

cape Council for American Private Education outlook

"Voice of the Nation's Private Schools"

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Ohio Supreme Court Rules on Scholarship Program

In another sign of a seismic shift in school choice jurisprudence, the Ohio Supreme Court ruled last month that the Cleveland scholarship program violates neither the Establishment Clause of the U.S. Constitution nor a similar clause of the Ohio Constitution. "The ruling decisively demonstrates that parental choice is constitutional," said Clint Bolick, the litigation director at the Institute for Justice, the firm that defended the program.

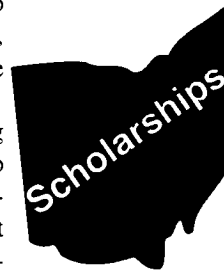
But the win was only a partial one, for while it upheld the program on First Amendment grounds, the court invalidated it on a technicality, declaring the program in violation of a section of the

Ohio Constitution that prohibits a bill from containing more than one subject. When it was enacted in 1995, the program was attached as a rider to a general appropriations bill, thereby running afoul of the one-subject rule.

Advocates were scurrying to get the Ohio legislature to pass the program as a stand-alone bill before July 1, so that children could continue to receive the scholarships in September. "We're going to give it our best shot," said Timothy Luckhaupt, executive director of the Ohio Catholic Conference.

The Ohio program provides schol-

arships worth up to \$2,250 to approximately 3,700 low-income children in Cleveland, allowing them to attend a private school, or a public school in an adjacent district.



Three-Prong Test

In ruling that the program does not violate the Establishment Clause of the First Amendment, the court applied the three-prong test set down by the U.S. Supreme Court in *Lemon v. Kurtzman* (1971). "We conclude that the School Voucher Program has a secular legislative purpose, does not have

Continued on page 2

Illinois Legislature Approves Education Tax Credit

Providing school choice advocates yet another major victory, the Illinois legislature last month approved a tax credit for parents who incur certain educational expenses for their children in K-12 public or private schools. Illinois Governor George H. Ryan, who personally promoted the bill during the House vote, was expected to sign the bill in early June. "Fairness and opportunity means extending a hand to all of our kids, including those in private and parochial schools, and this bill does that by giving parents the ability to send their kids to the school of their choice," Ryan said.

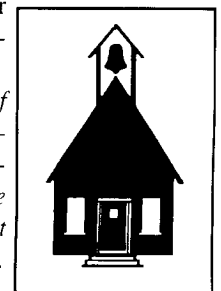


The tax credit, which takes effect in the 2000 tax year, amounts to 25 percent of expenses in excess of \$250 for tuition, book fees, and lab fees at any qualifying public or nonpublic elementary or secondary school. The maximum credit is \$500 per family. To qualify for the maximum, a family would have to have educational expenses amounting to \$2,250 or more.

Approximately 320,000 students, 14 percent of the state's total enrollment, attend PreK-12 private schools in Illinois. Acknowledging the economic benefit of private schools to the state, Governor Ryan said, "Parents

who spend money on private schools end up saving other taxpayers thousands of dollars because, if those more than 300,000 children now enrolled in private schools showed up at local public schools, the costs to public schools would be extensive and the schools couldn't handle the sheer number of students."

For the text of the Illinois education expense legislation, visit the CAPE Web site at <http://www.capenet.org>.



Continued from page 1

the primary effect of advancing religion, and does not excessively entangle government with religion," the court declared. But in employing the Lemon test, the Ohio justices applied the interpretive framework developed by the U.S. Supreme Court in more recent church-state cases such as *Witters* (1986), *Zobrest* (1993), and *Agostini* (1997). For example, in applying the "primary effect" test, the Ohio court said that because government funds flow to sectarian schools only as a result of the independent and private choices of parents who decide where to use the scholarships, the program passes muster. "To the extent that children are indoctrinated by sectarian schools receiving tuition dollars that flow from the School Voucher Program," said the court, "it is not the result of direct government action." What's more, the court reasoned, the scholarships are provided in a general and neutral way to a broad class of beneficiaries without regard to the schools the children attend.

Selection Criteria

Notably, the court did have a First Amendment problem with one aspect of the program. The law prescribes that private schools must admit students using the following priorities: (1) students enrolled the previous year, (2) siblings of enrolled students, (3) students residing within the district (selected by lot), (4) students affiliated with any organization that provides financial support to the school, and (5) all other applicants (by lot). Reasoning that the fourth priority is not religiously neutral since it provides parents an incentive to change religious beliefs in order to enhance their chances of getting a scholarship, the court declared that particular element of the statute to be unconstitutional. At the same time, the justices concluded that the unconstitutional part of the law could be severed from the rest of the statute, and they proceeded to do just that.

On the question of whether the statute excessively entangles the state in religious affairs, the court argued that sectarian schools do not receive the schol-

arship funds from the state but from the parents who decide which school their children will attend. "Given the indirect nature of the aid," the court said, "the resulting relationship between the nonpublic sectarian schools and the state is attenuated." And although religious schools have to register with the state in order to participate in the program, the registration requirements, at least from the court's perspective, "are not onerous." In an additional comment on the registration requirements, the court said, "We do not see how this relationship (which is, at least in part, preexisting, because sectarian schools are already subject to certain state standards...) has the effect of excessively entangling church and state."

In another section of the ruling, the

court examined whether the scholarship program violates a provision in the Ohio Constitution that obligates the state to establish a system of public schools. While observing that private schools have existed in Ohio "before the establishment of public schools" and provide "a valuable alternative to the public school system," the court reasoned that the success of private schools "should not come at the expense of our public education system or our public school teachers." However, the justices concluded, "We fail to see how the School Voucher Program, at the current funding level, undermines the state's obligation to public education."

The full text of the opinion may be found at [ftp://ftp.sconet.state.oh.us/opinions/1999/971117.html](http://ftp.sconet.state.oh.us/opinions/1999/971117.html).

Parent/Teacher Tax Credit Introduced

Adding a new twist to school choice initiatives, Congressman Matt Salmon (R-AZ) last month introduced the K-12 Education Excellence Now (KEEN) Act, which would provide federal tax credits not only for parents who incur certain educational expenses but also for teachers who do the same.

The bill (H.R. 1710), patterned in part after various state and federal school choice initiatives, actually includes something for almost everyone who contributes to the education of children at the elementary and secondary levels.

Families that face educational expenses for tuition, books, computers, or school supplies would receive a tax credit of up to \$500. Individuals and business that contribute money either directly to schools or to scholarship funds for low-income children could take a credit up to \$250.

But the innovative feature of the KEEN plan, and one almost certain to win support from many rank and file members of the teacher unions that traditionally oppose such legislation, is the \$250 annual tax credit for public or private school teachers who use their own money to buy supplies and materials for the classroom. "Virtually every teacher in America purchases education material for their students out of their own pockets. The KEEN credit would give teachers a long-overdue tax credit for these expenses," Congressman Salmon said.

Senator Jon Kyl (R-AZ) is expected to amend a similar bill (S.138) to mirror the provisions in H.R. 1710.



Rep. Matt Salmon (R-AZ) at a briefing last month on the K-12 Education Excellence Now (KEEN) Act.

Administration Sends ESEA Proposal to Congress

President Clinton last month sent to Congress a proposal chock-full of ways to change the Elementary and Secondary Education Act of 1965 (ESEA). The Administration's plan, called the Educational Excellence for All Children Act of 1999, is the crucial first step toward the reauthorization of the massive ESEA, which Congress is scheduled to tackle this year.

At a briefing on the bill, U.S. Secretary of Education Richard Riley said the proposal reflects various broad themes, including high academic standards, small class size, teacher quality, educational accountability, and school safety. "There is a strong emerging American consensus about how to improve education," Riley said, "and our proposed legislation reflects this growing and developing consensus."

But clearly the "consensus" is not nearly as sweeping as Riley would like. Rep. Bill Goodling (R-PA), Chairman of the House Committee on Education and the Workforce, said that while he agrees with many of the President's goals, he takes issue with the means proposed to achieve them. Claiming that the Administration wants to "impose Washington solutions to local problems," Goodling said the proposals "trample on our nation's long and proven traditions of local control of education." Signaling a potentially contentious reauthorization process, Goodling said Republicans have a better approach: local control and flexibility in exchange for academic improvement.

Private School Provisions

Various provisions in the President's bill would affect students and teachers in private schools. Continuing current requirements, the bill provides for equitable services to qualifying private school students under Title I, though it eliminates the section of law that reimburses school districts for the capital expenses connected with such services. A few technical amendments strengthen the Title I consultation process between school districts and pri-

vate school officials, and clarify that private school parents and teachers must be offered the opportunity to participate in parental involvement and professional development activities. The Department of Education estimates that of 11 million Title I students nationally, 167,000 are enrolled in private schools.

Part A of Title II of the bill creates a new grant program, Teaching to High Standards, which replaces three current programs: Goals 2000, the Eisenhower Professional Development Program, and Title VI of ESEA. With a heavy emphasis on improving the quality of teaching, the program supports state and local



Education Secretary Riley at a House hearing on the reauthorization of ESEA earlier this year.

efforts to "align instruction, curricula, assessments, and professional development with challenging academic standards." Services under Part A must be provided equitably to private school students and teachers in a way that addresses their needs.

Part D of Title II provides for the creation of a "comprehensive and cohesive national system of technical assistance" to support school improvement. If a state or school district uses funds under this program to provide for professional development for teachers or administrators in certain public schools, it must provide equitable opportunities for private schools in the same geographic area. In addition, if a state or school district uses funds to provide information about goals, standards, or

assessments to public schools, it must, upon the request of private school officials, provide that information to private schools in the same area.

Another significant section of Title II, however, does not extend to private schools. Part B, which provides funds to recruit and prepare military personnel and other mid-career professionals to serve as teachers, stipulates that persons who receive training stipends or other financial incentives under the program must teach in public schools.

Title III, Technology for Education, retains the core elements of the Technology Literacy Challenge Fund (TLCF), which provides competitive grants to enable districts to use technology to enhance instruction. The new program specifically targets TLCF monies to high-poverty districts with the greatest need for educational technology. As is currently the case, the bill provides for equitable services to students in private schools.

Other programs in the bill that include private school participation are:

- Reading Excellence Act (Title I, Part E);
- Safe and Drug-Free Schools and Communities Act (Title IV);
- Education of Migratory Children (Title I, Part C), and
- Bilingual Education Act (Title VII).

The above four sections, all of Title III, and Subpart 2 of Part A of Title II are subject to the uniform provisions of Title XI of the bill, which replaces the current Title XIV. Title XI includes provisions that bolster the consultation process between district officials and private school officials by specifying that such consultation shall include meetings, shall take place before any decisions are made that affect private school students or personnel, and shall continue throughout the duration of the program. Importantly, the uniform provisions also state that services for teachers and students in private schools are to address their needs.

For more information on the Administration's plan, visit www.ed.gov/offices/OESE/ESEA/index.html.



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• “Certain flash points in America’s civil rights struggle represent moments of moral awakening,” wrote former U.N. Ambassador **Andrew Young** last month in the *Los Angeles Times*. One such moment for Young—akin to Rosa Parks’ refusal to give up a bus seat and Martin Luther King Jr.’s letter from the Birmingham jail—is the recent cry for help from the families of 1.25 million poor children who applied to the Children’s Scholarship Fund for aid in providing their children with a decent education.

With great passion and eloquence, Young decried those who “reflexively resist the redistribution of power to poor families” and defend the current “system of educational apartheid.” The right to “seek a quality education wherever it may be found,” he said, is not a “radical proposition.” He noted that the U.N.’s Universal Declaration of Human Rights states, “Parents have a prior right to choose the kind of education that shall be given to their children.” And he quoted Nelson Mandela, who defended the right of African parents to choose

their children’s schools.

Young predicted that one day, people will “look back on the 1.25 million who applied for educational emancipation — for the chance to seek the light and oxygen of a nourishing education — not as victims, but as unwitting heroes with whom a great awakening was begun.”

• U.S. Secretary of Education **Richard Riley** last month announced the



names of 266 elementary schools selected as 1998-99 Blue Ribbon Schools. “These schools are examples of the good things happening in education nationwide,” Riley said. “They reflect the hard work of dedicated parents, teachers, students and staff, and serve as models for providing students with the high quality learning opportunities they need to be successful in the 21st Century.”

Among the winners are 45 private schools. Their names are listed on the Blue Ribbon Schools page of CAPE’s Web site (www.capenet.org). CAPE,

the proud coordinator of the program for private schools, joins the nation’s education community in congratulating all winning schools.

• In the April 1999 *Indicator of the Month*, the National Center for Education Statistics reports on the participation of students in grades 6-12 in community service projects. One objective of the National Education Goals, according to the report, is that “all students be involved in activities that promote and demonstrate good citizenship and community service.” The April *Indicator* claims that participation in community service “may reduce the feeling of alienation from society that adolescents often experience and may have a positive effect on students grades and school attendance.” The document draws from data collected in the 1996 *National Household Education Survey*, which found a significant difference in community service based on the type of schools that students attend. In public schools, 47% of students in grades 6-12 reported participation in community service, and in private schools 66% of students did so. The full report is on the Web at www.nces.ed.gov/pubs97/97331.html.

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