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The Indiana School Scholarship Act (House Bill 1003): Commentary and Analysis

By Joseph L. Bast¹

The Indiana School Scholarship Act (ISSA), signed into law by Gov. Mitch Daniels in May 2011, creates a school voucher program for low- and middle-income families in Indiana, doubles the preexisting cap on a scholarship tax-credit program, and creates a tax deduction for any family that pays out of pocket for educational expenses relating to private or home schools. The full text of the law appears in Appendix 1.

Since the tax credit and tax deduction parts of the bill are small in dollar terms, they are relatively inconsequential. What is notable is the voucher program, a statewide program for families with incomes up to 150 percent of the amount required for the individual to qualify for the federal free or reduced price lunch program. A family of four earning up to \$61,000 per year would be eligible to participate in the voucher program.

The ISSA is a breakthrough for school choice in a pivotal state.

Households with annual incomes of not more than the amount required for the student to qualify for the federal free or reduced priced lunch programs will qualify for vouchers equal to private school tuition or 90 percent of the state's current share of per-pupil public school spending, whichever is less. Students from households with incomes between that mark and 150 percent of that mark qualify for vouchers equal to tuition or 50 percent of state per-pupil spending, whichever is less. Vouchers for grades 1-8 are capped at \$4,500, but vouchers for high schools are not capped.

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The ISSA is a breakthrough for school choice in a pivotal state. Although participation is limited to 7,500 students in the first year and 15,000 in the second, there is no cap after the second year. The amount of the vouchers for high school students is likely to be greater than that of other voucher programs already operating elsewhere. Millions of children could benefit from the program, and schools will improve as they are subjected to competition.

The comments below identify “good provisions” in the act – language and policies that comport with design guidelines developed by experts on school choice legislation over the years² – followed by “bad provisions” in the act – language and policies that contradict those guidelines. Singling out good provisions is a way to direct policymakers in other states to good language and ideas as they work to design their own school choice programs.

The criticism implicit in the “bad provisions” is not aimed at the law’s architects or supporters, since every law is the product of compromise and negotiation. By seeing the shortcomings of the ISSA, policymakers can avoid making the same mistakes, and perhaps school reformers in Indiana can work to improve the law.

Good Provisions

The ISSA contains these hallmarks of a good bill:

GP1. Language memorializing the legislature’s intent to preserve the autonomy of private schools. Chapter 4, Section 1(a), states:

... it is the intent of the general assembly to honor the autonomy of nonpublic schools that choose to become eligible schools under this chapter. A nonpublic eligible school is not an agent of the state or federal government. ...

This language is important because it creates a presumption in favor of less rather than more regulation of participating schools, and it establishes that it is in the public interest to preserve the autonomy of private schools. Private schools need not prove that regulations harm them to have legal standing to oppose over-reaching by state regulators; they can point to this language and say the presumption is that their autonomy is good and ought to be protected. This can be used if litigation occurs in the future regarding efforts by the state to regulate participating schools.

² See Herbert J. Walberg and Joseph L. Bast, *Education and Capitalism*, Stanford, CA: Hoover Institution Press, 2003, Chapter 12 (pp. 289-314); John D. Merrifield, "The Twelve Policy Approaches to Increased School Choice," *Journal of School Choice*, Vol. 2 No. 1 (2008), pp. 4-19; Joseph Bast and Robert Wittmann, "Educational Choice Design Guidelines," *Heartland Policy Study* #39, May 1991, <http://www.schoolreform-news.org/article/8951>.

GP2. Language prohibiting regulation of the educational programs of participating schools. Chapter 4, Section 1(a)(1) states:

the department or any other state agency may not in any way regulate the educational program of a nonpublic eligible school that accepts a choice scholarship under this chapter, including the regulation of curriculum content, religious instruction or activities, classroom teaching, teacher and staff hiring requirements, and other activities carried out by the eligible school;

This is an extremely strong statement of legislative intent that the state “may not in any way regulate the educational program” of participating schools, and it specifically extends this prohibition to the “hiring requirements” of teachers and staff. This means the state cannot require participating schools to hire only state-certified teachers or require that their teachers be represented by a union or given collective bargaining rights.

GP3. Language stating that the act “does not expand the regulatory authority of the state.” Chapter 4, Section 1(a)(2) states:

the creation of the choice scholarship program does not expand the regulatory authority of the state, the state’s officers, or a school corporation to impose additional regulation of nonpublic schools beyond those necessary to enforce the requirements of the school scholarship program in place on July 1, 2011. ...

This language shuts the door on the usual claim that the creation of a program automatically bestows on government agencies whatever powers they decide are necessary to implement it. By “freezing” regulations to what they were at a date certain (July 1, 2011), this language further bolts the door shut.

GP4. Language forbidding discrimination on the basis of “race, color, or national origin” but not religion or other factors that may be important to a school’s culture. Chapter 4, Section 3(a) reads:

An eligible school may not discriminate on the basis of race, color, or national origin.

This language is necessary if the program is to comply with federal and state civil rights laws. Note that it does not say a school cannot discriminate on the basis of religious convictions, whether of the parent or the student. This matter is settled law. So long as a voucher program empowers parents to choose public or private schools, and does not tilt incentives toward religious schools or toward schools teaching or practicing a particular faith, a religious element in admissions and classroom teaching is acceptable.

GP5. A fair and non-bureaucratic form of accountability is created. Chapter 4, Section 9(a) provides for suspension of voucher payments for new students if the school fails to rise above “either of the lowest two categories or designations under IC 20-31-8-3. ...”

“How will participating schools be held accountable” is the most common question asked about voucher programs. While voucher advocates believe there is ample evidence that schools that must compete for students and funding are held accountable to the customers, and that schools that do a poor job are driven out of competitive marketplaces, many people know too little about how markets work or the literature on school choice to share this belief. Creating a mechanism for denying scholarships to schools reporting poor performance is an effective way to address those concerns.

The procedure described in the ISSA is admirably simple and fair. Importantly, being able to stay in the program is based on achievement relative to other schools, including public schools, which should prevent raising the bar only for choice schools. This is not a perfect method, since it requires that all participating schools administer state achievement tests, a fault described at greater length below.

GP6. The amount of the voucher is not to be treated as income for the purposes of other government programs. The language appears in Chapter 4, Section 11:

The amount of a choice scholarship provided to an eligible individual shall not be treated as income or a resource for the purposes of qualifying for any other federal or state grant or program administered by the state or a political subdivision.

Similar language should appear in all voucher programs, since counting the voucher as income could lead families to lose eligibility for housing vouchers, food stamps, free lunch programs, and other means-tested benefits. However, one shortcoming of the ISSA language is that it does NOT say the grants won't be counted as income for tax purposes.

GP7. Parents are allowed to “top off” or add to the amount of the voucher if tuition exceeds the value of the voucher.

Unlike voucher programs in Milwaukee and Cleveland, ISSA does not require participating schools to accept the vouchers as full payment for tuition. Some voucher advocates support bans on supplemental tuition payments on the grounds that allowing such payments could make it more difficult for children from poor families to attend the most popular schools. It would be naive to say this would never happen, but the consequences of banning supplemental tuition payments would be much more harmful to poor children.

Allowing parents to use their own dollars to pay some tuition motivates them to pay closer attention to the quality of education their children receive. As Milton Friedman often said, people are much more likely to be wasteful with “someone else’s money” than with their own. It

also makes possible participation by schools that need to spend more than the amount of the voucher ... which even under the Indiana plan is much less than average per-pupil public school spending. Allowing supplemental tuition will attract more education entrepreneurs and new investment to the state.

Poor families stand to benefit more from a large and thriving private school marketplace with uncapped tuition, than from a smaller and under-funded marketplace with low caps on tuition. Higher-spending schools are often innovators and trend setters; what they offer this year, less-expensive schools may be offering next year.

GP8. ISSA allows schools to retain control over admissions requirements, and requires lotteries only if the number of applicants exceeds the number of vacancies. The language appears in Chapter 4, Section 3(c):

If the number of applicants for enrollment in an eligible school under a choice scholarship exceeds the number of choice scholarships available to the eligible school, the eligible school must draw at random in a public meeting the applications of applicants who are entitled to a choice scholarship from among the applicants who meet the requirements for admission to the eligible school.

Private schools rightly worry about losing control over enrollment decisions, which could force them to enroll students whose parents do not agree to the terms and conditions set for other parents, or who don't share the mission of the school. The language used in ISSA is good in that it makes clear that schools can set their own admissions requirements, and that those standards apply even to students administered by lottery.

Lottery requirements are generally included in voucher programs to address fears of favoritism and unlawful discrimination. The former seems unavoidable and probably a good thing, as favoritism reflects a deliberate attempt to form a community of parents, educators, and students that can help all three thrive. The latter, unlawful discrimination, is already prohibited by law and does not require a lottery to prevent.

These, then, are the “good provisions” of the ISSA. Legislators in other states would do well to emulate them.

Bad Provisions

The ISSA isn't perfect legislation ... no law is. Here are some of the bad provisions:

BP1. ISSA limits participation to accredited schools. ISSA adds to the Indiana code a new Section 4.7, which in its entirety reads:

“Eligible school” refers to a public or nonpublic elementary school or high school that:

- (1) is located in Indiana;
- (2) requires an eligible individual to pay tuition or transfer tuition to attend;
- (3) voluntarily agrees to enroll an eligible individual;
- (4) is accredited by either the state board or a national or regional accreditation agency that is recognized by the state board;
- (5) administers the Indiana statewide testing for educational progress (ISTEP) program under IC 20-32-5;
- (6) is not a charter school or the school corporation in which an eligible individual has legal settlement under IC 20-26-11; and
- (7) submits to the department data required for a category designation under IC 20-31-8-3.

Much of this language is good and a model for other states, and the inclusion of national or regional accreditation agencies in the language is especially good, since Indiana over-regulates its accredited private schools. It would be better, however, to include schools that have “applied for accreditation” or more inclusive language that would allow an education savings account-style assembly of tutoring, testing, and online learning providers.³

Milton Friedman, in an interview published in 2003, made the case for the least-restrictive rules governing how vouchers could be spent:

I would expect an open market where there would be a wide variety of schools. There would be for-profit schools, charter schools, parochial schools, and government schools. Which survived would depend on which ones satisfied their customers. ...

Moreover, there’s no reason to expect that the future market will have the shape or form that our present market has. How do we know how education will develop? Why is it sensible for a child to get all his or her schooling in one brick building? Why not add partial vouchers? Why not let them spend part of a voucher for math in one place and English or science somewhere else? Why should schooling have to be in one building? Why can’t a student take some lessons at home, especially now, with the availability of the Internet? Right now, as a matter of fact, one of the biggest growth areas has been home schooling. There are more children being home schooled than there are in all of the

³See Joseph L. Bast, “Time to Consider Education Savings Accounts,” *School Reform News*, September 2005, <http://www.schoolreform-news.org/article/17659>

voucher programs combined.⁴

Including schools that have applied for accreditation could create complications and red tape as to what to do when accreditation is denied. School reformers in Indiana are working on ways to speed up the state's accreditation process and lighten the regulatory load on such schools.

BP2. ISSA requires participating schools to administer the state's achievement tests, rather than giving participating schools their choice of norm-referenced tests.

In the language cited in BP1, the ISSA requires schools to administer the state's standardized achievement tests, called the Indiana Statewide Testing for Educational Progress (ISTEP) program. This requirement apparently was made to ensure that participating schools could be ranked, Florida-style, by their students' achievement as part of the accountability procedure described in GP5. It also appeals to those who call for a "level playing field" between public and private schools and for "transparency" of results to parents. However, it is a bad requirement.

Allowing the state to dictate what tests are administered to students, particularly when those tests are "high stakes" tests as in this case, gives the state greater influence over curriculum than almost any other language put in the act would achieve. Private schools are rightly fearful that having to administer politically correct exams, and then have the results advertised to parents and used to determine continued eligibility for funding, would force them to adopt the same curriculum as public schools. Control over curriculum is a vitally important issue for many private schools and is part of the "autonomy of nonpublic schools" that should be protected.

Maybe it's not as bad as all that – after all, most private schools in most states already administer state tests and don't seem to mind, and educators ought to be able to explain to parents that poor performance on state tests may not be as meaningful as it seems, if indeed that's the case. But the concern nevertheless resonates with conservative and libertarian opponents of vouchers.

A solution would be to require schools to administer and release the results of *norm-referenced tests of their choice*. "Norm-referenced" means the test allows us to compare and grade or rank one test-taker against his or her peers. There are several accepted national norm-referenced tests available that would produce results at least as meaningful as the state's test.

BP3. The act uses a means test to determine eligibility. The income limits and their effect on the size of the voucher appear in Chapter 4, Section 4:

The maximum amount to which an eligible individual is entitled under this chapter for a school year is equal to the least of the following:

⁴ Pearl Rock Kane, "Choice & Freedom, Milton Friedman on Education," EducationNext, Winter 2003, <http://educationnext.org/choicefreedom/>.

(1) The sum of the tuition, transfer tuition, and fees required for enrollment or attendance of the eligible student at the eligible school selected by the eligible individual for a school year that the eligible individual (or the parent of the eligible individual) would otherwise be obligated to pay to the eligible school.

(2) An amount equal to: (A) ninety percent (90%) of the state tuition support amount determined under section 5 of this chapter if the eligible individual is a member of a household with an annual income of not more than the amount required for the individual to qualify for the federal free or reduced price lunch program; and (B) fifty percent (50%) of the state tuition support amount determined under section 5 of this chapter if the eligible individual is a member of a household with an annual income of not more than one hundred fifty percent (150%) of the amount required for the individual to qualify for the federal free or reduced price lunch program.

(3) If the eligible individual is enrolled in grade 1 through 8, the maximum choice scholarship that the eligible individual may receive for a school year is four thousand five hundred dollars (\$4,500).

The amount of the voucher is variable depending on family income, a form of means-testing that will require invasion of privacy and create disincentives for personal improvement. This provision apparently was added to help reduce the cost of including students already enrolled in private schools, and to address the common objection that well-off families with children already attending private schools should not receive the subsidy. These are important issues that legislative drafters have to address, but the trade-off is steep.

Milton Friedman warned that programs for poor people tend to be poor programs, because the poor lack the political clout and resources to lobby to defend programs from rent-seekers and bureaucrats who want to use the programs or dismantle them to advance their special interests.⁵ A program that is open to everyone, regardless of income, will be a better and stronger program because it will have more, and more influential, allies.

Income-testing requires parents to share their tax returns and other personal information with schools and government agencies. It also creates disincentives for parents to accept new jobs or report additional income if they believe doing so will disqualify them from future tuition scholarships. The loss of a scholarship as income rises is similar to a high marginal tax on earnings. Extensive research shows that high marginal taxes lead to less effort and fewer hours of work.

One solution to this problem is being proposed and debated now in Wisconsin. It would say that once a child is in a voucher program, he or she can stay in, regardless of changes in family income.

⁵ George A. Clowes, "The Only Solution Is Competition: An Exclusive Interview with Milton Friedman," *School Reform News*, December 1998, <http://www.schoolreform-news.org/article/12013>

BP4. The ISSA tries to micro-manage the teaching of civics and American history.

Concern about the possible misuse of public funds to support schools that teach violence or hatred of America is legitimate, but it is addressed simply and correctly for *all* schools in Chapter 4, Section 1(g):

An eligible school, charter school, or public school shall not teach the violent overthrow of the government of the United States.

The ISSA goes far beyond this, presenting some two-and-a-half pages of detailed instructions on what participating schools must teach, from “Being honest and truthful” to “a study of the Holocaust and the role religious extremism played in the events of September 11, 2001.” It is difficult to reconcile these mandates with the earlier language prohibiting regulation of curriculum content.

These mandates apparently were added by amendment shortly before the law was passed and intended to further address concerns among some legislators about the types of schools that might apply for taxpayer support. Much of what appears here apparently appears also in the state’s accreditation requirements and is similar to mandates imposed on public schools. Some of the mandates can be complied with simply by having a set of CDs with the required documents available to students.

It is bad practice to burden school choice legislation with prescriptions of what ought to be taught in participating schools. Even if added to a bill with the best of intentions, the ultimate effect is to discourage participation by schools and education entrepreneurs and create opportunities for unproductive meddling by regulators and lawyers. This opens a door for interference with schools that earlier language sought to nail shut. Policymakers are advised to avoid such prescriptive language if possible.

BP5. The cap on the value of vouchers for K-8 is too low and not indexed for inflation or to keep pace with state spending per student.

The language capping vouchers for grades K-8 at \$4,500 was cited in BP3. Once again this appears to have been a compromise aimed at keeping the proposal cost-neutral. Many private K-8 schools charge very modest tuition since they are supported by churches and voluntary contributions. While this creates the appearance that a modest voucher would pay tuition at “most current private schools,” this is not true.

Small religious schools operate more as clubs than small businesses. They are visionary organizations that put at the top of their agenda goals other than profit-making or return on investment, although they understand that if they fail to raise funds sufficient to offset costs, they cannot continue to exist. This manner of organization makes it unlikely that small religious schools will grow fast enough to absorb new students under a voucher program. They simply do

not want to grow so fast, and they fear such growth would compromise their ability to achieve other goals.

Secular private schools typically charge much more for tuition than religious schools, and these are the schools we would expect to expand or start up to handle the new demand for private schooling unleashed by a voucher plan. Nationally, secular private schools charge an average of \$15,945 a year in tuition, more than three times the value of the voucher provided by the Indiana act. The cap of only \$4,500 for vouchers for K-8 schools, then, will pose a barrier to entry for some private schools. This “bad provision” is partially offset by the facts that there is no similar cap on the value of high school vouchers and parents are allowed to supplement the voucher with their own tuition payments.

Conclusion

In summary, the Indiana School Scholarship Act has at least eight provisions that can serve as models for legislators considering drafting legislation for school choice programs in their states. Those provisions are necessary and well-written in this law. The act also contains five provisions that are not so good, that reflect compromises with or concessions to persons or groups that oppose school choice and so wish to undermine an effective school choice program.

On balance, the strengths of the new law outweigh its flaws. If the program is implemented, it will benefit millions of children and prompt many other states to follow Indiana’s lead. It is a genuine breakthrough for school reformers everywhere and ought to be celebrated as such.

The devil, though, is always in the details. It will require constant vigilance to ensure that the law is properly implemented and that future revisions and reforms strengthen rather than weaken it.

Appendix

The Indiana School Scholarship Act (House Bill 1003)

Source: <http://www.in.gov/legislative/bills/2011/HE/HE1003.1.html>

[This document has not been reformatted. It is presented here as it appears online. Only the pagination has been changed.]

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1003

AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

SOURCE: IC 6-3-2-22; (11)HE1003.1.1. -->

SECTION 1. IC 6-3-2-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: **Sec. 22. (a) The following definitions apply throughout this section:**

(1) “Dependent child” means an individual who:

(A) is eligible to receive a free elementary or high school education in an Indiana school corporation;
(B) qualifies as a dependent (as defined in Section 152 of the Internal Revenue Code) of the taxpayer; and

(C) is the natural or adopted child or the taxpayer or, if custody of the child has been awarded in a court proceeding to someone other than the mother or father, the court appointed guardian or custodian of the child.

If the parents of a child are divorced, the term refers to the parent who is eligible to take

the exemption for the child under Section 151 of the Internal Revenue Code.

(2) “Education expenditure” refers to any expenditures made in connection with enrollment, attendance, or participation of the taxpayer’s dependent child in a private elementary or high school education program. The term includes tuition, fees, computer software, textbooks, workbooks, curricula, school

supplies (other than personal computers), and other written materials used primarily for academic instruction or for academic tutoring, or both.

(3) “Private elementary or high school education program” means:

(A) home schooling; or

(B) attendance at a private school;

in Indiana that satisfies a child’s obligation under IC 20-33-2 for compulsory attendance at a school. The term does not include the delivery of instructional service in a home setting to a dependent child who is enrolled in a school corporation or a charter school.

(b) This section applies to taxable years beginning after December 31, 2010.

(c) A taxpayer who makes an unreimbursed education expenditure during the taxpayer’s taxable year is entitled to a deduction against the taxpayer’s adjusted gross income in the taxable year.

(d) The amount of the deduction is:

(1) one thousand dollars (\$1,000); multiplied by

(2) the number of the taxpayer’s dependent children for whom the taxpayer made education expenditures in the taxable year.

A husband and wife are entitled to only one (1) deduction under this section.

(e) To receive the deduction provided by this section, a taxpayer must claim the deduction on the taxpayer’s annual state tax return or returns in the manner prescribed by the department.

SOURCE: IC 6-3.1-30.5-3; (11)HE1003.1.2. --> SECTION 2. IC 6-3.1-30.5-3, AS ADDED BY P.L.182-2009(ss), SECTION 205, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. As used in this chapter, “scholarship granting organization” refers to an organization that:

(1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) conducts a school scholarship program **without limiting the availability of scholarships to students of only one (1) participating school (as defined in IC 20-51-1-6).**

SOURCE: IC 6-3.1-30.5-12; (11)HE1003.1.3. --> SECTION 3. IC 6-3.1-30.5-12, AS ADDED BY P.L.182-2009(ss), SECTION 205, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. A contribution **to a scholarship granting organization** shall be treated as having been made for use in a school scholarship program if:

(1) the contribution is made directly to a scholarship granting

organization; and

(2) either:

(A) not later than the date of the contribution, the taxpayer designates in writing to the scholarship granting organization that the contribution is to be used only for a school scholarship

program; or

(B) the scholarship granting organization provides the taxpayer with written confirmation that the contribution will be dedicated solely for use in a school scholarship program.

SOURCE: IC 6-3.1-30.5-13; (11)HE1003.1.4. --> SECTION 4. IC 6-3.1-30.5-13, AS ADDED BY P.L.182-2009(ss), SECTION 205, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. The total amount of tax credits awarded under this chapter may not exceed ~~two million five hundred thousand dollars (\$2,500,000)~~ **five million dollars (\$5,000,000)** in ~~any~~ a state fiscal year.

SOURCE: IC 20-51-1-4.5; (11)HE1003.1.5. --> SECTION 5. IC 20-51-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4.5. **“Eligible individual” refers to an individual who:**

- (1) has legal settlement in Indiana;**
- (2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in IC 20-33-2-7;**
- (3) either has been or is currently enrolled in an accredited school;**
- (4) is a member of a household with an annual income of not more than one hundred fifty percent (150%) of the amount required for the individual to qualify for the federal free or reduced price lunch program; and**
- (5) either:**
 - (A) was enrolled in grade 1 through 12 in a school corporation that did not charge the individual transfer tuition for at least two (2) semesters immediately preceding the first semester for which the individual receives a choice scholarship under IC 20-51-4; or**
 - (B) received a scholarship from a scholarship granting organization under IC 20-51-3 or a choice scholarship under IC 20-51-4 in a preceding school year, including a school year that does not immediately precede a school year in which the individual receives a scholarship from a scholarship granting organization under IC 20-51-3 or a choice scholarship under IC 20-51-4.**

SOURCE: IC 20-51-1-4.7; (11)HE1003.1.6. --> SECTION 6. IC 20-51-1-4.7 IS ADDED TO THE INDIANA CODE

AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4.7. **“Eligible school” refers to a public or nonpublic elementary school or high school that:**

- (1) is located in Indiana;**
- (2) requires an eligible individual to pay tuition or transfer tuition to attend;**
- (3) voluntarily agrees to enroll an eligible individual;**
- (4) is accredited by either the state board or a national or regional accreditation agency that is recognized by the state board;**
- (5) administers the Indiana statewide testing for educational progress (ISTEP) program under IC 20-32-5;**
- (6) is not a charter school or the school corporation in which an eligible individual has legal settlement under IC 20-26-11; and**
- (7) submits to the department data required for a category designation under IC 20-31-8-3.**

SOURCE: IC 20-51-1-7; (11)HE1003.1.7. --> SECTION 7. IC 20-51-1-7, AS ADDED BY

P.L.182-2009(ss), SECTION 364, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. "Scholarship granting organization" refers to an organization that:

(1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) is organized at least in part to grant school scholarships **without limiting the availability of scholarships to students of only one (1) participating school.**

SOURCE: IC 20-51-3-1; (11)HE1003.1.8. --> SECTION 8. IC 20-51-3-1, AS ADDED BY P.L.182-2009(ss), SECTION 364, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. ~~(a)~~ A program qualifies for certification as a school scholarship program if:

(1) the program:

(A) is administered by a scholarship granting organization; and

(B) has the primary purpose of providing school scholarships to eligible students; and

(2) the scholarship granting organization administering the program:

(A) applies to the department on the form and in the manner prescribed by the department; and

(B) enters into an agreement with the department to comply with this article.

~~(b) A program may not be certified as a school scholarship program~~

~~if the program:~~

~~(1) limits a recipient of a school scholarship to attending specific participating schools; or~~

~~(2) limits the ability of a recipient of a school scholarship to~~

~~change attendance from one (1) participating school to another participating school.~~

SOURCE: IC 20-51-3-5; (11)HE1003.1.9. --> SECTION 9. IC 20-51-3-5, AS ADDED BY P.L.182-2009(ss), SECTION 364, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) An agreement entered into under section 1 of this chapter must

prohibit a scholarship granting organization from distributing school scholarships for use by an eligible student to:

(1) enroll in a school that has:

(A) paid staff or board members; or

(B) relatives of paid staff or board members;

in common with the scholarship granting support organization;

(2) enroll in a school that the scholarship granting organization knows does not qualify as a participating school; or

(3) pay for the cost of education for a public school where the eligible student is entitled to enroll without the payment of tuition.

(b) An agreement entered into under section 1 of this chapter must prohibit a scholarship granting organization from limiting the availability of scholarships to students of only one (1) participating school. An agreement entered into under section 1 of this chapter before July 1, 2011, must be amended to include the requirement specified in this subsection.

SOURCE: IC 20-51-4; (11)HE1003.1.10. --> SECTION 10. IC 20-51-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 4. Choice Scholarship

Sec. 1. (a) Except as provided under subsections (b) through (h), it is the intent of the

general assembly to honor the autonomy of nonpublic schools that choose to become eligible schools under this chapter. A nonpublic eligible school is 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 nonpublic eligible school that accepts a choice scholarship under this chapter, including the regulation of curriculum content, religious instruction or activities, classroom teaching, teacher and staff hiring requirements, and other activities carried out by the eligible school;

(2) the creation of the choice scholarship program does not expand the regulatory authority of the state, the state's officers, or a school corporation to impose additional regulation of nonpublic schools beyond those necessary to enforce the requirements of the choice scholarship program in place on July 1, 2011; and

(3) a nonpublic eligible school shall be given the freedom to provide for the educational needs of students without governmental control.

(b) This section applies to the following writings, documents, and records:

(1) The Constitution of the United States.

(2) The national motto.

(3) The national anthem.

(4) The Pledge of Allegiance.

(5) The Constitution of the State of Indiana.

(6) The Declaration of Independence.

(7) The Mayflower Compact.

(8) The Federalist Papers.

(9) "Common Sense" by Thomas Paine.

(10) The writings, speeches, documents, and proclamations of the founding fathers and presidents of the United States.

(11) United States Supreme Court decisions.

(12) Executive orders of the presidents of the United States.

(13) Frederick Douglas' Speech at Rochester, New York, on July 5, 1852, entitled "What to a Slave is the Fourth of July?".

(14) Appeal by David Walker.

(15) Chief Seattle's letter to the United States government in 1852 in response to the United States government's inquiry regarding the purchase of tribal lands.

(c) An eligible school may allow a principal or teacher in the eligible school to read or post in the school building or classroom or at a school event any excerpt or part of a writing, document, or record listed in subsection (b).

(d) An eligible school may not permit the content based censorship of American history or heritage based on religious references in a writing, document, or record listed in subsection (b).

(e) A library, a media center, or an equivalent facility that an eligible school maintains for student use must contain in the facility's permanent collection at least one (1) copy of each writing or document listed in subsection (b)(1) through (b)(9).

(f) An eligible school shall do the following:

(1) Allow a student to include a reference to a writing, document, or record listed in subsection (b) in a report or other work product.

(2) May not punish the student in any way, including a reduction in grade, for using the reference.

(3) Display the United States flag in each classroom.

(4) Provide a daily opportunity for students to voluntarily recite the Pledge of Allegiance in each classroom or on school grounds. A student is exempt from participation in the Pledge of Allegiance and may not be required to participate in the Pledge of Allegiance if:

(A) the student chooses to not participate; or

(B) the student's parent chooses to have the student not participate.

(5) Provide instruction on the constitutions of:

(A) Indiana; and

(B) the United States.

(6) For an eligible school that enrolls students in grades 6 through 12, provide within the two (2) weeks preceding a general election five (5) full recitation periods of class discussion concerning:

(A) the system of government in Indiana and in the United States;

(B) methods of voting;

(C) party structures;

(D) election laws; and

(E) the responsibilities of citizen participation in government and in elections.

(7) Require that each teacher employed by the eligible school present instruction with special emphasis on:

(A) honesty;

(B) morality;

(C) courtesy;

(D) obedience to law;

(E) respect for the national flag and the Constitution of the State of Indiana and the Constitution of the United States;

(F) respect for parents and the home;

(G) the dignity and necessity of honest labor; and

(H) other lessons of a steady influence that tend to promote and develop an upright and desirable citizenry.

(8) Provide good citizenship instruction that stresses the nature and importance of the following:

(A) Being honest and truthful.

(B) Respecting authority.

(C) Respecting the property of others.

(D) Always doing the student's personal best.

(E) Not stealing.

(F) Possessing the skills (including methods of conflict resolution) necessary to live peaceably in society and not resorting to violence to settle disputes.

(G) Taking personal responsibility for obligations to family and community.

- (H) Taking personal responsibility for earning a livelihood.**
- (I) Treating others the way the student would want to be treated.**
- (J) Respecting the national flag, the Constitution of the United States, and the Constitution of the State of Indiana.**
- (K) Respecting the student's parents and home.**
- (L) Respecting the student's self.**
- (M) Respecting the rights of others to have their own views and religious beliefs.**
- (9) Provide instruction in the following studies:**
 - (A) Language arts, including:**
 - (i) English;**
 - (ii) grammar;**
 - (iii) composition;**
 - (iv) speech; and**
 - (v) second languages.**
 - (B) Mathematics.**
 - (C) Social studies and citizenship, including the:**
 - (i) constitutions;**
 - (ii) governmental systems; and**
 - (iii) histories;**
- of Indiana and the United States, including a study of the Holocaust and the role religious extremism played in the events of September 11, 2001, in each high school United States history course.**
- (D) Sciences.**
- (E) Fine arts, including music and art.**
- (F) Health education, physical fitness, safety, and the effects of alcohol, tobacco, drugs, and other substances on the human body.**
- (g) An eligible school, charter school, or public school shall not**

teach the violent overthrow of the government of the United States.

(h) Nothing in this section shall be construed to limit the requirements of IC 20-30-5.

Sec. 2. (a) Subject to subsection (b), an eligible individual is entitled to a choice scholarship under this chapter for each school year beginning after June 30, 2011, that the eligible student enrolls in an eligible school.

(b) The department may not award more than:

(1) seven thousand five hundred (7,500) choice scholarships for the school year beginning July 1, 2011, and ending June 30, 2012; and

(2) fifteen thousand (15,000) choice scholarships for the school year beginning July 1, 2012, and ending June 30, 2013.

The department shall establish the standards used to allocate choice scholarships among eligible students.

Sec. 3. (a) An eligible school may not discriminate on the basis of race, color, or national origin.

(b) An eligible school shall abide by the school's written admission policy fairly and without discrimination with regard to students who:

(1) apply for; or

(2) are awarded;

scholarships under this chapter.

(c) If the number of applicants for enrollment in an eligible school under a choice scholarship exceeds the number of choice scholarships available to the eligible school, the eligible school must draw at random in a public meeting the applications of applicants who are entitled to a choice scholarship from among the applicants who meet the requirements for admission to the eligible school.

(d) The department shall, at a minimum, annually visit each eligible school and charter school to verify that the eligible school or charter school complies with the provisions of IC 20-51-4, the Constitutions of the state of Indiana and the United States.

(e) Each eligible school, public school, and charter school shall grant the department full access to its premises, including access to any points of ingress to and egress from the school's grounds, buildings, and property for observing classroom instruction and reviewing any instructional materials and curriculum.

Sec. 4. The maximum amount to which an eligible individual is entitled under this chapter for a school year is equal to the least of the following:

(1) The sum of the tuition, transfer tuition, and fees required

for enrollment or attendance of the eligible student at the eligible school selected by the eligible individual for a school year that the eligible individual (or the parent of the eligible individual) would otherwise be obligated to pay to the eligible school.

(2) An amount equal to:

(A) ninety percent (90%) of the state tuition support amount determined under section 5 of this chapter if the eligible individual is a member of a household with an annual income of not more than the amount required for the individual to qualify for the federal free or reduced price lunch program; and

(B) fifty percent (50%) of the state tuition support amount determined under section 5 of this chapter if the eligible individual is a member of a household with an annual income of not more than one hundred fifty percent (150%) of the amount required for the individual to qualify for the federal free or reduced price lunch program.

(3) If the eligible individual is enrolled in grade 1 through 8, the maximum choice scholarship that the eligible individual may receive for a school year is four thousand five hundred dollars (\$4,500).

Sec. 5. The state tuition support amount to be used in section 3(2) of this chapter for an eligible individual is the amount determined under the last STEP of the following formula: STEP ONE: Determine the school corporation in which the eligible individual has legal settlement.

STEP TWO: Determine the amount of state tuition support that the school corporation identified under STEP ONE is eligible to receive under IC 20-43 for the calendar year in which the current school year begins, excluding amounts provided for special education grants under IC 20-43-7 and career and technical education grants under IC 20-43-8.

STEP THREE: Determine the result of:

(A) the STEP TWO amount; divided by

(B) the current ADM (as defined in IC 20-43-1-10) for the school corporation identified under STEP ONE for the calendar year used in STEP TWO.

Sec. 6. (a) If an eligible individual enrolls in an eligible school for less than an entire school year, the choice scholarship provided under this chapter for that school year shall be

reduced on a prorated basis to reflect the shorter school term.

(b) An eligible individual is entitled to only one (1) choice scholarship for each school year. If the eligible individual leaves the eligible school for which the eligible individual was awarded a choice scholarship and enrolls in another eligible school, the eligible individual is responsible for the payment of any tuition required for the remainder of that school year.

Sec. 7. (a) The department shall administer this chapter.

(b) The department shall adopt rules under IC 4-22-2 to implement this chapter.

(c) The department may adopt emergency rules under IC 4-22-2-37.1 to implement this chapter.

Sec. 8. The department may prescribe forms and methods for demonstrating eligibility for a choice scholarship under this chapter.

Sec. 9. (a) The department shall enforce the following consequences for an eligible school that is nonpublic:

(1) If the school is placed in either of the lowest two (2) categories or designations under IC 20-31-8-3 for two (2) consecutive years, the department shall suspend choice scholarship payments for one (1) year for new students who would otherwise use a choice scholarship to attend the school.

(2) If the school is placed in either of the lowest two (2) categories or designations under IC 20-31-8-3 for three (3) consecutive years, the department shall suspend choice scholarship payments for new students who would otherwise use a choice scholarship to attend the school until the school is placed in the middle category or higher category or designation, for two (2) consecutive years.

(3) If the school is placed in the lowest category or designation under IC 20-31-8-3 for three (3) consecutive years, the department shall suspend choice scholarship payments for new students who would otherwise use a choice scholarship to attend the school until the school is placed in the middle category or higher category or designation, for three (3) consecutive years.

(4) Students who:

(A) are currently enrolled at a school described in subdivision (1), (2), or (3); and

(B) qualify for a choice scholarship for the upcoming school year;
may continue to receive a choice scholarship at the school.

(b) This section may not be construed to prevent a student

enrolled in a school subject to this section from applying for a choice scholarship in the future at another participating school.

Sec. 10. The department may distribute any part of a choice scholarship to the eligible individual (or the parent of the eligible individual) for the purpose of paying the educational costs described in section 4(1) of this chapter. For the distribution to be valid, the distribution must be endorsed by both the eligible individual (or the parent of the eligible individual) and the eligible school providing educational services to the eligible individual.

Sec. 11. The amount of a choice scholarship provided to an eligible individual shall not be treated as income or a resource for the purposes of qualifying for any other federal or state grant or program administered by the state or a political subdivision.

SOURCE: ; (11)HE1003.1.11. --> SECTION 11. **An emergency is declared for this act.**

HEA 1003 _ Concur

Figure

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About the Author

Joseph Bast is president of The Heartland Institute, a national nonprofit research organization with offices in Chicago and Washington DC. He is coauthor or editor of 14 books, including *We Can Rescue Our Children* (1988), *Rebuilding America's Schools* (1990), *Education & Capitalism* (2003), and *Let's Put Parents Back in Charge* (2005). His writing has appeared in *Phi Delta Kappan*, *Economics of Education Review*, *The Wall Street Journal*, *Investor's Business Daily*, *Cato Journal*, *USA Today*, and many of the country's largest-circulation newspapers. He is publisher of *School Reform News*.

Bast has been recognized many times for his contributions to public policy research and debate, including being named one of "The 88 to Watch in 1988" by the *Chicago Tribune*, a Kentucky Colonel by Gov. Paul E. Patton in 1996, a member of the Philadelphia Society in 2002, and member of the board of directors of the American Conservative Union in 2007. He received the 1994 Roe Award from the State Policy Network and the 1996 Sir Antony Fisher International Memorial Award (with coauthors).

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