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Proposals to Establish a K-12 Scholarship or Voucher Program in the District of Columbia: Policy Issues and Analysis

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David P. Smole
Analyst in Social Legislation
Domestic Social Policy Division

Proposals to Establish a K-12 Scholarship or Voucher Program in the District of Columbia: Policy Issues and Analysis

Summary

In the 108th Congress, numerous proposals have been made to establish federal programs designed to increase parents' opportunities to choose the elementary and secondary schools their children attend. A few of these proposals would create new school choice programs specifically designed to serve parents and students in the District of Columbia.

On December 8, 2003, the House agreed to the conference report (H.Rept. 108-401) of the Consolidated Appropriations Act, 2004 (H.R. 2673) which among other things would authorize the establishment of a scholarship program in the District of Columbia under the DC School Choice Incentive Act of 2003. The bill would create a competitive grant program under which the Secretary of Education would award grants to eligible entities for the operation of one or more scholarship programs in the District of Columbia. Grantees would award scholarships (also commonly referred to as school vouchers) of up to \$7,500 per academic year to elementary and secondary school students, who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty level, to enable them to attend private schools located in the District of Columbia. For FY2004, \$14 million would be provided to fund and administer the program. At present, the Senate has not voted on the conference report. Previously, the House and Senate considered establishing a scholarship program in the District of Columbia as part of FY2004 appropriations bills for the District of Columbia (H.R. 2765, S. 1583, and S.Amdt. 1783) or a separate bill reported by a House Committee (H.R. 2556).

This report identifies and briefly discusses some of the issues that have led to a new federally funded school choice program being considered as a policy option for elementary and secondary education in the District of Columbia. It provides a brief description of the proposed scholarship program. The report then identifies and analyzes a number of policy issues that the 108th Congress may consider as it debates the proposal. Significant policy issues discussed in the report include: the potential effect of the proposed program on school choice in the District of Columbia; the potential of the program to affect the distribution of federal and local education funding in the District of Columbia; how nondiscrimination and civil rights laws might apply to grantees and participating schools; and how accountability of the program would be assured.

This report will be updated consistent with significant legislative activity.

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Proposals to Establish a K-12 Scholarship or Voucher Program in the District of Columbia: Policy Issues and Analysis

In the 108th Congress, numerous proposals have been made to establish federal programs designed to increase parents' opportunities to choose the elementary and secondary schools their children attend. A few of these proposals would create new school choice programs specifically designed to serve parents and students in the District of Columbia.¹

On July 10, 2003, the House Committee on Government Reform approved and ordered to be reported H.R. 2556, the DC Parental Choice Incentive Act of 2003, which would create a federally funded scholarship program to serve low-income students in the District of Columbia. The program would authorize the establishment of a competitive grant program under which the Secretary of Education would award grants to eligible entities for the operation of one or more scholarship programs in the District of Columbia. Grantees would award scholarships (also commonly referred to as school vouchers) of up to \$7,500 per academic year to students who are residents of the District of Columbia and whose family income does not exceed 185% of the poverty level, to enable them to attend private elementary or secondary schools located in the District of Columbia. The program would be authorized to be funded at up to \$15 million for FY2004, and at such sums as necessary through FY2008.

On December 8, 2003, the House agreed to the conference report (H.Rept. 108-401) of the Consolidated Appropriations Act, 2004 (H.R. 2673) which among other things would authorize the establishment of a scholarship program in the District of Columbia under the DC School Choice Incentive Act of 2003.² At present, the Senate has not voted on the conference report. Previously, the House and Senate considered establishing a scholarship program in the District of Columbia as part of FY2004 appropriations bills for the District of Columbia (H.R. 2765, S. 1583, and S.Amdt. 1783). These proposals all are substantially similar to the program proposed

¹ Proposals include H.R. 684, H.R. 2556, H.Amdt. 368 to H.R. 2765, S. 4, S. 1583, S.Amdt. 1783 to H.R. 2765, and the Choice Incentive Fund proposed by the administration in the President's FY2004 Budget (U.S. Department of Education, *Fiscal Year 2004 Justifications of Appropriation Estimates to the Congress: Volume I*, pp. E-28-E-31). For a more complete discussion of school choice in general, and bills introduced during the 108th Congress, see CRS Issue Brief IB98035, *School Choice: Current Legislation*, by David P. Smole. (Hereafter cited as CRS Issue Brief IB98035, *School Choice*.)

² The FY2004 District of Columbia Appropriations Act, along with six other FY2004 appropriations bills not yet enacted into law have been incorporated into the Consolidated Appropriations Act (H.R. 2673).

under H.R. 2556. According to the conference report, \$14 million would be provided during FY2004 to fund and administer the program.

This report examines bills being considered by the 108th Congress that would establish a federally funded scholarship or voucher program in the District of Columbia, with a focus on the DC School Choice Incentive Act as contained in H.Rept. 108-401. It begins by identifying and briefly discussing some of the issues that have led to a new federally funded school choice program being considered as a policy option for elementary and secondary education in the District of Columbia. It next provides a brief description of scholarship program currently being considered. The report then identifies and analyzes a number of policy issues that the 108th Congress may consider during debate.

School Choice as a Federal Policy Option in the District of Columbia

During the past several Congresses, numerous proposals have been made to enact school choice programs through federal legislation. A number of these proposals have been enacted into law and are being implemented across the nation.³ During this time, several proposals also have been made to enact school choice programs that would operate only within the District of Columbia. One, the District of Columbia School Reform Act of 1995 (P.L. 104-134), created the District of Columbia public charter school law. Others failed to be enacted.⁴ In 1998, President Clinton vetoed the District of Columbia Student Opportunity Scholarship Act of 1997 (S. 1502), which would have created a federally funded scholarship program in the District of Columbia for purposes of awarding scholarships to enable children from low-income families to attend schools of choice in the Washington, DC metropolitan area.

There appear to be a number of reasons why proposals have been made to establish a federally funded school voucher or scholarship program unique to the District of Columbia. These include: a desire to bring about reform and improvement in the District of Columbia Public Schools (DCPS); the perception that publicly funded private school choice is a missing, but needed choice option for low-income students in the District of Columbia; the opportunity to implement a highly visible school voucher demonstration program in the nation's capital; and the belief that low-income students should not be compelled to attend inferior public schools when students from families with greater resources have access to better schooling options.

³ For a brief description of existing school choice programs, see CRS Issue Brief IB98035, *School Choice*.

⁴ Proposals during the previous four Congresses include: 107th Congress (H.R. 5033, H.Amdt. 57, H.Amdt. 58, S. 2866, S.Amdt. 536); 106th Congress (H.Amdt. 536); 105th Congress (H.R. 1797, H.R. 2607, H.R. 4380, H.Amdt. 874, S. 847, S. 1502, S.Amdt. 1249); 104th Congress (H.R. 2546, S.Amdt. 3531).

Policy arguments against the establishment of a scholarship program for the District of Columbia include: it would be “imposed” on the District of Columbia against principles of home rule; existing voucher programs have demonstrated only limited success in improving student academic achievement; if the establishment of voucher programs were a truly promising education reform, there likely would be widespread demand for them nationwide; a voucher program would divert resources and perhaps the most motivated and talented students away from public schools; and a voucher program would not hold participating private schools to the same standards and requirements applicable to public schools.⁵

Proposals to Establish a K-12 Scholarship or Voucher Program in the District of Columbia

In the 108th Congress, the House and the Senate considered a number of proposals to establish a scholarship program for low-income elementary and secondary school students in the District of Columbia. Similar proposals were debated in both chambers during consideration of FY2004 District of Columbia appropriations bills. However, the House-passed version of the appropriations act for the District of Columbia (H.R. 2765) authorized the establishment of a scholarship program while the Senate-passed version of H.R. 2765 did not. When legislation for the District of Columbia appropriations act was consolidated with other unapproved appropriations bills, conferees agreed on language to authorize and appropriate funds for the DC School Choice Incentive Act as part of the conference report to the Consolidated Appropriations Act, 2004 (H.Rept. 108-401). The House has agreed to the conference report and the Senate is expected to consider it during the 2nd Session of the 108th Congress. This section describes the provisions of the DC School Choice Incentive Act as contained in H.Rept. 108-401.

Program Description. The DC School Choice Incentive Act would authorize the establishment of a federal competitive grant program in which the Secretary of Education would award one or more grants to eligible entities (defined as educational entities of the District of Columbia government, non-profit organizations, or consortia of non-profit organizations) for the operation of a scholarship program to enable children from low-income families in the District of Columbia to attend private elementary or secondary schools located in the District of Columbia. Grantees would operate programs in which students, who are residents of the District of Columbia and who are from families with incomes not exceeding 185% of the poverty line, could apply for scholarships.⁶ In subsequent years, students would remain eligible to continue to receive scholarships even if their family

⁵ Some who value the independence afforded private schools see the prospect of increased regulation as an argument against a federally funded scholarship program.

⁶ According to federal income eligibility guidelines for children to be eligible for free or reduced-price lunches under federal child nutrition programs, for the period from July 1, 2003 through June 30, 2004, 185% of the poverty line is defined as an annual income of \$22,422 for a two-person household, \$28,231 for a three-person household, and \$34,040 for a four-person household. For larger families, an additional \$5,809 in household income is allotted for each additional family member. See U.S. Department of Agriculture, Child Nutrition Programs, *Income Eligibility Guidelines*. Available at [<http://www.fns.usda.gov/cnd/Governance/iegs/IEGs03-04.pdf>].

income rose above 185% of the poverty line, so long as it did not exceed 200% of the poverty line. The Secretary would give priority in the awarding of grants to entities that would: (a) give priority in the awarding of scholarships to students who in the previous school year, attended schools identified for school improvement, corrective action, or restructuring under Title I-A of the Elementary and Secondary Education Act (ESEA); (b) target families with limited financial resources; and (c) provide students from poor families with the widest range of school choice options.

If more eligible students applied to participate in the program than could be accommodated, operators of the scholarship program and participating schools would be required to select and admit eligible students through a random selection process. The random selection process used by eligible entities would be required to give weight to students who in the previous year attended a school in school improvement, and to students from families with limited financial resources. The random selection process used by participating schools could include provisions allowing for sibling preference.

Eligible entities and schools would be prohibited from discriminating on the basis of race, color, national origin, religion, or sex. However, schools offering single-sex programs would be eligible to participate in the program, and religiously-affiliated schools would be permitted to take sex into account in the operation of their programs consistent with the religious tenets of the school. Families would be able to use scholarships for tuition at schools that as part of their curriculum, advanced religious educational purposes; and religiously affiliated schools accepting scholarships would be permitted to maintain their religious practices.⁷ Schools, including religiously affiliated schools, would be permitted to require scholarship recipients to abide by rules of conduct and other policies otherwise applicable to all students. The program would not alter any provisions of the Individuals with Disabilities Education Act (IDEA).⁸

Operators of scholarship programs would make scholarship payments to the parents or legal guardians of students selected to receive scholarships, and scholarship payments would be deemed assistance to students, and not federal financial assistance to the schools the students attend. (This has important implications with regard to certain federal laws and regulations that apply to organizations contingent upon their receipt of federal funds.) The value of scholarships could vary according to student need, however the maximum value would be limited to the lesser of (a) the cost of tuition, fees, and transportation expenses to attend a particular private school, or (b) \$7,500. The bill does not prohibit participating schools from charging tuition and fees that exceed the amount covered by the scholarships, nor from waiving or subsidizing tuition and fees.

⁷ Following the Supreme Court's ruling in *Zelman v. Simmons-Harris* (536 U.S. 369 (2002)), it does not appear that the program, as currently proposed, would run afoul of church-state entanglement issues under the First Amendment to the Constitution. For additional information on school vouchers and First Amendment issues, see CRS Report RL30165, *Education Vouchers: Constitutional Issues and Cases*, by David M. Ackerman.

⁸ P.L. 101-476, (20 U.S.C. §1400 *et. seq.*).

A number of accountability requirements would apply to the program. The Secretary and the Mayor of the District of Columbia would be required to jointly select an independent entity to annually evaluate the performance of scholarship recipients and to make the results of the evaluations publicly available. The academic achievement of all participating students must be measured using the same academic assessments administered to DCPS students. The proposal calls for comparing the academic achievement of scholarship recipients with DCPS students in general, and DCPS students who applied for but were not selected to receive scholarships. It also calls for comparing retention, dropout, graduation, and college admission rates between participants and nonparticipants.

Grantees operating scholarship programs also would be required to prepare annual reports for the Secretary containing information on the academic achievement of student participants, graduation and college admission rates, and parental satisfaction. Annually, the Secretary would compile this information into reports to Congress. At least once per year, schools would be required to report information on students' academic achievement and school safety to students' parents.

The Secretary and the Mayor would be required to enter into a memorandum of understanding (MOU) regarding the operation of the program. According to the statement of the managers of H.Rept. 108-401, the MOU must address the following: accountability measures and program evaluation; the lottery system to be used if the program is oversubscribed; joint oversight of the program by the Mayor and the Secretary; the selection of schools licensed in the District of Columbia for participation in the program; the determination of tuition and fees for participating schools; the development of oversight and accountability measures; and criteria for teacher quality.

Under the DC School Choice Incentive Act, \$14 million is authorized for FY2004 and such sums as necessary for the succeeding 4 fiscal years. From this amount, up to \$1 million would be available to administer and fund assessments of the program. Grantees would be permitted to use up to 3% of their awards for administrative expenses and the Secretary could use up to 3% of the annual appropriation for evaluations.

Policy Issues and Analysis

This section identifies and analyzes a number of policy issues that the 108th Congress may consider as it debates proposals to establish an elementary and secondary education scholarship or voucher program for low-income students in the District of Columbia. These include how the proposed program might affect current and future school choice options in the District of Columbia, funding, nondiscrimination, and accountability.

School Choices in the District of Columbia

In the District of Columbia, there currently exists a broad array of school choice options. These include a number of public school options, such as open enrollment, whereby students may apply to attend out-of-boundary schools when space is available; schools offering special programs that enroll students on a city-wide basis; public charter schools chartered by either DCPS or the District of Columbia Public Charter School Board and public school choice and supplemental educational services required under ESEA Title I-A for children assigned to schools identified for school improvement, corrective action, or restructuring.⁹ In an effort to reform underperforming schools, DCPS has reconstituted a number of schools as “transformational” schools, to which DCPS provides additional resources.¹⁰ According to the National Center for Education Statistics (NCES), there are also more than 80 private schools in the District of Columbia from among which children may choose to attend. In some instances, children attend private schools with assistance provided through privately funded scholarship funds.¹¹

Available information on school choice in the District of Columbia suggests that families are seeking to take advantage of school choice options and exercise their opportunity to choose the schools their children attend. Currently, over 11,700 students are enrolled in 40 charter schools in the District of Columbia.¹² Data from the 2000 census show that in that year over 13,000 students in grades K-12 in the District of Columbia attended private elementary and secondary schools, representing approximately 15% of school-age students.¹³ For school year 2003-2004, DCPS made available 5,254 seats for out-of-boundary open enrollment.¹⁴ However, a review of the choices available reveals that the most highly regarded public schools had few if any available openings, but large numbers of applicants, while less well regarded schools, including some schools identified for improvement under ESEA

⁹ Supplemental educational services are provided outside of normal school hours and are designed to augment or enhance the educational services provided during the regular school day. They may be provided by public or private entities. For additional information on 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. (Hereafter cited as CRS Report RL31329, *Supplemental Educational Services*.)

¹⁰ Information on transformational schools may be accessed at [<http://www.k12.dc.us/dcps/T9/main/index.asp>].

¹¹ For example, the Washington Scholarship Fund (associated with the Children’s Scholarship Fund) provides scholarships to assist nearly 1,200 students in the District of Columbia attend private schools. For more information on the Washington Scholarship Fund, at [<http://www.washingtonscholarshipfund.org/>].

¹² Government of the District of Columbia. Education Center. Available at [http://www.dcschoolsearch.dc.gov/education/schools/school_listing.asp?canned=1].

¹³ U.S. Census Bureau, 2000 Census of Population and Housing, 2000 Census Summary File 3 (Table P36).

¹⁴ District of Columbia Public Schools, *Available Seats for Out of Boundary Students*, at [<http://www.k12.dc.us/dcps/outofbounds/pdfs/seatsavailable.pdf>].

Title I-A, had large numbers of openings, but few applicants.¹⁵ This review also notes that in 2002, while approximately 7,000 students applied for out-of-boundary transfers, fewer than 800 were accepted for transfer.

School choice often is proposed in response to low academic achievement in the public schools, with the supposition that competition among schools will bring about educational improvement. Data appear to support the contention that as a whole, public schools in the District of Columbia are characterized by low performance. For example, recently reported data from the National Assessment of Educational Progress (NAEP) 2003 Trial Urban District Assessments in Reading and Mathematics show that student achievement (for grades 4 and 8) is lower in the District of Columbia than in other central city public schools, as well as public schools nationwide.¹⁶ Stanford Achievement Test, version 9 (SAT-9) data show that in DCPS schools, achievement levels are generally low and not improving.¹⁷

While some reports show that students who attend private schools in some cases exhibit higher academic achievement than those who attend public schools,¹⁸ there are mixed results when examining whether school voucher programs targeted at low-income students lead to improved academic achievement for voucher recipients who enroll in private schools. Results from some program evaluations show statistically significant increased academic achievement for African-American voucher recipients (but not for other students); while results of other evaluations indicate that vouchers have little or no positive effect on student achievement.¹⁹

¹⁵ Casey Lartigue, "Giving D.C. Kids the Best Education Available," *National Review Online*, Oct. 22, 2003.

¹⁶ U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress, *2003 Trial Urban District Assessment: Reading*, available at [<http://www.nces.ed.gov/nationsreportcard/reading/results2003/districtresults.asp>]; and *2003 Trial Urban District Assessment: Mathematics*, available at [<http://www.nces.ed.gov/nationsreportcard/mathematics/results2003/districtresults.asp>].

¹⁷ District of Columbia Public Schools Academic Performance Database System, at [<http://www.silicon.k12.dc.us/apds/APDSSummaryReports.asp>].

¹⁸ See, U.S. Department of Education, National Center for Education Statistics, *Private Schools: A Brief Portrait*, NCES 2002-013, by Martha Naomi Alt and Katharin Peter. Washington, D.C., 2002.

¹⁹ See for example, William G. Howell and Paul E. Peterson, *The Education Gap: Vouchers and Urban Schools* (Washington, DC: Brookings Institution Press, 2002); Daniel P. Mayer, et al., *School Choice in New York City After Three Years: An Evaluation of the School Choice Scholarships Program — Final Report* (Princeton, NJ: Mathematica Policy Research, Inc. Feb. 19, 2002); Alan B. Krueger and Pei Zhu, *Another Look at the New York City School Voucher Experiment* (Apr. 2003); and Kim K. Metcalf, et al., *Evaluation of the Cleveland Scholarship and Tutoring Program: Summary Report 1998-2001* (Bloomington, IN: Indiana Center for Evaluation, Mar. 2003).

A growing body of research has shown that competition in elementary and secondary education (including competition between public and private schools), in many cases, has resulted in improved educational outcomes.²⁰ School voucher or scholarship programs, as well as public charter schools, also often do lead to increased parental satisfaction. Under the proposed program, an independent entity would be required to conduct an evaluation of the program to determine if it was effective in improving the academic achievement of scholarship recipients and its effects on public elementary and secondary schools in the District of Columbia. The results of such an evaluation may prove influential in informing future federal school choice policy decisions. Accountability issues are discussed in greater detail in a later section of this report.

Possibilities for Increased School Choices in the District of Columbia under the DC School Choice Incentive Act

The proposed scholarship program would allow children from families with incomes at or below 185% of the poverty line to apply to receive scholarships valued at up to \$7,500 to attend private elementary and secondary schools in the District of Columbia (and to continue participating in the program so long as their family income in subsequent years does not exceed 200% of the poverty line). Data from the 2000 census show that in the District of Columbia, nearly 44% of families with related children aged 5 to 17 had incomes at or below 185% of the poverty line. Thus, it appears that a relatively high proportion of students in the District of Columbia would be eligible to participate in the program.²¹ If \$14 million were provided for the program, after accounting for administrative costs, academic assessments, and evaluations, more than 1,600 scholarships valued at \$7,500 could be provided to eligible children (representing over two percent of current DCPS enrollment).²² If some students were able to attend private schools for less than \$7,500, scholarships could be provided to more students.

It may be questioned whether existing private schools in the District of Columbia would be able to absorb an influx of scholarship recipients, especially schools with tuition low enough to be covered by a \$7,500 scholarship. A number of reports suggest that there currently are sufficient openings in private schools to accommodate potential scholarship recipients. For example, the Archdiocese of Washington has stated that it would be able to enroll up to 2,000 additional students in the Catholic schools located in the District of Columbia, where tuition at

²⁰ Clive R. Belfield and Henry M. Levin, "The Effects of Competition Between Schools on Educational Outcomes: A Review for the United States," *Review of Educational Research*, summer 2002, 72, no. 2, pp. 279-341.

²¹ U.S. Census Bureau, 2000 Census of Population and Housing, 2000 Census Summary File 3 (Table PCT61); (based on family income in 1999).

²² Based on language in H.R. 2673 and H.Rept. 108-401, it appears that if the maximum authorized amounts were used for administration, assessments, evaluations, and reporting, approximately \$12.2 million would be available for scholarships.

elementary schools generally is between \$2,500 and \$7,000.²³ Also, based on a survey it conducted in June 2003, the CATO Institute estimates that private schools in the District of Columbia could accommodate approximately 2,925 additional students.²⁴ With approximately 1,600 scholarships able to be funded under the proposed program, on the surface it appears that there are sufficient openings to accommodate an influx of students.

When analyzing the ability of private schools to accommodate scholarship recipients, it is important to consider the priorities that would be applied in awarding scholarships to students under the proposed program. In addition to limiting initial eligibility to students from families with incomes at or below 185% of the poverty line and that have limited resources, the program also would give priority to students attending schools identified for improvement, corrective action, or restructuring under ESEA, Title I-A. In DCPS, 15 schools have been identified for school improvement: three elementary schools, four middle and junior high schools, and seven senior high schools.²⁵ In the current school year, approximately 9,000 students attend these schools. Of these students, approximately 20% attend the elementary schools, approximately 20% attend the middle and junior high schools, and approximately 60% attend the senior high schools.²⁶ All of these schools are located in relatively high-poverty neighborhoods in the District of Columbia. Thus, while the number of students attending these schools who would be eligible to participate in the program based on their low-income status is unknown, it is presumable that a substantial proportion would be eligible.

Given the existing education environment in the District of Columbia and the substantial number of children from families with incomes below 185% of the poverty line, it may be useful to consider the school choice options that might become available to scholarship recipients at the various grade levels. **Figures 1-3** display maps of the District of Columbia showing the percentages of families with children aged 5-17 with incomes below 185% of the poverty line by census tract, the locations and attendance area boundaries of schools identified for school improvement under ESEA Title I-A, and the location and tuition levels of private schools offering programs at various grade levels. On the maps, census tracts with increasing proportions of families with incomes below 185% of the poverty line are shown by increasingly darker shading. Private school locations and their tuition amounts are shown by bars of varying heights, with the height of the bar

²³ Valerie Strauss, "Questions and Answers with Patricia Weitzel-O'Neill," *The Washington Post*, Sept. 14, 2003, p. C-5; and Patricia Weitzel-O'Neill, "Letter to the Editor," *The Washington Post*, May 31, 2003, p. A-18.

²⁴ Casey J. Latrigue, Jr., "School Choice in the District of Columbia: Saving Taxpayers Money, Increasing Opportunities for Children," *CATO Institute Briefing Papers*, No. 86, Sept. 19, 2003, p. 4. It is not clear whether all of these potential openings would be at schools with tuition and fees of \$7,500 or less.

²⁵ District of Columbia Public Schools. "Title I School Improvement Schools," available at [<http://www.k12.dc.us/dcps/dcpsnclb/nclbtitleschools.html>].

²⁶ District of Columbia. "DC Government's Resident Resource Center: DC School Search," available at [<http://www.dcschoolsearch.dc.gov/education/schools/index.asp>].

corresponding to the school's tuition level.²⁷ Private schools that charge tuition of \$7,500 or less are depicted by light color bars and schools that charge tuition above \$7,500 are depicted by dark color bars. Tuition at many private schools, especially senior high schools, is more than double the proposed scholarship amount.

The maps show that there potentially will be different private school options available to scholarship recipients at different grade levels. School choice options will be dependent upon the number of private schools offering programs at the various grade levels, their willingness to participate in the program, the number of openings they make available, and their tuition levels. At present, it is not known how many schools would elect to participate, nor how many openings they would make available. However, information is available on the number and location of private schools currently operating in the District of Columbia and the tuition they charge. Of the private schools that offer programs at the elementary school level (see **Figure 1**), 35 out of 53 have tuition at or below \$7,500. Of the private schools that offer programs at the middle and junior high school level (see **Figure 2**), 36 of 53 have tuition at or below \$7,500. Most of the schools that serve elementary, middle, and junior high school students and that have tuition at or below \$7,500 are located in areas with greater proportions of low-income families. Only 5 out of 20 private schools that offer senior high school programs (see **Figure 3**) have tuition at or below \$7,500. It appears that senior high school students would have rather limited private school options, with most private senior high schools charging tuition above \$7,500 and being located the Northwest quadrant of the District of Columbia.

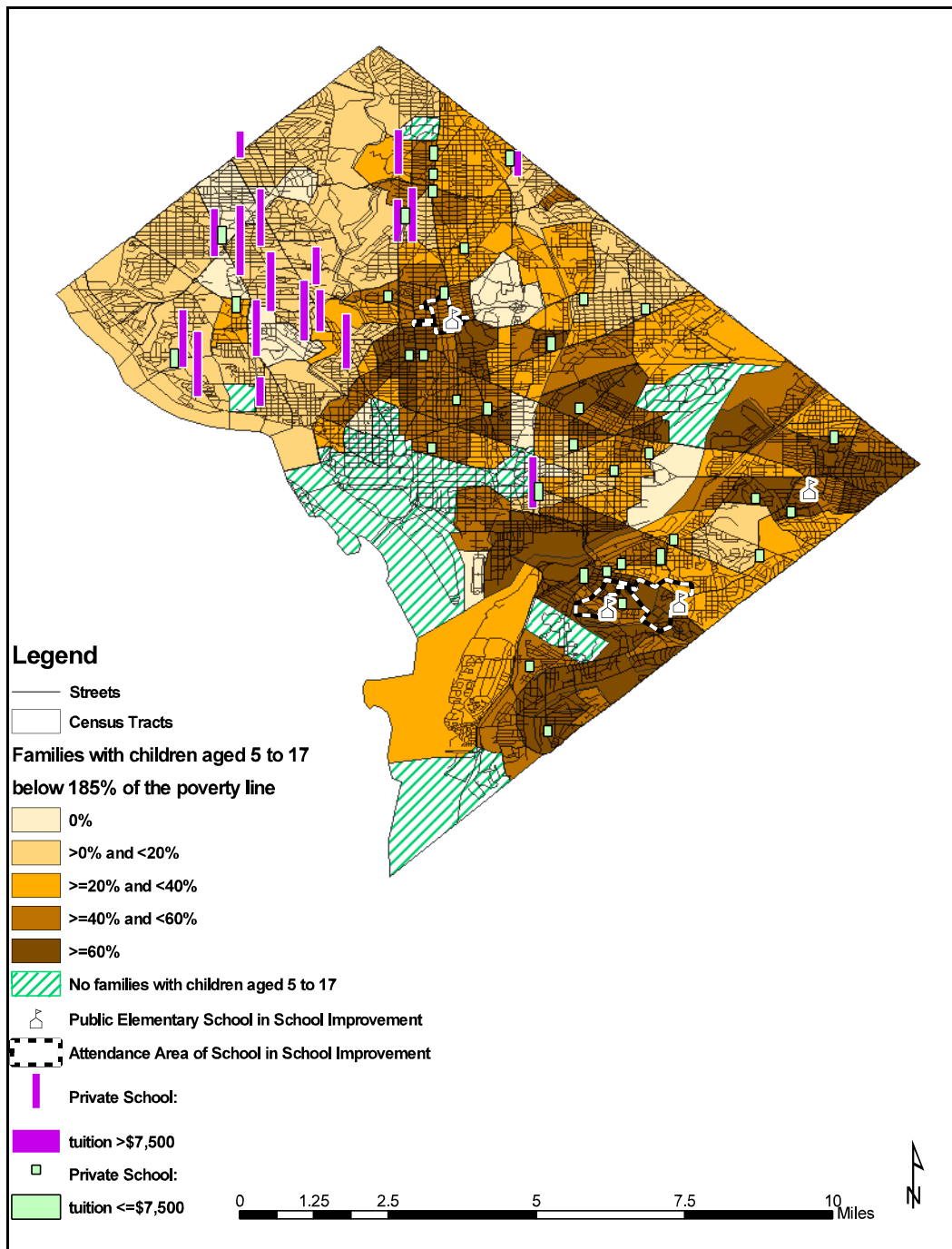
Based on the number of private schools operating in the District of Columbia and their published tuition levels, it appears that the greatest range of school choices will be available to the approximately 40% of students from schools identified for school improvement who are at the elementary, middle, and junior high school levels (see **Figure 1** and **Figure 2**). A sizable proportion of these schools are located in lower income neighborhoods. For the approximately 60% of students from schools identified for school improvement who are at the senior high school level, it appears that there would be relatively few options, largely because most private senior high schools in the District of Columbia charge tuition that exceeds \$7,500 (see **Figure 3**).²⁸

²⁷ The maps show private schools located in the District of Columbia that offer education programs at defined grade levels. Schools and tuition levels were identified using the following sources: U.S. Department of Education. National Center for Education Statistics. Private School Universe Survey, 1999-2000; "2003 Guide to Private Schools," *Washingtonian On-line*, available at [<http://www.washingtonian.com/schools/private/schools.html>]; David F. Salisbury, "What Does a Voucher Buy? A Closer Look at the Cost of Private Schools," *CATO Policy Analysis*, No. 486, Aug. 28, 2003; the Archdiocese of Washington [http://www.adw.org/education/edu_schools.html]; and individual school websites. Schools offering educational programs that are not defined by graded level (which primarily serve students with special needs) are not included on the maps.

²⁸ This assumes that scholarship recipients generally will be unable to contribute any additional funds toward their education. There also exists the possibility that participating schools will offer scholarship recipients tuition waivers or scholarships for tuition not covered under the proposed program.

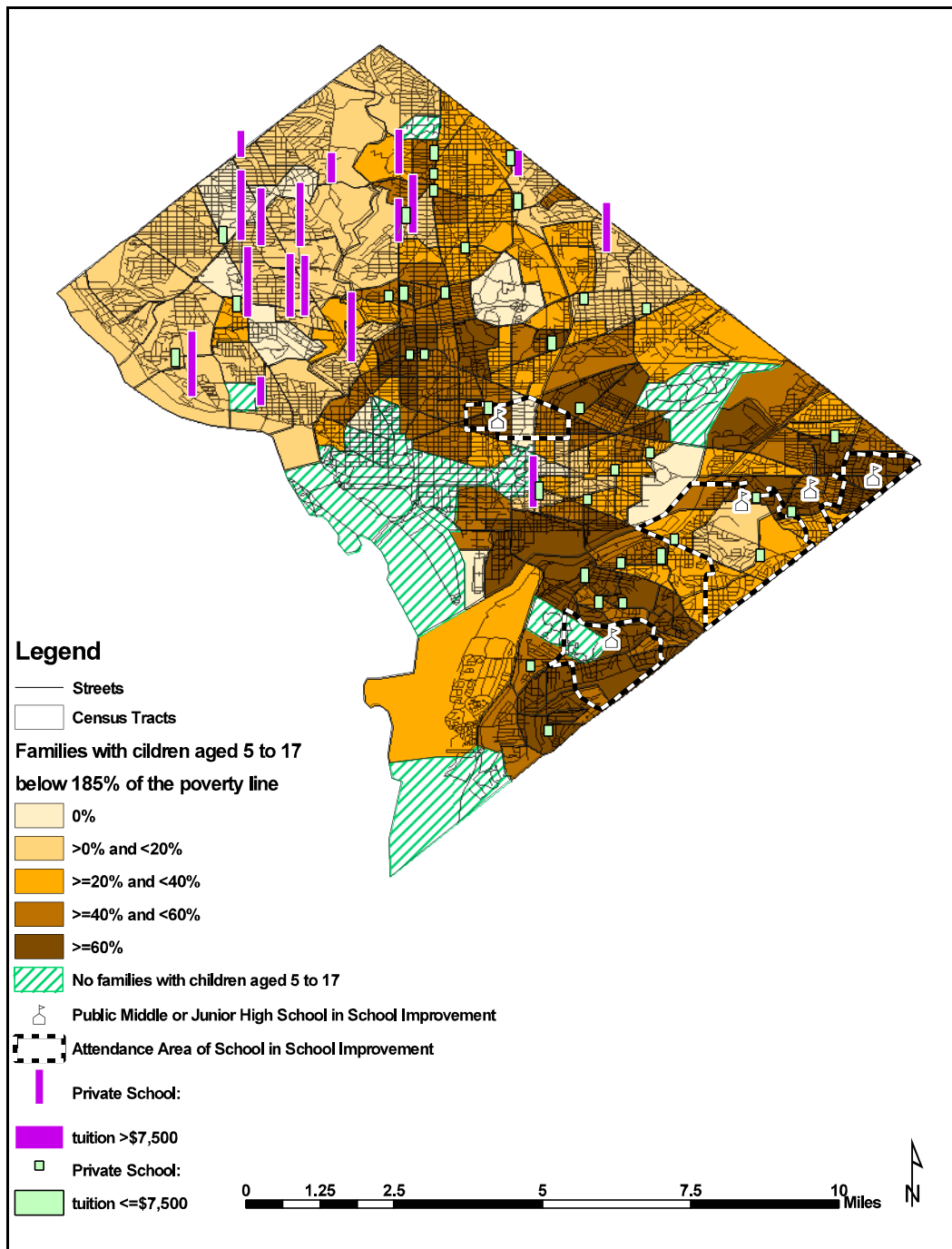
While it is not clear that sufficient school choice options are available at the appropriate grade levels to accommodate the total number of students who might be eligible and seek to participate in the program, it is possible that by providing \$7,500 scholarships to a large number of low-income families, sufficient demand will be created to stimulate an increase beyond current private school options. Existing private schools might increase their enrollments, and over time, new schools might open — especially in the low-income neighborhoods of scholarship recipients. Still, it is unclear whether scholarships limited to \$7,500 will be sufficient to cause a noticeable increase in capacity at the senior high school level.

Figure 1. Potential Private Elementary School Options



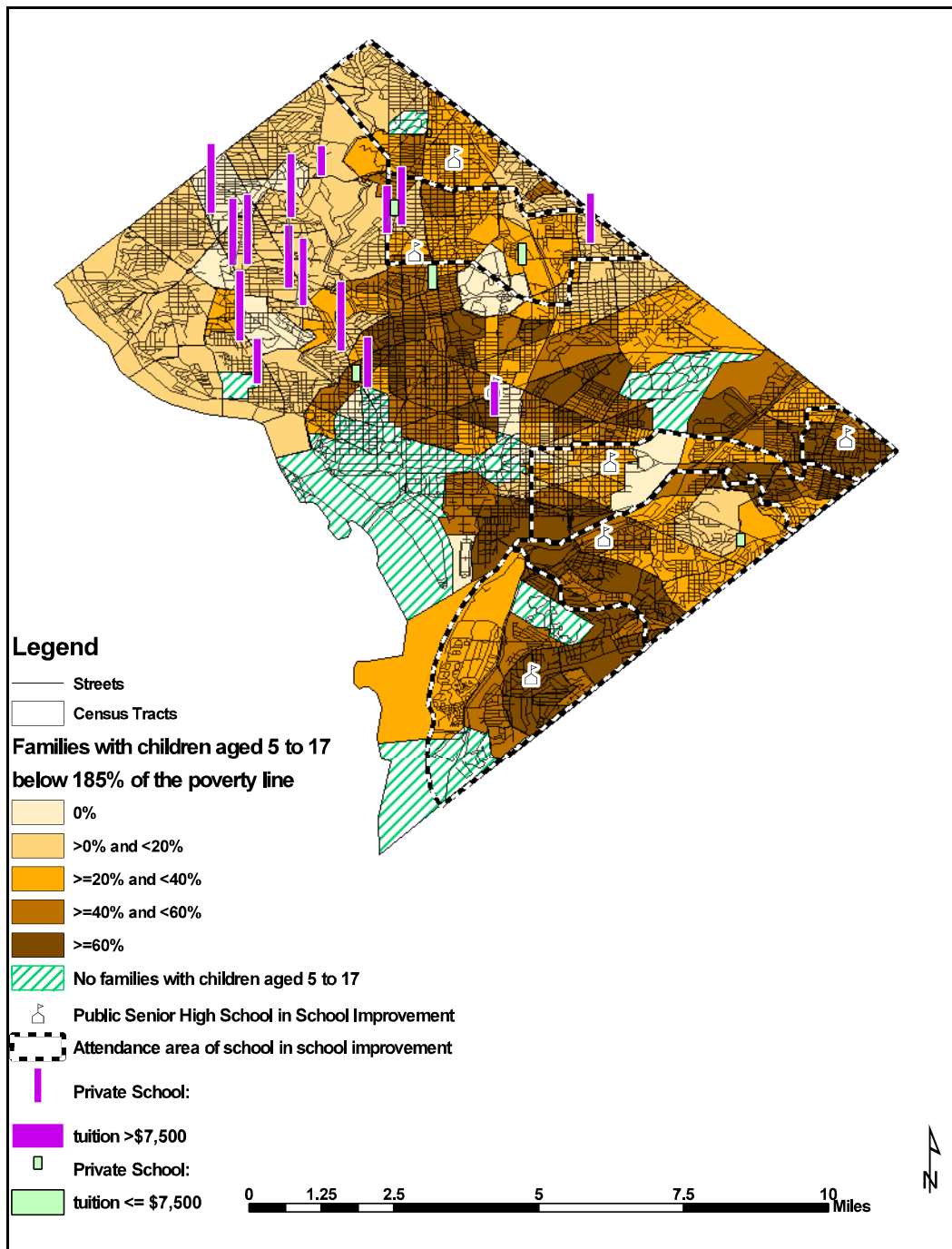
Sources: U.S. Census Bureau, 2000 Census of Population and Housing, 2000 Census Summary File 3 (Table PCT61); District of Columbia. “DC Government’s Resident Resource Center: DC School Search,” available at [<http://www.dcschoolsearch.dc.gov/education/schools/index.asp>]; U.S. Department of Education, National Center for Education Statistics, Private School Universe Survey, 1999-2000; “2003 Guide to Private Schools,” *Washingtonian On-line*, available at [<http://www.washingtonian.com/schools/private/schools.html>]; David F. Salisbury, “What Does a Voucher Buy? A Closer Look at the Cost of Private Schools,” *CATO Policy Analysis*, no. 486, Aug. 28, 2003; the Archdiocese of Washington [http://www.adw.org/education/edu_schools.html]; and individual school websites.

Figure 2. Potential Private Middle and Junior High School Options



Sources: U.S. Census Bureau, 2000 Census of Population and Housing, 2000 Census Summary File 3 (Table PCT61); District of Columbia. “DC Government’s Resident Resource Center: DC School Search,” available at [<http://www.dcschoolsearch.dc.gov/education/schools/index.asp>]; U.S. Department of Education, National Center for Education Statistics, Private School Universe Survey, 1999-2000; “2003 Guide to Private Schools,” *Washingtonian On-line*, available at [<http://www.washingtonian.com/schools/private/schools.html>]; David F. Salisbury, “What Does a Voucher Buy? A Closer Look at the Cost of Private Schools,” *CATO Policy Analysis*, no. 486, Aug. 28, 2003; the Archdiocese of Washington [http://www.adw.org/education/edu_schools.html]; and individual school websites.

Figure 3. Potential Private Senior High School Options



Sources: U.S. Census Bureau, 2000 Census of Population and Housing, 2000 Census Summary File 3 (Table PCT61); District of Columbia, “DC Government’s Resident Resource Center: DC School Search,” available at [<http://www.dcschoolsearch.dc.gov/education/schools/index.asp>]; U.S. Department of Education, National Center for Education Statistics, Private School Universe Survey, 1999-2000; “2003 Guide to Private Schools,” *Washingtonian On-line*, available at [<http://www.washingtonian.com/schools/private/schools.html>]; David F. Salisbury, “What Does a Voucher Buy? A Closer Look at the Cost of Private Schools,” *CATO Policy Analysis*, no. 486, Aug. 28, 2003; the Archdiocese of Washington (http://www.adw.org/education/edu_schools.html); and individual school websites.

Funding

Federal Education Funding for the District of Columbia. Questions might arise about whether the establishment of the proposed scholarship program would affect the amount of federal funds available for elementary and secondary education in the District of Columbia. Funds appropriated to carry out the program might be characterized either as “new” spending or as displacing spending that otherwise would have occurred under one or more existing federal programs or that otherwise would have been earmarked for some other purpose (such as funding for other projects in the District of Columbia). While it is not possible to ascertain whether and how funds made available for the proposed program might be distributed in the absence of such a program, it does not appear that the establishment of a scholarship program for students in the District of Columbia would have any significant adverse effect on the amount of funds to be made available to students in the District of Columbia under federal elementary and secondary education formula grant programs.²⁹

In general, under federal formula grant programs, the allocation of funds to state and local educational agencies (SEAs and LEAs, respectively) is based on the number of eligible children residing in states or LEAs, or the total number enrolled in public and non-public schools.³⁰ Thus, the type of school in which a child is enrolled generally does not impact the amount of federal funds a state or LEA is eligible to receive. However, since eligible children enrolled in private schools generally are eligible to be served under federal programs, when the number or proportion of eligible children enrolled in private schools increases, it results in a smaller proportion of federal funds being available to serve students who remain in public schools. This often results in concerns being raised by states and LEAs about voucher programs that enable students to attend private schools.

ESEA Title I-A. As the education for the disadvantaged program under ESEA Title I-A is the largest of the federal elementary and secondary education formula grant programs, it might be useful to illustrate how the distribution of funds under this program might be impacted by a scholarship program.³¹ If the proposed scholarship program were implemented, presumably a sizable proportion of

²⁹ Conceivably, if the amount of funds available nationwide for federal formula grant programs were reduced to make funds available for a scholarship program, the District of Columbia would lose its proportionate share of such funds. However, the District of Columbia generally receives less than 1% of federal elementary and secondary education funding. Thus, even if federal formula funds were reduced by the amount of funding provided for a District of Columbia scholarship program, any reduction in the District of Columbia’s share of federal formula funds likely would be far surpassed by the increased amount provided through the scholarship program.

³⁰ See for example, ESEA §§1124-1125, 1125A, 1202, 1303, 3111, 3244, and 5111; and IDEA §611.

³¹ For a more thorough description of ESEA Title I-A grant allocation formulas, see pp. 15-26 of CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle.

scholarship recipients would be eligible for services under ESEA Title I-A.³² As previously mentioned, the number of students attending private schools would not affect the total amount of funds the District of Columbia would be eligible to receive under Title I-A. However, the amount of funds available to serve students attending both schools in the DCPS system and public charter schools would be reduced if eligible students transferred to private schools. Funds that previously would have been generated by the student for a DCPS (or charter) school, would now be redirected to serve eligible students attending private schools.

Under Title I-A, not all schools in an LEA receiving funding under Title I-A are eligible to receive funds to operate Title I-A programs. Funds are allocated within LEAs to schools for the operation of Title I-A programs (either for targeted assistance or for schoolwide programs) based on the number of low-income students residing within school attendance areas.³³ Children enrolled in private schools are identified to be served under Title I-A on the basis of (1) residing in an eligible attendance area, and (2) being identified either as failing or most at risk of failing to meet state academic achievement standards.³⁴ If upon being awarded a scholarship under the proposed program, a low-income child transferred out of a Title I-A school to attend a private school, the funds generated by the child would become available to serve eligible low-achieving children attending the receiving private school. However, the particular child who generated the funds might not be eligible for Title I-A services, as eligibility to receive services is determined on the basis of a child residing in a low-income attendance area and being low-achieving, not low-income.

Local Education Funding in the District of Columbia. In the District of Columbia, local education funding is allocated to DCPS and to public charter schools on a per-pupil basis according to the uniform per student funding formula (UPSFF).³⁵ In generating funds, the UPSFF provides a “foundation level” of funding per student, and then applies add-on weights for students based on characteristics such as grade level, special education, limited English proficiency, and participation in summer school. Funds are then allocated to individual DCPS schools according to the weighted student formula (WSF), which similarly contains weights based on

³² For example, of the 15 schools in the District of Columbia Public School (DCPS) system identified under ESEA §1116 for school improvement during school year 2003-2004, all are eligible for assistance under Title I-A.

³³ ESEA §1113. LEAs may use the following measures to count low-income children (a) the number of children aged 5-17 counted in the U.S. Census Bureau’s Small Area Income and Poverty Estimates (SAIPE), (b) the number of children eligible for free and reduced price lunches, (c) the number of children in families receiving assistance under Temporary Assistance for Needy Families (TANF), (d) the number of children eligible to receive Medicaid, or (e) a composite of these.

³⁴ ESEA §1115. Family income is **not** considered in determining a child’s eligibility to be served under Title I-A. *Note:* Eligibility criteria for targeted assistance programs are used to identify children attending private schools for the receipt of Title I-A services. However, the majority of public school participants in Title I-A are now served through schoolwide programs, in which the identification of particular children for the receipt of services is not required.

³⁵ Per-pupil funding is required under P.L. 104-134, §§2401-2403.

student characteristics. The amount of funding provided to DCPS schools under the WSF is noticeably less than the amount generated under the UPSFF. The difference between the UPSFF and the WSF amounts goes to central services. These per-pupil funding procedures are designed to ensure accountability and transparency in the allocation of funds.³⁶

It appears that the transfer of students from DCPS schools or public charter schools to private schools would affect education funding differently than has the transfer of students from DCPS schools to charter schools. As previously mentioned, charter schools are funded on a per-pupil basis, so when a student transfers from a DCPS school to a charter school, funding follows the student from the sending school to the charter school. If the proposed scholarship program facilitated the transfer of students from either DCPS or public charter schools to private schools, there would be no requirement for local funds to follow the students to private schools.

Still, the prospect of over 1,600 students leaving publicly funded DCPS or charter schools to attend private schools could have a varied and possibly significant impact on the amount of local funds made available for public education in the District of Columbia, depending in part on decisions by local policymakers. If, for example, the UPSFF foundation level were maintained, a smaller amount of local funding would be allocated as public school enrollment decreased. Conversely, if local appropriations remained steady, the UPSFF foundation level could be increased, resulting in greater funding on a per-pupil basis. Regardless of how the potential transfer of students to private schools might impact local education funding, expansion beyond existing choice programs in the District of Columbia also likely would add additional uncertainty to local efforts to plan for facilities, staff, and other resources, especially if continuation of the proposed program were not assured.

Restrictions on the Use of Federal Funds. Under many federal grant programs, receipt of federal funds is conditioned on grantees assuring either that the federal funds they receive will not be used to fund activities that otherwise would have occurred in the absence of federal funding, or that they will match in whole or in part federal funds with non-federal funds. In general, federal elementary and secondary education grant programs contain requirements that funds awarded to SEAs, LEAs, or other grantees supplement, and not supplant, funds received from other sources. “Supplement, and not supplant” clauses are found in ESEA and IDEA programs.³⁷ The proposed scholarship program contains neither a “supplement, and not supplant” clause, nor a matching requirement. Thus, if an entity currently funded through non-federal sources and which awards scholarships to allow students in the District of Columbia to attend private schools were to be selected as the program

³⁶ For a discussion of the UPSFF and the WSF, see District of Columbia Board of Education, *The DC Board of Education Proposed FY2004 Operating Budget*, Washington, D.C., Dec. 23, 2002, pp. 66-69, and 90-91. For FY2002, the UPSFF foundation level was \$5,907; for FY2003, it was \$6,419. For FY2003, the base WSF per-student funding factor was \$4,269.

³⁷ See for example, ESEA Title I-A, §120A(B); and IDEA, §613(a).

operator, it does not appear that the entity would be required to fund only new scholarships with the federal funds it receives.

Continued Funding for the Scholarship Program. According to H.Rept. 108-401, \$14 million would be authorized and appropriated for the program for FY2004, and such sums as necessary would be authorized for subsequent years. As previously mentioned, this would allow for over 1,600 students to be awarded scholarships to attend private schools per academic year. As the program continues, an annual appropriation of approximately the same amount would continue to need to be provided to allow this cohort of students to progress with its private school education. Assuming that each year only a few students leave the program, or graduate from high school, few new students beyond the initial cohort would be able to receive scholarships in subsequent years without substantial annual increases in appropriations.

Nondiscrimination and Civil Rights

The proposed program contains a number of provisions addressing nondiscrimination. Scholarship organizations and schools participating in the program would be prohibited from discriminating on the basis of race, color, national origin, religion, or sex. They also would be required to accept eligible students through a random selection process if oversubscribed. Religiously affiliated schools would not be considered to be discriminating on the basis of sex if taking sex into account, such as through the offering of single-sex schools, classes, or activities, were consistent with their religious tenets or beliefs. Religiously affiliated schools also would be permitted to make employment decisions, such as employing individuals in a manner consistent with furthering their religious purpose, consistent with the requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1). Participating schools would be permitted to require students to abide by school policies and rules of conduct applicable to all students at the school (e.g., participating in religious education classes, and meeting school attendance, disciplinary, and academic requirements).

Legislation to establish the scholarship program would not affect any provisions of the IDEA. The applicability of many other federal non-discrimination and civil rights laws, however, is dependent upon receipt of federal financial assistance; and the proposal provides that scholarships provided through the program are to be considered assistance to the student and not assistance to the school that enrolls the student. It appears that this provision would limit the applicability of these laws to participating schools. A number of issues regarding how non-discrimination and civil rights issues might be treated under the proposed program are discussed below.

Individuals with Disabilities Education Act. Under IDEA, LEAs are required to make a free appropriate education available to students with disabilities. However, if LEAs do make a free appropriate education available and parents elect to enroll their children in private schools, those LEAs are not required to pay the

educational costs for students with disabilities.³⁸ Thus, if parents of students with disabilities enrolled their children in private schools under the program, it appears that DCPS would not be obliged to provide them with special educational services. IDEA does not require private schools to provide special education and related services to students with disabilities. However, private schools, including religiously affiliated schools are required to meet the “child-find” requirements of IDEA.³⁹ As noted above, the proposal would not affect any of the provisions of IDEA. In the District of Columbia, special education students represent 18.6% of DCPS enrollment.⁴⁰

Americans with Disabilities Act of 1990.⁴¹ Title II of the Americans with Disabilities Act (ADA) prohibits public entities from discriminating against individuals with a disability in the provision of services. It does not apply to private schools or organizations. Thus, it appears that its provisions would not apply directly to private schools that scholarship recipients might attend, nor to private non-profit organizations or consortia operating a scholarship program. However, if an educational entity of the District of Columbia government were selected to operate the scholarship program, as a public entity it appears that it would be subject to Title II requirements.

Title III of the ADA prohibits private entities from discriminating against individuals with disabilities in the provision of public accommodations and is applicable to private schools. However, private schools that are controlled by religious organizations are exempted from Title III requirements. The applicability of ADA requirements to a scholarship program established under the proposed program would depend in part on the types of organizations that are selected as grantees and the schools that elect to accept applications from scholarship recipients.

Other Federal Nondiscrimination and Civil Rights Laws. A number of other federal civil rights laws are applicable to programs or activities that receive federal financial assistance. These include Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin); Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex in federally funded education programs); Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap); and the Age Discrimination Act of 1975 (which prohibits discrimination on the basis of age).⁴² Title VII of the Civil Rights Act of 1964 (which prohibits employment

³⁸ IDEA §612(a)(10)(C). For further information on the requirements under IDEA with respect to private schools and possible voucher issues, see CRS Report RL31489, *Individuals with Disabilities Education Act (IDEA): Possible Voucher Issues*, by Richard N. Apling, Nancy L. Jones, and David P. Smole.

³⁹ See IDEA §612(a)(10)(A)(ii).

⁴⁰ District of Columbia Public Schools, “Just the Facts,” available at [<http://www.k12.dc.us/dcps/offices/facts1.html#14>].

⁴¹ P.L. 101-336; 42 U.S.C. §12101 *et. seq.*

⁴² For a brief summary of federal civil rights laws, see CRS Report 97-756, *Comparison of* (continued...)

discrimination on the basis of sex, race, color, religion, or national origin) applies generally and is not contingent upon receipt of federal financial assistance.⁴³ As the proposal states that scholarships provided through the program are to be considered assistance to the student and not assistance to the school that enrolls the student, it appears that these civil rights laws might apply differently to participating schools accepting applications from scholarship recipients than to grantees receiving federal funds to operate the scholarship program.

In general, it appears that a school participating in the scholarship program would not be considered a recipient of federal financial assistance on the basis of accepting a scholarship recipient, and that civil rights laws would apply to a participating school only if the school accepted federal financial assistance through other sources. However, as previously noted, the legislation does contain specific provisions addressing nondiscrimination.

With regard to entities selected to operate the scholarship program, it appears that in general, as recipients of federal financial assistance, they would be subject to most federal nondiscrimination and civil rights laws. To see how these requirements might apply under the proposed scholarship program, it may be instructive to turn to an existing federally funded elementary and secondary education school choice program — supplemental educational services. The Department of Education has adopted a policy of requiring SEAs and LEAs, as recipients of federal financial assistance, to ensure that discrimination does not exist in the supplemental educational services programs they operate.⁴⁴ It is not clear the extent to which operators would be required to ensure that discrimination did not exist in their scholarship programs. For example, with respect to students with disabilities, would scholarship program operators only be required to ensure that such students were eligible to receive scholarships; or would they be required to ensure that all scholarship recipients were presented with the opportunity to choose from among a range of schools able to accommodate them, or that all participating schools enroll scholarship recipients with disabilities on the same basis as students without disabilities?

⁴² (...continued)

Titles VI & VII of the Civil Rights Act of 1964; Americans with Disabilities Act; Age Discrimination in Employment Act; Title IX of Education Amendments of 1972; and Rehabilitation Act of 1973, by Alane Allman, et. al.

⁴³ There are exceptions. Title VII of the Civil Rights Act of 1964 is not applicable to private employers with fewer than 15 employees, nor to religious organizations.

⁴⁴ U.S. Department of Education, *Supplemental Educational Services Non-Regulatory Guidance: Draft Guidance*, Aug. 22, 2003, Section C-3, at [<http://www.ed.gov/policy/elsec/guid/suppsvcsguid.pdf>]. Under ESEA §1116(e)(5)(C), supplemental educational services providers are required to “[m]eet all applicable Federal, State, and local health, safety, and civil rights laws;” however, they are not considered recipients of federal financial assistance, so the applicability of such laws is limited. For further information on supplemental educational services, see CRS Report RL31329, *Supplemental Educational Services*.

District of Columbia Nondiscrimination Laws. The District of Columbia government has enacted local nondiscrimination laws that apply to educational institutions operating within the District of Columbia. In addition to protections provided under federal law, the requirements of the D.C. Code apparently also would apply to the operation of the proposed scholarship program. Under the D.C. Code, it is unlawful discrimination for educational institutions (including private elementary and secondary schools):

- (1) To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, political affiliation, source of income, or disability of any individual; or
- (2) To make or use a written or oral inquiry, or form of application for admission, that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, or national origin of an applicant for admission, except as permitted by regulations of the Office.
- (3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition —
 - (A) the use of any fund, service, facility, or benefit; or
 - (B) the granting of any endorsement, approval, or recognition,
 to any person or persons that are organized for, or engaged in, promoting,⁴⁵ encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.⁴⁵

Accountability

The proposed program contains accountability provisions requiring the Secretary and the Mayor to jointly select an independent entity to evaluate the program, and requiring the Secretary, scholarship organizations, and participating schools to report information about various aspects of the scholarship program. The independent entity conducting the evaluation would be required to measure the academic achievement of all participating students using the same academic assessments as are administered to students in DCPS. The evaluation would compare the academic achievement of students participating in the program, students who applied but were not awarded scholarships, and students who attend DPCS schools. Annually, the Secretary would be required to report to Congress on the progress of the program and to make information about the program publicly available. Grantees operating scholarship programs would be required to prepare annual activities and achievement reports about the programs they operate. Participating schools would be required to report to parents information about their child's academic achievement, as compared with other students at the school, as well as information on school safety.

⁴⁵ D.C. Code §2-1402.41. An exception also applies to schools operated by religious organizations allowing them to give preference to persons of the same religion, consistent with the principles for which they were established. (D.C. Code §2-1401.03).

While the proposal would require program evaluations and the reporting of various types of information, it would not apply explicit sanctions to grantees or schools as a consequence for poor performance. Rather, the program apparently would rely on market accountability or the implicit consequences of poor performance — grantees' potential loss of federal funding and schools's potential loss of student enrollment — as an accountability mechanism.

The accountability provisions contained in ESEA Title I-A generally would not apply to private schools participating in the scholarship program (e.g., academic standards and assessments applicable to all public schools in states receiving grants under Title I-A (§1111(b)); school improvement requirements (§1116); and qualifications for teachers and paraprofessionals (§1119)).