

Q & A on S-1607/A2897

1. *Q. Is this a voucher bill?*

A. The legislation involves corporate tax credits and not vouchers. With corporate tax credits, no payments are made from the government, at any level, either to nonpublic schools or directly to parents. Corporations decide how to use their tax liability, and may choose to fund scholarships for students to attend either nonpublic or public schools.

Because businesses bear a huge burden of having to train unprepared workers who are the products of failed educational experiences, it is only logical that these businesses should have the opportunity to direct their tax liabilities to a source which they feel will improve the educational quality of graduating students. If they are satisfied with caliber of their employees, then they can continue to pay their tax liabilities without participating in this program. If, however, they feel the need to provide better educational opportunities for low-income children in the targeted districts, they can contribute to the appropriate scholarship organization.

2. *Q. Isn't the bill an attempt to destroy public education?*

A. Nothing could be farther from the truth. The money does not affect public school funding. It in no way takes money from the pilot public school districts. The program is funded by a completely separate revenue stream/tax credits given to contributing businesses. In effect, the scholarships are fueled by the State's treasury, not removed from the pilot public school districts. This bill does address, however, the disparate educational situations many children in these districts experience. Increased educational options and innovative programs greatly increase the community's ability to educate its children.

Many education experts argue that class size is a determining factor in the success in a child's success in his/her educational setting. This bill would permit class sizes to be reduced in public education while eliminating the need to build new schools at greater taxpayer expense.

3. *Q. Are such programs constitutional?*

A. Opponents claim that if dollars for religiously affiliated schools are included in such scholarship programs, the program violates the First Amendment. Rather than a subsidy of religious schools as part of this program, the decision about the choice of school is placed in the hands of the parents. If parents believe that the school provides a worthy educational option for their child, then they will choose that particular school. Additionally, the State already provides resources to nonpublic school students and parents. Merely to include such schools in the range of educational options made available to a neutrally defined category of beneficiaries (economically disadvantaged families) is hardly equivalent to a subsidy. No funds would be transmitted to a private/religious school except by the independent decisions of parents.

With respect to the constitutionality of various school choice programs, any program which assists nonpublic school students has traditionally been required to meet the so-called three-part *Lemon* test (taken from the *Lemon v Kurtzman* Supreme Court decision of 1971). On June 29, 1983, the Supreme Court upheld the Minnesota State Education Tax Deduction in *Mueller v Allen*, ruling that the program did indeed meet the three-part constitutional test established by *Lemon*. In *Zelman v Simmons-Harris* (June 27, 2002), the Supreme Court concluded that the use of public money to underwrite tuition in private and religious schools does not violate the Establishment Clause of the US Constitution as long as parents make the decision regarding where the scholarship is used. This decision occurred as a result of a challenge to the Cleveland Scholarship and Tutoring Program. The court concluded that the Cleveland program is neutral with regard to religion, even though the majority of program recipients chose religious schools.

Although another challenge to the Arizona Corporate Tax Credit Program has been filed in the Ninth US Circuit Court of Appeals, precedent falls on the side of school choice. The US Supreme Court and the Arizona Supreme Court dismissed a previous challenge to the program in *Kotterman v Killian*. Pennsylvania's Corporate Tax Scholarship Program, upon which S1607 is modeled, has never been challenged in the courts.

4. Q. *Who is eligible to receive these scholarships?*

A. The scholarships are only available to low-income students residing in the pilot districts. Because this is a pilot program, it only affects students living in the following districts: Camden, Trenton, Lakewood, Orange, Jersey City, Elizabeth, Paterson and Newark. In addition to residing in the district, students must come from low-income families defined as having a family income of not more than 2.5 times the federal poverty level, based on family size. For example, currently for a family of four to participate, their income could exceed not \$53,000 annually.

5. Q. *But won't this program simply help current nonpublic school students?*

A. 75% of the money must be used for current public school students. 25% may be used for students currently in nonpublic schools. However, they must meet the same income guidelines as the public school students and it is important to note that, in many cases, the nonpublic schools parents are struggling to send their child to a nonpublic school. They are, in effect, one paycheck away from becoming public school families.

6. Q. *Isn't this simply a subsidy for private education?*

A. The state of New Jersey (along with other states) has supported private enterprises with public money for years. With respect to education, parents and students currently receive the opportunity to attend private preschools and private special education schools. Students are granted scholarship money through a variety of programs (using state and federal dollars) to attend private (sectarian and nonsectarian) colleges and universities. Private hospitals receive state subsidy. Additionally, the state sets no control over the use of welfare benefits paid to recipients. Therefore, it would be entirely possible for a welfare recipient to turn the check over to a religious entity (church, synagogue, etc.) without any state controls.

7. Q. Do nonpublic schools accept classified students?

A. The myth that opponents of this legislation would have the public believe is that nonpublic schools do not accept classified students. This is certainly not the case, and it is insulting to the parents whose children attend nonpublic schools. In fact, on page D-100 of Governor Corzine's FY09 budget, the Office of Management and Budget has identified 35,700 classified nonpublic school students for the 2008-2009 school year.

Unfortunately, these students do not receive the same level of state and federal aid given to public school students. In this year's budget, special education for public schools students is funded at the level of \$718,131,000. These figures do not include the millions of dollars in additional federal aid give to public school students.

On the other hand, nonpublic school students, when they are classified, receive an ISP (Individualized Service Plan) rather than an IEP (Individualized Education Plan). The IEP indicates all the services that the public school student will receive using a combination of state, federal, and local dollars. The ISP is more restricting in scope, indicating only services which will be provided to the nonpublic school student through the limited state and federal dollars, regardless of the child's needs.

Nonpublic school parents are willing to trade limited services for their classified children in return for the greater rewards of attending a nonpublic school of their choice. Nonpublic school administrators are more than willing to accept classified children; however, with those children should come the same state and federal dollars available to public schools.

8. Q. Won't this legislation help only the best students?

A. Students who are succeeding at the highest levels are hardly candidates for school choice programs. Happy, high achieving students will stay in their current schools. The students in the target districts currently attempting to attend nonpublic schools are those who are not succeeding, and are thus seeking an alternative education for reasons such as academics or safety. The Choice and Charter school movements have shown that it is the low-achieving students that access these programs. The failure of public schools to retain their own best students would indeed be a damning indictment of their ability to educate and attract students.

9. Q. Won't schools run by extremists be founded as a result of such legislation?

A. Existing federal and state laws prohibit all institutions from discrimination and illegal activities. Existing nonpublic schools (89% nationally) are accredited or evaluated by agencies such as national, regional, or state private school organizations. For example, the Catholic schools in New Jersey receive accreditation through the Middle Atlantic States Accrediting Association. All Catholic schools in New Jersey are required to have visits by a Middle States Accreditation Team.

10. Q. Aren't nonpublic schools largely unregulated and, therefore, not accountable to the public?

A. The Urban Schools Scholarship Act also requires testing of scholarship students. However, nonpublic schools are already accountable to the parents of the students they serve. And their graduation rates far exceed those of the public schools in the target districts. If nonpublic schools fail their students, parents will leave. Conversely, parents of children in public schools have no recourse for the lack of accountability of these schools under current federal and state standards. Their children must remain trapped in schools to which their children are assigned.

Under *NJSA18A:6-4*, nonpublic schools are required to register with the New Jersey Department of Education on an annual basis. Nonpublic schools are also subject to a variety of local, state, and federal health and safety regulations including those for fire safety, OSHA, immunizations, and pest management, just to name a few.

The argument is sometimes made that nonpublic schools do not have to fulfill the requirements listed under No Child Left Behind (NCLB) which the public schools must fulfill. However, only a certain percentage of nonpublic school students (those who qualify under both the low-income and low-performing requirements) are eligible for services under Title I. The federal government does not impose requirements on nonpublic schools for receiving aid under NCLB because, unlike the public schools, there is no massive influx of federal dollars spent to improve education in nonpublic schools. Aid is given to nonpublic students NOT nonpublic schools (an important distinction).

11. Q. *What about the issue of certification and nonpublic school teachers?*

A. Although over 95% of Catholic school teachers are certified, not all nonpublic school groups agree that certification makes a quality teacher. For example, the New Jersey Association of Independent Schools (representing schools such as the Hun School, The Lawrenceville School, and others) argues that background and experience make a quality teacher, particularly the depth of knowledge in one's subject area. Because certification courses only deal with issues such as classroom management and educational psychology, the content area in which the teacher is employed is not included in course work. If current parents in nonpublic schools were to question the quality of teachers in those schools, they could "vote with their feet." As an example, the recent Nonpublic School Teacher of the Year for New Jersey has a doctorate in molecular biology but would be deemed "unqualified" to teach in a public school because she is not certified.

12. Q. *Will the scholarships cover the cost of educating the student at a nonpublic school?*

A. The bill specifically prohibits any additional charges being imposed on the parents of the scholarship students. In the case of more expensive nonpublic school options, the school will be able to use current private scholarship resources to offset any additional cost.

13. Q. *But won't this bill only help a "lucky few?"*

A. This bill is a pilot program. An increase in the number of students eligible under the current legislation could certainly be provided by the future amendments. But the argument upon which this objection is based ("If we can't help all, we can't help any") would undermine any currently existing social program, educational or otherwise. In attempts to provide low-income housing and other benefits to the poor in social programs, we do not criticize developers who can only provide 500 units of low-income housing when 2,000 are needed. Using the logic of opponents, we would not provide any of these low-income units unless all 2,000 were possible.