pennsylvania (under whose USCO policy there has been a comparatively large number of determinations) during the 2003-2004 school year, 75 students in the Philadelphia school district transferred from the 27 schools identified as persistently dangerous, and 58 students transferred from the one school so identified in the Chester-Upland school district.⁴⁰

Other Federal School Choice Programs

A small number of federal programs authorized separately from the ESEA provide support for school choice. These include the DC School Choice Incentive Act program and Coverdell Education Savings Accounts (ESAs).⁴¹ These programs are described here to provide a brief overview of the extent of federal support for school choice in elementary and secondary education and to put ESEA school choice programs and requirements into context. Each program is briefly described below.

DC School Choice Incentive Program

The DC School Choice Incentive Program is a five-year federal demonstration program under which ED funds the operation of a tuition scholarship or voucher program in the District of Columbia. Students who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty line are eligible to receive scholarships valued at up to \$7,500 per year to support their attendance at private elementary or secondary schools located in the District of Columbia. Priority in the awarding of scholarships goes to students attending schools identified for school improvement, corrective action, or restructuring under ESEA Title I-A. The program is authorized through FY2008. In FY2008, \$14.8

³⁹ U.S. Department of Education, Safe and Drug-Free Schools and Communities Advisory Committee, Unsafe School Choice Option Report, 2006, at [<http://www.ed.gov/about/bdscomm/list/sdfscac/topics.html#Unsafe>].

⁴⁰ John S. Gooden and Sonja Y. Harrington, "The Unsafe School Choice Option: A Snapshot," *Planning and Changing*, fall 2005, vol. 36, no. 3/4, pp. 133-146.

⁴¹ In addition, federal support for school choice was once provided under the Temporary Emergency Impact Aid for Displaced Students program. This was a temporary emergency aid program in which funding was made available to schools on a per-student basis, irrespective of whether parents had chosen to enroll their children in public or nonpublic schools. The program was authorized for the 2005-2006 school year and was limited to schools serving students displaced by Hurricanes Katrina and Rita. For additional information on the program, see CRS Report RL33236, *Education-Related Hurricane Relief: Legislative Action*, by Rebecca R. Skinner, Charmaine Mercer, David P. Smole, Richard N. Apling, and Jeffrey J. Kuenzi.

million was appropriated for the program, of which \$1.8 million may be used for the funding and administration of assessments.

During the first three years of implementation, a total of 4,443 eligible students applied for scholarships under the program, and 2,850 of these students have been awarded scholarships. In the fall of 2006, the third year of the program, 1,800 scholarship recipients were enrolled in private schools participating in the program.⁴² Not all recipients were able to use their scholarships to enroll in private schools for reasons that included difficulty for some students in meeting private school entrance requirements, no scholarship recipients applying for admittance to certain schools, and openings in some private schools being filled before scholarship recipients could be accommodated.⁴³ An evaluation of the program is ongoing, and after the first year of the program, findings fail to show a statistically significant difference in academic assessment results between scholarship recipients and non-recipients.⁴⁴

Coverdell Education Savings Accounts

Coverdell ESAs are trusts or custodial accounts authorized under § 530 of the Internal Revenue Code (IRC). Taxpayers may make annual deposits of up to \$2,000 to ESAs if their modified adjusted gross income (AGI) is less than \$110,000 for single filers and less than \$220,000 for married filers; however, the annual contribution limit is phased out for single filers with incomes of more than \$95,000 but less than \$110,000, and for married filers with incomes of more than \$190,000 but less than \$220,000. Earnings on contributions to Coverdell ESAs accrue on a tax-deferred basis, and distributions are not taxed if used for certain K-12 and postsecondary education expenses. Qualified K-12 education expenses include tuition, fees, books, supplies and equipment, services for students with special needs, academic tutoring, computer equipment and services; and may include room and board, uniforms, transportation, and supplementary items or services (e.g., extended day programs) that are required or provided by the beneficiary's school. When the program was first authorized, distributions could only be used for postsecondary education expenses; however, under the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16), the purpose of the program was expanded to allow distributions to be used for K-12 education expenses incurred after December 31, 2001, and through December 31, 2010.⁴⁵

⁴² U.S. Department of Education, Institute of Education Sciences, *Evaluation of the DC Opportunity Scholarship Program: Impacts After One Year*, 2007, at [<http://ies.ed.gov/ncee/pdf/20074009.pdf>].

⁴³ Patrick Wolf, Babette Gutmann, Michael Puma, and Marsha Silverberg. *Evaluation of the DC Opportunity Scholarship Program: Second Year Report on Participation*, U.S. Department of Education, Institute of Education Sciences, Washington, DC: U.S. Government Printing Office, 2006, pp. 3-4, at [<http://www.ed.gov/rschstat/eval/choice/dcchoice-yeartwo/dcchoice-yeartwo.pdf>].

⁴⁴ *Ibid.*

⁴⁵ For additional information on Coverdell ESAs, see CRS Report RL32155, *Tax-Favored Higher Education Savings Benefits and Their Relationship to Traditional Federal Student* (continued...)

School Choice and ESEA Reauthorization

Most ESEA programs are authorized through FY2008, and bills to amend and extend the ESEA are likely to be considered during the 110th Congress. As ESEA reauthorization is considered, future directions for federal school choice policy may be a topic of debate. Specifically, there may be interest in examining the effectiveness of current school choice programs and requirements in meeting desired policy goals, and also in exploring the success of non-ESEA programs in supporting school choice and whether such policy options warrant consideration for incorporation into the ESEA. Following the Supreme Court's ruling in *Zelman v. Simmons-Harris*⁴⁶ and the implementation of programs such as the DC School Choice Incentive program, debate over the authorization of public funding to support the enrollment of children in private, including religiously affiliated, schools will likely focus less on Constitutional concerns and more on issues such as the effectiveness and desirability of providing this type of aid.

Studies, evaluations, and performance reviews of many of the school choice programs discussed in this report have either recently been completed or are currently in progress. As more information on the performance and effectiveness of ESEA school choice programs and requirements becomes available and is reviewed by policymakers, increased attention may be turned toward examining whether the existing number and mix of school choice programs is optimal and if not, whether existing programs should be consolidated or eliminated, or whether new programs should be created. The degree of success demonstrated by ESEA school choice programs and requirements — as well as the success of non-ESEA programs (e.g., the DC Parental Choice Incentive Act program and an array of state-authorized programs) — in achieving desired policy goals may help inform the Congress as it considers options for future federal support of school choice.

Major Types of Proposals to Provide Additional Federal Support for School Choice

The range of school choice proposals that the Congress might consider is broad, and can be clustered into at least four basic groups: choice options in existing programs, demonstration or targeted choice programs, block grants, and tax subsidies. These are not mutually exclusive. Except for tax subsidies,⁴⁷ these are briefly reviewed below.

Choice Options in Existing Programs. Existing federal education programs could be amended in various ways, such as by removing possible program

⁴⁵ (...continued)

Aid, by Linda Levine.

⁴⁶ 536 U.S. 639 (2002).

⁴⁷ Federal tax law is not normally amended through bills authorizing discretionary spending programs. A discussion of federal tax benefits in the context of school choice is provided in archived CRS Report RL31439, *Federal Tax Benefits for Families' K-12 Education Expenses in the Context of School Choice*, by Linda Levine and David P. Smole.

barriers to choice, adding school choice as an authorized or required use of funds, expanding current choice provisions, or reconstituting programs to focus them on choice. The primary examples of proposals in this category have involved ESEA Title I-A. As previously noted, Title I-A contains certain choice-related provisions authorizing or requiring public school choice and the provision of supplemental educational services for students attending poor-performing Title I-A schools. Title I-A school and LEA improvement requirements could be amended by switching the order in which LEAs are required to offer public school choice and supplemental educational services to families,⁴⁸ or by expanding public school choice requirements to require that students be provided the opportunity to transfer to schools in different LEAs. Previously attempted choice amendments to Title I-A have endeavored to include private school enrollment among choice options. Through prior reauthorizations, the ESEA also has been amended to be supportive of public school choice through the addition of the Innovative Programs, Public Charter Schools, Voluntary Public School Choice, and Magnet Schools programs. Proposals could be made to incorporate programs similar to the DC School Choice Incentive Program or the Temporary Emergency Impact Aid for Displaced Students Program into the ESEA.

Demonstration or Targeted Choice Programs. Federal support for school choice might be designed to demonstrate the impact of school choice in a discrete number of locations (e.g., specific cities or a limited number of places around the country, such as low-performing LEAs or empowerment zones) or to target choice in a similarly limited fashion to particular kinds of students or schools. The most frequent examples of this type of proposal have sought to expand choice options for special groups of students (e.g., low-income students, victims of violence on school grounds) or those in certain types of schools (e.g., schools characterized by poor levels of academic performance). The DC School Choice Incentive Act is an example of such a program.

Block Grants. Block grants are federal grants that provide an exceptionally high degree of flexibility in the ways in which aid may be used, perhaps coupled with more specific requirements for accountability in terms of desired outcomes. They are frequently proposed as the outcome for a consolidation of several existing federal education programs. Groups of existing programs might be transformed into block grants in selected states under “performance agreement” proposals. Under a block grant, school choice might be an explicitly authorized use, a required use (perhaps of some specified portion of funding), or a precondition for participation (i.e., federal funds are available only to those implementing choice plans). In the past, choice programs have been explicitly included among the authorized uses of funds under block grant proposals. Sufficiently broad authority also might be provided under block grant programs to support school choice without explicit mention.

⁴⁸ The Secretary has used her flexibility and waiver authority to establish a supplemental educational services (SES) Pilot Program, through which LEAs may apply to reverse the sequencing of public school choice and supplemental educational services in LEAs with schools identified for improvement. This flexibility has been granted to LEAs in Alaska, Delaware, Indiana, North Carolina, and Virginia.