

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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THE PARENTAL CHOICE SCHOLARSHIP ACCOUNTABILITY ACT

Summary

This bill creates administrative, fiscal, and academic accountability standards to be used in conjunction with elementary or secondary publicly-created **private school scholarship programs**.

Model Legislation

Section 1. {Title} The Parental Choice Scholarship Accountability Act

Section 2. {Definitions}

(A) "Program" means a publicly-created private school choice scholarship program.

(B) "Participating students" mean students who are eligible for and students who are participating in the state's publicly-created private school choice scholarship program.¹

(C) "Parent" includes a guardian, custodian or other person with the authority to act on behalf of the child.

(D) "Department" means the state Department of Public Instruction or an organization chosen by the state.²

(E) "Participating school" means a school that is eligible for and participating in the state's publicly-created private school choice scholarship program.³

(F) "Test" means either the state achievement test or nationally recognized norm-referenced test chosen by the participating school.

Section 3. {Accountability Standards for Participating Schools in School Choice Programs}

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

- (1) comply with all health and safety laws or codes that apply to private schools;

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(2) hold a valid occupancy permit if required by their municipality;

(3) certify that they comply with the nondiscrimination policies set forth in 42 USC 1981;⁴ and

(4) conduct criminal background checks on employees. The participating school then shall:

(a) exclude from employment any people not permitted by state law to work in a private school; and

(b) exclude from employment any people that might reasonably pose a threat to the safety of students.⁵

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

(1) demonstrate their financial accountability by:

(a) annually submitting to the department a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant;⁶ and

(b) having an auditor certify that the report is free of material misstatements and fairly represents the program's costs per pupil, including the costs of the testing required in subsection 3(C)(1)(a). The auditor's report shall be limited in scope to those records that are necessary for the department to make payments to participating schools on behalf of parents for scholarships.

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

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

(b) filing with the department prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the Parental Choice Scholarships expected to be paid during the school year to students admitted at the participating school.⁷

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

(1) participating schools shall:⁸

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

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

(c) provide the test results to the state or an organization chosen by the state⁹ on an annual basis, beginning with the first year of testing; and

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

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

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

(a) ensure compliance with all student privacy laws;

(b) collect all test results;

(c) provide the test results and associated learning gains to the public via a state website after the third year of test and test-related data collection¹⁰; and

(d) aggregate the findings by the students' grade level, gender, family income level, number of years of participation in the scholarship program, and race.¹¹

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

(1) the department or any other state agency may not in any way regulate the educational program of a participating school that accepts a parental choice scholarship; and

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

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

Section 4. {Responsibilities of the Department of Public Instruction}

(A) The department may bar a school from participation in the Parental Choice Scholarship Program if the department establishes that the participating school has:

(1) failed to comply with Section 3(C); or

(2) intentionally and substantially misrepresented information required under Section 3; or

(3) routinely failed to comply with the accountability standards established in Sections (A) and (B); or¹²

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(4) failed to refund to the state any scholarship overpayments in a timely manner.

(B) If the department decides to bar a participating school from the program, it shall notify eligible students and their parents of this decision as quickly as possible. Participating students attending a school barred by the department shall retain scholarship program eligibility to attend another participating school.

(C) The department shall adopt rules and procedures as necessary for the administration of the Parental Choice Scholarship Program.

Section 5. {Effective Date} The Parental Choice Scholarship Accountability Act will be in effect beginning with the fall semester of the next school year.

Endnotes

1. The definition for participating students in this model legislation includes the students who are eligible for a state's publicly-created private school choice programs. Additionally, this bill can be used in conjunction with legislation that would create a new scholarship program, and in that case, an eligible student would be defined as the student eligible to participate in that scholarship program. ALEC Model Legislation that should be considered when creating such scholarship programs include: Parental Choice Scholarship Program Act (Universal eligibility, means-tested scholarship amount); the Parental Choice Scholarship Program Act (Means-Tested Eligibility); the Parental Choice Scholarship Program Act (Universal Eligibility); the Foster Child Scholarship Program Act; and the Military Family Scholarship Program Act.

2. This bill designates the Department of Public Instruction as the agency regulating the state's private school choice programs, though if your state has an existing school choice program, it could be administered in a different department. The intent was to name the existing agency in the state that is responsible for public school finances and private school regulation. Alternatively, legislators may choose to consider other capable departments or create a new small agency to oversee the program if they are concerned about the hostility the program would face from the existing state education department.

3. The definition for participating schools in this model legislation includes private schools that participate in a state's scholarship tax credit program. Alternatively, this bill can be used in conjunction with legislation that would create a new school choice program, and in that case, an eligible school would be defined as a private school eligible to participate in that scholarship program.

4. Under 42 USC 1981, private schools are already prohibited from discriminating with respect to race, color and national origin. In addition, if private schools are recipients of federal funds, they are subject to nondiscrimination requirements under 42 USC 2000d (race, color, national origin) and 29 USC 794 (disability).

5. This language is valuable in two cases: 1) a small number of states prohibit discriminating against felons in hiring even for sensitive positions in schools, and this language would give schools clear authority to dismiss or not hire individuals who pose a risk to student safety; and 2) some religious schools see rehabilitation as part of their mission. In this case, the schools could hire someone with a criminal background who they believe is no longer a threat to students, such as someone who committed nonviolent crimes or has decades-old violations followed by a clean record. This language would give schools the responsibility to do background checks and the power to exclude potential risks from the school.

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

7. The model legislation provides for two methods for schools to demonstrate financial viability to ensure that public funds are secure. The first method employs a market-based means of demonstrating viability. Private companies that issue surety bonds have a financial interest in making sure that the schools can repay

any funds that might be owed the state. They will therefore conduct the checks necessary to protect their financial interest as well as the taxpayers' financial interests. Surety bonds can be expensive (one to three percent of the amount covered) or invasive for some institutions, so the legislation allows schools to demonstrate by some other means that they have the financial wherewithal to pay back any amount they might owe the state. This might include things like personal guarantees, reserve accounts or escrow accounts.

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

Participating schools should provide the parents of each student with a copy of the results and should provide the results to the state or an organization chosen by the state, as described in Endnote 9, in a manner that protects the identity and privacy of individual students. The purpose of this testing requirement should be to provide each parent with a measure of their student's achievement and to allow the taxpayers to measure the achievements of the program. The number and scope of the tests should be carefully limited to ensure that there is sufficient information to demonstrate the achievements of the program without being so exhaustive or prescriptive as to end up dictating the curriculum at participating schools. The costs of the testing requirements for a private school must be included in the costs used to determine the size of the scholarships at that school. If legislators would like an extensive longitudinal study, refer to Endnote 11 and its suggested language to create such a review.

9. Like in Endnote 2, if legislators are concerned about the hostility the program would face from the existing state Department of Public Instruction, they may choose to create a new small agency or contract with a private non-profit organization to oversee the academic accountability responsibilities of the state. Allowing an organization chosen by the state to oversee this program allows for the flexibility to implement market-based models of academic accountability. In these cases, test results could be reported to a consumer organization, such as GreatSchools.net, where parents can assess participating schools' test results and compare schools to which they may send their children.

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

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

11. Legislators sincerely wishing to demonstrate the program's academic success to taxpayers could require a scientific evaluation of the program using the testing data established in Section 3(C). It is crucial that the legislature give the oversight responsibility for this study to a trusted objective nonpartisan source like a legislative service agency or a trusted research university department. We have provided model language for such an independent evaluation of the program

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below. The outlined research would evaluate not only whether students who participate in the program are better off but also, more importantly, whether the competition from private schools improves the performance of public schools. The outlined longitudinal study includes a comparison of students in the choice program with a similar cohort in the public schools for at least five years of their education. Unfortunately, a longitudinal study is likely to be quite expensive. Accordingly, the legislation allows the legislature (or a legislative service agency) to accept private grants to completely fund such a study. In some states, the legislature is not allowed to accept such grants, and another trusted agency would have to be selected. It will be tempting for legislators to further define the details of the study, but they should take care not to dictate the methodology or the results in order to maintain the credibility of the research.

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

Section X. {Evaluation of the Parental Choice Scholarship Program}

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

(B) The study shall assess:

(1) the level of parental satisfaction with the program;

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

(3) the impact of the program and the resulting competition from private schools on the resident school districts, public school students, and quality of life in a community;

(4) the impact of the program on public and private school capacity, availability and quality; and

(5) participating student's academic performance and graduation rates in comparison to students who applied for a scholarship under this program but did not receive one because of random selection.

(C) The researchers who conduct the study shall:

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

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

(3) provide the Legislature with a final copy of the evaluation of the program.

(D) The relevant public and participating private schools shall cooperate with the research effort by providing student assessment results and any other data necessary to complete this study

(E) The Legislative Service Agency may accept grants to assist in funding this study.

From CMD: This "model" legislation adds reporting requirements to state programs allowing state tax dollars to be used to subsidize for-profit, religious, or secular private schools through so-called "scholarships," which are not based on actual merit but instead are actually "vouchers" or "grants," a taxpayer-funded subsidy. One criticism of voucher programs is that private schools are not subject to much state regulation. This bill selects "accountability" measures while protecting private schools from real regulation by clarifying that "the department or any other state agency may not in any way regulate the educational program of a participating school . . . the creation of this program does not expand the regulatory authority of the state... to impose any additional regulation of private schools beyond those necessary to enforce the requirements of this law.... Participating schools shall be given the maximum freedom to provide for the educational needs of their students without governmental control." It also suggests the creation of a separate agency to regulate the scholarships if the state department of education or its equivalent is "hostile" to public subsidization of private schools.

(F) The study shall cover a period of five years. The legislature may require periodic reports from the researchers. After publishing their results, the researchers shall make their data and methodology available for public review while complying with the requirements of FERPA (20 USC Section 1232 g).

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