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### THE FOSTER CHILD SCHOLARSHIP PROGRAM ACT

#### Summary

The Foster Child Scholarship Program creates a scholarship program that provides children who have been placed in foster care the option to attend the public or **private elementary or secondary school** of their guardians' choice.

#### Purpose

Foster children are among the most at-risk in our society. Adults formerly in foster care are more likely to be homeless, incarcerated, and dependent on state services than the general population. Foster children face a number of unique disadvantages and require specially tailored assistance during their school years and during the difficult transition from youth to adulthood.

One key factor that determines whether a foster child will achieve a successful transition is the quality of primary and secondary education he or she receives. Unfortunately, too many foster children receive a substandard education. Compared with the general population, foster children have lower scores on standardized tests and higher absenteeism, tardiness, truancy, and dropout rates.

A significant problem for children in foster care is instability. Roughly half of all foster children will spend at least one year in foster care, with 20 percent staying longer than three years. Children in long-term foster care often experience multiple home placements, which can result in multiple school transfers. Practically, school transfers can impose gaps in the learning cycle, as children change from different classrooms and must adjust to new settings, teachers, students, and, in many cases, special services. School transfers also result in emotional instability and the loss of important friendships with peer groups. A synthesis of foster care research finds that fewer placements while in care have been associated with better school achievement and more years in education.

Providing foster children with a tuition scholarship could help to ensure that a child continues to attend a quality school even if he or she experiences frequent home transfers. Moreover, for others, a scholarship could provide better educational opportunities to children who must overcome many challenges to succeed in the classroom. For the many foster children who are eligible for special education services, an opportunity scholarship would help ensure that these needs are met.

#### Model Legislation

**Section 1. {Title}** The Foster Child Scholarship Program

**Section 2. {Definitions}**

(A) "Program" means the Foster Child Scholarship Program created in this subchapter.

Did you know that an online for-profit school company was the corporate co-chair in 2011?

(B) "Eligible Student" means any elementary or secondary student who was eligible to attend a public school in [state] in the preceding semester or is starting school in [state] for the first time and is in foster care and/or is the biological sibling of a foster child.<sup>1</sup>

(C) "Guardian" includes a parent, foster care parent, guardian, or other person with the authority to act on behalf of the child.<sup>2</sup>

(D) "Department" means the state agency or organization charged with administering the Foster Child Scholarship Program.<sup>3</sup>

(E) "Resident school district" means the public school district in which the student resides.

(F) "Participating school" means either a public school outside of the resident school district, a school run by another public entity, or any private school that provides education to elementary and/or secondary students and has notified the Department of its intention to participate in the program and comply with the program's requirements.<sup>4</sup>

### **Section 3. {Basic Elements of the Foster Child Scholarship Program Act}**

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

(1) the student has been accepted for admission at a participating school;  
and

(2) the guardian has requested a scholarship from the state before the deadline established by the Department.

(B) Any eligible students shall retain program eligibility regardless of subsequent placement out of the foster care system and until his or her graduation from high school or his or her 21st birthday, whichever comes first.<sup>5</sup>

(C) Any eligible student will qualify for an annual scholarship in an amount equal to the lesser of:

(1) the participating school's annual cost per pupil, including both operational and capital facility costs, including any costs associated with the eligible child's special needs; or

(2) the dollar amount the resident school district would have received to serve and educate the eligible student from federal, state, and local sources had the student enrolled there, including costs for an Individualized Education Program for applicable students.<sup>6</sup>

(D) The decision to enroll in a participating school shall be made by the eligible student's foster care parent if currently under foster care or by the student's current legal guardian at the time of enrollment.<sup>7</sup>

(E) The scholarship is the entitlement of the eligible student under the supervision of the eligible student's foster parent or legal guardian. The scholarship is never to be considered the entitlement of any school.

(F) A participating school may not refund, rebate, or share a student's scholarship with a student, parent, or guardian in any manner. A student's scholarship may be used for educational purposes such as tuition, special education services,

transportation costs, uniforms, books or other school fees, tutoring, and other extracurricular programs with an educational purpose.<sup>8</sup> Such expenses are authorized when a participating school is either providing these services or is under contract with a third party to provide these services. In either case, scholarship funds are payable only to the participating school.

(G) Participating schools can accept eligible students on a first-come, first-served basis until such time as they have more eligible students applying than spaces available. When participating schools are oversubscribed,<sup>9</sup> they shall fill the available spaces by a random selection process, except that participating schools may give preference to biological siblings of enrolled participating students and previously enrolled scholarship students under this subchapter.<sup>10</sup>

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

(I) A participating student shall be counted in the enrollment figures for his or her resident school district for the purpose of calculating state aid to the resident school district. The funds needed for a scholarship shall be subtracted from the state school aid payable to the student's resident school district. Any aid the school district would have received for the student in excess of the funds needed for a scholarship will be kept by the state.<sup>11</sup>

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

(1) the eligibility and participation of private schools including timelines that will maximize student and public and private school participation;

(2) the calculation and distribution of scholarships to eligible students;<sup>12</sup>

(3) the application and approval procedures for scholarships for eligible students and participating schools; and

(4) the sharing of student records between participating schools in compliance with the Family Educational Rights and Privacy Act of 1974 (20 USC 1232g).

#### **Section 4. {Responsibilities of the Resident School Districts}**

(A) The resident school district shall provide a participating school that has admitted an eligible student under this program with a complete copy of the student's school records while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC 1232g).

(B) The resident school district shall provide transportation for an eligible student to and from the participating school under the same conditions as the resident school district is required to provide transportation for other resident students to private schools as per current law. The resident school district will qualify for state transportation aid for each student so transported.

#### **Section 5. {Responsibilities of the Department}**

(A) The Department shall ensure that eligible students and their guardians are informed annually of which schools will be participating in the Foster Child Scholarship Program. This information should also be provided to all state agencies and organizations that are involved in issues pertaining to foster care to maximize the awareness among potential beneficiaries.

(B) The Department shall create a standard application that students interested in the Foster Child Scholarship Program can use to submit to participating schools to establish their eligibility and apply for admissions. Participating schools may

require supplemental information from applicants. The Department shall ensure that the application is readily available to interested families through various sources, including the Internet.

(C) The Department may bar a school from participation in the Foster Child Scholarship Program if the Department establishes that the participating school has:

- (1) intentionally and substantially misrepresented information required under Section 6; or<sup>13</sup>
- (2) routinely failed to comply with the accountability standards established under Section 6; or
- (3) failed to comply with Section 3(F); or
- (4) failed to comply with Section 6(C); or
- (5) failed to refund to the state any scholarship overpayments in a timely manner.

(D) If the Department decides to bar a participating school from the program, it shall notify eligible students and their guardians as quickly as possible. Participating students attending a school barred by the Department shall retain scholarship program eligibility to attend another participating school.

(E) The Department shall adopt rules and procedures as necessary for the administration of the Foster Child Scholarship Program.

#### **Section 6. {Accountability Standards for Participating Schools}**

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

- (1) comply with all health and safety laws or codes that apply to private schools;
- (2) hold a valid occupancy permit if required by their municipality;
- (3) certify that they comply with the nondiscrimination policies set forth in 42 USC 1981,<sup>14</sup> and
- (4) conduct criminal background checks on employees. The participating school then shall:
  - (a) exclude from employment any people not permitted by state law to work in a private school; and
  - (b) exclude from employment any people that might reasonably pose a threat to the safety of students.<sup>15</sup>

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

(1) demonstrate their financial accountability by:

(a) annually submitting to the Department a financial information report for the school that complies with uniform financial accounting standards established by the Department and conducted by a certified public accountant;<sup>16</sup> and

(b) having an auditor certify the report is free of material misstatements and fairly represents the costs per pupil, including the costs of the testing required in subsection 4(C)(1)(a). The auditor's report shall be limited in scope to those records that are necessary for the Department to make payments to participating schools on behalf of guardians for scholarships.

(2) demonstrate their financial viability by showing they can repay any funds that might be owed the state, if they are to receive \$50,000 or more during the school year, by:<sup>17</sup>

(a) filing with the Department prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of the Foster Child Scholarships expected to be paid during the school year to students admitted to the participating school; or

(b) filing with the Department prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the Foster Child Scholarships expected to be paid during the school year to students admitted to the participating school.

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

(1) participating schools shall:<sup>18</sup>

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

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

(c) provide the test results to the state or an organization chosen by the state<sup>19</sup> on an annual basis, beginning with the first year of testing; and

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

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

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

(a) ensure compliance with all student privacy laws;

(b) collect all test results; and

(c) provide the test results and associated learning gains to the public via a state Web site after the third year of test and test-related data collection.<sup>20</sup> The findings shall be aggregated by the students' grade level, gender, family income level, number of years of participation in the scholarship program, and race.<sup>21</sup>

(D) Participating School Autonomy. A participating, private school is autonomous and not an agent of the state or federal government and therefore:

(1) the Department or any other state agency may not in any way regulate the educational program of a participating, private school that accepts a Foster Child Scholarship;

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

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

#### **Section 7. {Evaluation of the Foster Child Scholarship Program}<sup>22</sup>**

(A) The legislative service agency may contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct a study of the program with funds other than state funds.

(B) The study shall assess:

(1) the level of participating students' satisfaction with the program;

(2) the level of guardian satisfaction with the program;

(3) the percentage of participating students who exhibited behavioral problems at their resident school district compared with the percentage exhibiting behavioral problems at their participating school;

(4) the class size experienced by participating students at their resident school district and at their participating school; and

(5) the fiscal impact to the state and resident school districts of the program.

(C) The researchers who conduct the study shall:

(1) apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study;

(2) protect the identity of participating schools and students by, among other things, keeping anonymous all disaggregated data other than that for the categories of grade level, gender, and race and ethnicity; and

(3) provide the legislature with a final copy of the evaluation of the

program.

(D) The relevant public and private participating school from which students transfer to participate in the program shall cooperate with the research effort by providing student assessment results and any other data necessary to complete this study.

(E) The legislative service agency may accept grants to assist in funding this study.

(F) The legislature may require periodic reports from the researchers. After publishing their results, the researchers shall make their data and methodology available for public review while complying with the requirements of the Family Educational Rights and Privacy Act (20 USC Section 1232g).

**Section 8. {Effective Date}** The Foster Child Scholarship Program will be in effect beginning with the fall semester of the next school year.

### **Endnotes**

1. The definition of an eligible student in this model legislation is all children of school age who are placed in foster care at the time of enrollment. Legislators may also want to consider including in the definition of sibling the biological children of foster care parents for purposes of program eligibility. Allowing these students to participate in the program would not only better ensure foster care student placement in the best schools available, but it would also serve as an additional incentive to prospective foster parents when considering participation in the foster care system.

2. Legislators should take care to use definitions that comport to existing state level definitions of guardian as they relate to the state's foster care system.

3. Legislators should consider several options when designating which agency or organization will administer the program. It may be expedient to designate the agency in charge of foster care and other social services. Alternatively, legislators may choose to create a new small agency to oversee the program if they are concerned about the hostility the program would face from the existing state education department. An additional alternative would be to allow for this program to be contracted out to a nonprofit organization to administer the program.

4. This model legislation allows students to use a scholarship to attend a public school outside their districts as well as a private school. The authors support giving guardians the widest possible array of choices so they can choose a school that best meets their children's needs. Legislators may also want to consider the inclusion of home-based education providers in the participating school definition. This change should be reflected throughout other sections including exemptions from some of Section 6. In addition, a primary purpose of the legislation to provide children in foster care with new education options is to improve education stability. Allowing for the broadest range of choices will help maximize the likelihood that a child in foster care receives a quality and stable education. Providing students with the opportunity to attend a public or private school of choice is not only the right policy but also the best legal strategy. The U.S. Supreme Court and various state courts have all cited this broad array of choices as an important part of the reason they have found school choice programs constitutional. The courts have reasoned that these scholarship programs are not an inappropriate subsidy of religious institutions because the purpose was secular (the education of children) and the parents were given many options including public schools, charter schools, private secular schools, and private religious schools. If a state already has an open enrollment or some other form of public school choice, then this legislation should be made consistent with the existing program. In fact, if a state already has a broad array of school choice options available to parents, then a state may be able to add an option for just private schools without encountering constitutional questions.

Who?

5. For this model legislation, the authors have limited eligibility to 21 years of age. However, when drafting bills for specific states, this eligibility age should follow existing school age eligibility practices in the state.

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6. It is the intent of this legislation that scholarship funding should flow from state

resources only.

7. Determining who makes the decision about the education of a child placed in foster care presents interesting questions. A child who has been placed in foster care is a charge of the state. However, at any given time, a number of different decision-makers (from state officials, caseworkers, foster parents, and the children themselves) have a say in a child's future. In order to afford students in foster care as many choices in school placement as possible, it is important that non-government actors be given authority to make the selection on behalf of the student. For this reason, it is preferable to give foster care parents the authority to apply for a scholarship on behalf of the foster care student as well as select whichever participating school they think best for the student. The agency in charge of administering the program should create an application system that verifies the choice of school was determined by the student's foster care parent in non-binding consultation with the other parties who hold some stake in the welfare of the foster care student. Because foster care students retain program eligibility regardless of long-term placement or adoption, it is necessary to make explicit that future enrollment decisions are transferred to the student's legal guardian.

9. Interviews and a focus group of foster children and foster parents have identified that covering additional costs beyond tuition would be an important component of a successful scholarship program to provide participating students with a quality education. The authors of this legislation believe that the allowable use of the funds of the scholarship should include the important education-related costs described in Section 3(F).

9. The legislation requires participating schools that are oversubscribed to use a random selection process for determining which students gain admission. This random selection process will assure that students are admitted on an equal basis regardless of their educational attainment, athletic talents, or life challenges. Critics of school choice often falsely allege that schools will "cream" the best students from the list and not take the more difficult challenges. In reality, several existing school choice programs require this random selection process and experience shows the students they admit face greater challenges than the average public school student in their district.

The model legislation makes two exceptions from this random selection process in order to facilitate attainment of educational objectives. Children already attending the school on a scholarship are not required to join the lottery for admittance so as not to interrupt their educational experience. Similarly, the siblings of students already attending the school are exempted so families can send all of their children to the same school. A requirement that siblings join a random selection process could produce a logistical nightmare for parents when their children are all admitted to different schools. This would force many such families to unite their children by either choosing a much less desirable school without a waiting list or by exiting the program.

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

10. Legislators may want to consider giving enrollment preference to any school age children who share the same guardian and household as an enrolled student in addition to those covered under the sibling definition. Legislators may also want to consider whether further discretion should be afforded participating schools when admitting students who represent disciplinary challenges. However, it is recommended that such a provision seek out the most objective criteria possible for governing these enrollment decisions.

11. The bill has been drafted so that any savings in the cost of educating a student shall accrue to the state. School choice legislation drafted in this manner has the political advantage of either reducing state expenditures or making more funds available for other public schools. Legislators should know that some local school districts will claim that because the state is capturing the savings the program is "draining resources" away from public schools. This would not be the case if the savings were used to increase state aids to public school districts.

12. It is important that the Department calculate the scholarship amount in strict accordance with the definitions in the legislation. If the Department cannot be trusted to do this objectively, a more detailed description for determining the size of the voucher should be written into the law.

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13. The legislation allows schools to occasionally fail to meet an accountability standard so that an antagonistic regulator cannot shut down the program by banning schools with a modest occasional violation such as turning in a report late.

14. Under 42 USC 1981, private schools are already prohibited from discriminating with respect to race, color, and national origin. In addition, if private schools are recipients of federal funds, they are subject to nondiscrimination requirements under 42 USC 2000d (race, color, national origin) and 29 USC 794 (disability). If you choose to include language banning discrimination in hiring on the basis of race, color, national origin, or disability, take care not to interfere with the ability of religious institutions to hire individuals who share their religious beliefs.

15. The model legislation provides schools with the tools they need to ensure that students will be safe. The schools are required to conduct criminal background checks on existing and potential employees, and then they are given the flexibility to determine from this information whether the employee might pose a risk to students. This language is valuable in two cases: 1) a small number of states prohibit discriminating against felons in hiring even for sensitive positions in schools, and this language would give schools clear authority to dismiss or not hire individuals who pose a risk to student safety; and 2) some religious schools see rehabilitation as part of their mission. In this case, the schools could hire someone with a criminal background who they believe is no longer a threat to students, such as someone who committed nonviolent crimes or has decades-old violations followed by a clean record. This language would give schools the responsibility to do background checks and the power to exclude potential risks from the school.

16. The purpose of the financial information report is to make sure that the Department can ascertain the costs of educating a student at the school and to ensure public funds are used appropriately. The legislation does not call for an independent audit because this would be unnecessarily expensive and invasive for many private schools.

17. The model legislation provides for two methods for schools to demonstrate financial viability to ensure that public funds are secure. The first method employs a market-based means of demonstrating viability. Private companies that issue surety bonds have a financial interest in making sure that the schools can repay any funds that might be owed the state. They will therefore conduct the checks necessary to protect their financial interest as well as the taxpayers' financial interests. Surety bonds can be expensive (one to three percent of the amount covered) or invasive for some institutions, so the legislation allows schools to demonstrate by some other means that they have the financial wherewithal to pay back any amount they might owe the state. This might include things like personal guarantees, reserve accounts, or escrow accounts.

18. The authors believe that empowered parents are the best way to achieve academic accountability. Clear and consistent information about the academic performance of participating students will help empower parents and will also provide the public and policymakers with the information they need to evaluate the effectiveness of the program and participating schools. Therefore, all participating schools should be required to annually administer either the state achievement tests or nationally recognized norm-referenced tests that demonstrate learning gains in math and language arts. Most private schools already administer such norm-referenced tests so this provision should not be seen as burdensome. It is important, however, to give schools the ability to choose between a state test and the nationally recognized test. Many private schools would simply refuse to participate in the program if they were forced to administer the state tests, because it implies that they are no longer independent of the state. The reason many opponents to school choice promote state testing of private schools' students is, in fact, because they want to discourage school participation and quietly destroy the program.

Participating schools should provide the parents of each student with a copy of the results and should provide the results to the state or an organization chosen by the state, as described in Endnote 19, in a manner that protects the identity and privacy of individual students. The purpose of this testing requirement should be to provide each parent with a measure of their student's achievement and to allow the taxpayers to measure the achievements of the program. The number and scope of the tests should be carefully limited to ensure that there is sufficient information to demonstrate the achievements of the program without being so exhaustive or prescriptive as to end up dictating the curriculum at participating schools. The costs of the testing requirements for a private school must be included in the costs used to determine the size of the scholarships at that school. If legislators would like an extensive longitudinal study, refer to Endnote 11 and its suggested language to create such a review.

From CMD: This "model" legislation creates a scholarship program to appeal to foster parents and to constituents sympathetic to children in foster care. The "scholarship," actually a subsidy, would be available regardless of the income of the foster parents and would take funding away from the public school system. It would subsidize foster parents who want both their foster children and their biological children to attend private elementary, middle, or high school at public expense. It essentially provides a voucher system for a specific group of students. This paves the way for expanding vouchers for all students. Such programs provide income to for-profit, religious or other private schools through subsidizing their tuition and fees.

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

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

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

21. Legislators sincerely wishing to demonstrate the program's academic success to taxpayers could require a scientific evaluation of the program using the testing data established in Section 6(C). It is crucial that the legislature give the oversight responsibility for this study to a trusted objective nonpartisan source like a legislative service agency or a trusted research university department. We have provided model language for such an independent evaluation of the program below. The outlined research would evaluate not only whether students who participate in the program are better off but also, more importantly, whether the competition from private schools improves the performance of public schools. The outlined longitudinal study includes a comparison of students in the choice program with a similar cohort in the public schools for at least five years of their education. Unfortunately, a longitudinal study is likely to be quite expensive. Accordingly, the legislation allows the legislature (or a legislative service agency) to accept private grants to completely fund such a study. In some states, the legislature is not allowed to accept such grants, and another trusted agency would have to be selected. It will be tempting for legislators to further define the details of the study, but they should take care not to dictate the methodology or the results in order to maintain the credibility of the research.

22. It is crucial that the legislature give this study oversight responsibility to a trusted objective nonpartisan source like a legislative service agency. A longitudinal study can be quite expensive. Accordingly, the legislation allows the legislature (or a legislative service agency) to accept private grants to completely fund such a study. In some states, the legislature is not allowed to accept such grants and another trusted agency will have to be selected. It will be tempting for legislators to further define the details of the study but they should take care not to dictate the methodology or the results in order to maintain the credibility of the research.

*Additional Note:*

It is fairly common for legislators to consider including severability clauses in new legislation. Legislators should make sure that if such clauses are included and exercised, the remaining legislation produces a program that is workable and achieves the original intent of the bill.

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