

Parent Power

A PUBLICATION FOR CATHOLIC SCHOOL PARENTAL ADVOCACY

VOLUME 10 ISSUE 1

FALL/WINTER 2004

Congress Passes Reauthorization of IDEA

Despite the highly charged political atmosphere which led up to the November elections, Republicans and Democrats in both the U.S. House of Representatives and Senate overcame their differences and overwhelmingly passed the reauthorization of the Individuals with Disabilities Education Act (IDEA) shortly before the two chambers recessed for the Thanksgiving break. On November 17, 2004 the House-Senate Conference Committee on IDEA convened to report a bipartisan bill that represented a compromise between legislation the House had originally passed in April 2003 and the bill approved by the Senate in May 2004. On November 19, 2004, the House of Representatives overwhelmingly approved the Conference report 397-3. The following day, the Senate passed the legislation by voice vote. President Bush signed the bill into law on December 3, 2004.

Congressional approval of IDEA followed a three year debate over what changes were needed in the federal government's primary law governing education for students with disabilities at the pre-collegiate level. One of the most contentious issues involved whether funding should remain

discretionary (subject to Congressional appropriations each year) or be changed to mandatory funding. Other conflicts arose over what disciplinary standards should affect students with disabilities in public schools and what changes were needed to avoid an adversarial atmosphere when parents and school personnel disagree about how best to meet the needs of a student with a disability.

The U.S. Conference of Catholic Bishops, working with a thirteen member coalition called the Coalition for Equity in Special Education, had spent several years trying to convince members of Congress and their staff to strengthen language in IDEA so that students with disabilities whose parents enroll them in private schools have a better chance to receive some IDEA services. Although parentally-placed private school students with disabilities will still not have an individual entitlement to services, the new IDEA should increase the number of private school students who benefit from changes in the law.

Most changes in the new law which affect private school students will go into effect July 1, 2005. A change anticipated to be

one of the most significant for parentally-placed private school students is one assigning responsibility to a public school district for identifying, evaluating and serving such students. All previous versions of IDEA have given that responsibility to the public school district where the student lived, a district frequently different from the one where the student's school was located. This meant that public school districts often had to coordinate with private schools outside their boundaries and private school administrators had to work with numerous public school districts to secure services for their students with disabilities. The new IDEA gives the responsibility for evaluating and serving private school students to the public school district where the private school is located. This arrangement should foster improved communication and concentration of resources for serving private school students with disabilities.

[See accompanying article for specific changes in IDEA which will affect parentally-placed private school children with disabilities on page 2.]

"I am writing in support of the provisions for parentally-placed private school children with disabilities that have been written in the course of amending the Individuals with Disabilities Education Act (IDEA)...[T]he Conference Committee report and statutory language provide meaningful changes in the way services are delivered to parentally-placed private school children. The process has been one of consultation and inclusion. My thanks go to you and your staffs for an excellent job in bringing together divergent interests and crafting a bill that can make a real difference in the education of children with disabilities."

Letter from Rev. William F. Davis, OSFS, USCCB Deputy Secretary for Schools to Sen. Judd Gregg and Sen. Edward M. Kennedy, chair and ranking member; HELP Committee and to Rep. John Boehner and Rep. George Miller, chair and ranking member of Education and the Workforce Committee, November 16, 2004.

Important Federal Legislation

Under the New IDEA Statute:

- Public school districts have the **responsibility to identify, locate, and evaluate** children with disabilities who attend private schools within their district.
- **Child Find activities** for parentally-placed private school students must be **equivalent** to those for public school students, including the timeline for evaluation.
- The **cost of Child Find activities** for parentally-placed private school students, including their evaluations, does not reduce the funds allocated to provide them services.
- Public school districts will need to **keep records** of the number of private school students who receive a special education evaluation, are found to have a disability, and receive services under IDEA. These statistics will need to be reported to the state department of education.
- Public school districts are required to **use IDEA funds** to serve parentally-placed private school students in the **same proportion** as the number of private school students with a disability to the total number of students with a disability in the district. (ie: if 10% of students with a disability are in private schools, then 10% of federal IDEA funds should serve them.)
- State and local funds may **supplement** IDEA funds, but **not supplant** them.
- Public school districts must engage in “**timely and meaningful consultation**” with private school representatives and parents about
 1. how the **Child Find process** for parentally-placed private school students will be designed and implemented.
 2. how the **amount of federal funds available** to serve private school students has been calculated.
 3. **how, where, and by whom special education and related services will be provided** for students with disabilities in private schools.
- Public school districts must obtain **written affirmation** (sign off) from private school representatives, if possible, that timely and meaningful consultation has occurred.
- Services to parentally-placed private school students may be **provided either by public school employees or through contract** with an individual, association, agency, or organization.
- Public school districts must provide **reasons in writing** if they choose not to provide services through contract or directly to private school students with disabilities if private school representatives have requested such services.
- Private school officials have the right to **file a complaint** with the state department of education if they believe public school officials did not engage in timely and meaningful consultation or give due consideration to the views of private school officials. If dissatisfied with the decision of state officials, a private school official may submit a complaint to the U.S. Secretary of Education.
- The **U.S. Department of Education** must arrange for services (**bypass**) if a state or district is unable or unwilling to provide for equitable participation of private school students.
- **All services provided must be secular, neutral, and nonideological.**

PARENT POWER IS PUBLISHED BY THE OFFICE FOR PARENTAL ADVOCACY, DEPARTMENT OF EDUCATION, USCCB

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Issues of Parent Power are available on the website of the United States Conference of Catholic Bishops at: www.usccb.org/education/parentassn/power/index.htm. No permission is needed to copy and distribute issues.

Grassroots Efforts Lead to Partial Restoration of Funds for NCLB Title V — *Innovative Programs*

In a clear display of the effectiveness of grassroots advocacy, the U.S. Congress included substantial funding for Title V, Part A of the *No Child Left Behind Act* in the omnibus funding bill approved shortly before the Thanksgiving recess. Despite efforts in both the House and Senate earlier this fall to eliminate all funding for the Innovative Programs part of NCLB, Congress ultimately included \$200 million for Title V, Part A in the 2005 appropriations.

Although \$200 million is substantially smaller than the \$296.5 million appropriated for fiscal year 2004, aggressive lobbying by a public/private school coalition was credited with preserving this part of the federal education budget. Formed when total elimination of the program seemed likely, the coalition combined the advocacy efforts of the Council of Chief State School Officers, American Association of School Administrators, National School Boards Association, National Catholic Educational Association, National Association of Independent Schools, Agudath Israel of America, and United States Conference of Catholic Bishops. Members of these organizations used numerous personal visits, e-mails, and letters to urge Congress to restore substantial funding to Title V, Part A in the 2005 budget. Members of Congress appear to have heard the message that this program was important to students and educators in many different kinds of schools.

Title V, Part A of the No Child Left Behind Act allows both public and private schools to use federal funds for innovative educational programs which meet local needs. A wide variety of uses have been funded through this section of NCLB. They include library/media center materials, computer hardware and software, and staff development opportunities for education personnel. Under this program private school students are allocated the same per student dollar amount as are students in public schools. Because of the equitable funding and the flexibility to address local needs, Innovative Programs

has been the federal education program which has most widely benefited students in private schools. In 2000 the U.S. Supreme Court upheld the constitutionality of this program in the decision *Mitchell v. Helms*. The considerable support articulated by both private and public school constituents has allowed Innovative Programs to continue into the 2005 budget year.

OGL monitor

The USCCB's Office of Government Liaison, which represents the USCCB before the U.S. Congress on public policy issues of concern to the bishops, provides regular updates on the status of federal legislation important to the Catholic community. This service, the *OGL Monitor*, can be accessed at www.usccb.org/ogl/oglmonitor.shtml.

Currently the Education section of the OGL Monitor provides a link to the omnibus appropriations bill, the *Consolidated Appropriations Act, 2005*, H.R. 6818 (H. Report 108-792), including NCLB Title V funding.

The text of the *Individuals with Disabilities Education Improvement Act of 2004*, H.R. 1350 can also be accessed from the OGL Monitor. The sections in H.R. 1350 pertaining to students with disabilities enrolled by their parents in private schools begin in Part B, Section 612(a)(10). In the Adobe PDF file, this section can be found on pages 46-55.

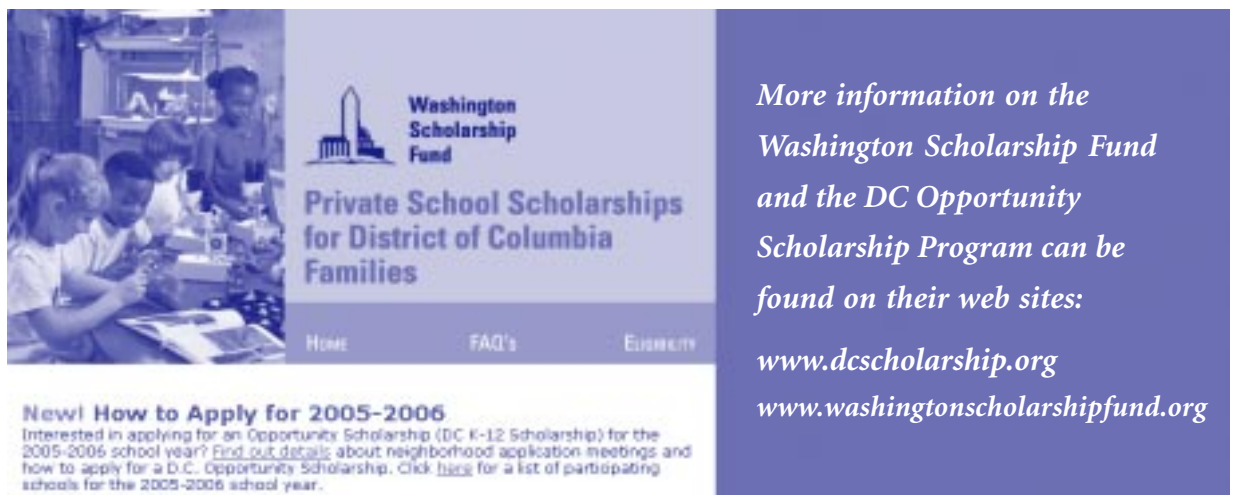
Voucher Programs

The First Federally-funded Voucher Program begins in the District of Columbia

Despite a very short time to implement a new federal program, over 1000 low-income students in the District of Columbia used federally-funded vouchers this fall to enroll in private, including religious, schools. Signed into law in January 2004, the **D.C. School Choice Incentive Act** provides funding for the 2004-2005 school year for up to 1700 eligible students to use a maximum scholarship of \$7500 each. The scholarship can be used to cover the tuition, fees, and transportation expenses of attending a private elementary or secondary school located within the District of Columbia.

ships to low-income students, was selected last spring to administer this program. Families of nearly 3000 students applied for scholarships. Over 1800 students met all the eligibility requirements; more than 1300 students were offered D.C. School Choice vouchers. The latter included over 200 students already enrolled in a private school.

Not all students offered a voucher ended up using it. Although 53 private schools are participating in the 2004-2005 program, most spots available for voucher students have been in grades kindergarten through six. Students in grades seven through twelve



Washington Scholarship Fund
Private School Scholarships for District of Columbia Families

Home FAQ's Eligibility

More information on the Washington Scholarship Fund and the DC Opportunity Scholarship Program can be found on their web sites:

www.dcscholarship.org
www.washingtonscholarshipfund.org

New! How to Apply for 2005-2006
Interested in applying for an Opportunity Scholarship (DC K-12 Scholarship) for the 2005-2006 school year? [Find out details](#) about neighborhood application meetings and how to apply for a D.C. Opportunity Scholarship. [Click here](#) for a list of participating schools for the 2005-2006 school year.

Eligible students need to live in the District of Columbia and be in families not earning more than 185 % of the federal poverty standard. The law gives priority to students enrolled in D.C. public schools designated “in need of improvement,” but does allow some eligible students already enrolled in private schools to benefit. After the first year of the program, additional private school students are not expected to rank high enough in priority to receive the federal voucher.

The Washington Scholarship Fund, which had experience administering privately funded scholar-

ships to low-income students, if they could be matched up with an appropriate school, were greater in number than the spaces available.

Of the schools participating in this year’s program, 44% are part of the Catholic Archdiocese of Washington, 26% are other sectarian schools, and 20 percent have no religious affiliation.

The Washington Scholarship Fund is already distributing applications for scholarships for the 2005-2006 school year. Sixty-one schools have already agreed to participate in the second year of the D.C. School Choice program.

Private School Choice Participants in Milwaukee Show Superior Graduation Rates

In a study released in September 2004 researcher Jay P. Greene, Ph.D. concluded that students participating in the Milwaukee Parental Choice Program graduate from high school at a considerably higher rate than students of similar backgrounds in Milwaukee Public Schools (MPS). Based on data from the 2002-2003 school year, Greene's research showed that approximately 64% of students who used a voucher to enter ninth grade in 1999 graduated from high school in 2003. This compared to a graduation percentage of 41% for Milwaukee students who originally enrolled in selective MPS high schools and 34% for all MPS students who began high school in 1999. Private schools accepting voucher students must use lotteries to admit students when they have more applicants than spaces available, an admissions requirement not required of the six selective high schools within the Milwaukee Public Schools.

Greene, Senior Fellow at the Manhattan Institute for Policy Research and a well-known educational researcher, published his conclusions in *Graduation Rates for Choice and Public School Students in Milwaukee*. The organization School Choice Wisconsin sponsored Greene's work after the State of Wisconsin failed to authorize a more comprehensive longitudinal study of the Milwaukee Parental Choice Program.

Established by the State of Wisconsin in 1990 and expanded in 1995, the Milwaukee Parental Choice Program provides vouchers to low income families living in

the city of Milwaukee so their children may attend private, including religious, schools. Currently more than 13,000 students attending 107 schools benefit from a voucher worth about \$5900 per student. Family income

Graduation Rates for Choice and Public School Students in Milwaukee and Milwaukee Public Schools in an Era of Choice may be viewed and downloaded from the Research and Publications section of the web site www.SchoolChoiceInfo.org.

may not exceed 175% of the federal poverty level. No more than 15% of the Milwaukee Public Schools' enrollment, approximately 15,000 students, may participate in the Choice Program in any one year.

Private schools which participate in the Choice Program must follow laws which apply to all Wisconsin private schools, must follow state accounting standards and file an independent audit, and must comply with health and safety codes and specified federal civil rights laws.

In his report, Greene concluded "These graduation rate-results are consistent with earlier random-assignment research in Milwaukee and other cities showing that students experience significant academic benefits from being able to attend a private school with a voucher."

Milwaukee Public Schools Show Gains During Time of Increasing School Choice Options

Despite some predictions that more options for Milwaukee parents would lead to enrollment declines, lower academic achievement, and less financial support for Milwaukee Public Schools, a recent report by School Choice Wisconsin has cited figures showing just the opposite. Using data from Milwaukee Public Schools, the organization, which provides information on the impact of school choice on families, communities, and public schools, has noted that

- between 1990, when the private school choice program began, and 2004 public school enrollment increased over 8%.
- between 1991 and 2003, the yearly high school dropout rate declined from 16.2% to 10.2%.
- between 1998 and 2004, the percentage of third graders scoring proficient or advanced on state reading tests improved from 50% to 66%.
- between 1997 and 2004, public school scores on state standardized tests improved in 12 of 15 categories.
- between 1990 and 2004, per pupil spending increased from \$8660 to \$11,708.

Archdiocese of San Francisco Forms Newest Catholic School Advocacy Organization

In April 2004 Archbishop William J. Levada initiated the newest diocesan Catholic school advocacy organization when he approved the founding of the **San Francisco Alliance for Catholic Schools (SFACS)**. Structured as a standing committee of the Board of Education of the Archdiocese of San Francisco, SFACS intends to assist Catholic school pastors and principals to establish public policy committees in local schools which will educate and mobilize networks of school families, teachers, alumni, and friends to advocate effectively on public policy issues affecting the Catholic school community.

As individual school public policy committees are formed they will be linked with educational policy offices in both the California Catholic Conference and the U.S. Conference of Catholic Bishops. This networking will

allow local school communities to join broader efforts to articulate proposals and concerns about public policy issues affecting students, parents, and personnel in Catholic schools.

The Archdiocesan Board of Education and Department of Catholic Schools will host the initial meeting of school public policy chairpersons in February 2005. Robert A. Teegarden, the California Catholic Conference's Associate Director for Education will address the group on the importance of networking, educating, and mobilizing on public policy issues affecting schools and children.

The Archdiocese of San Francisco is the second diocese in California to authorize an alliance for Catholic school advocacy. The Diocese of Fresno was the first, forming the Fresno Alliance for Catholic Schools in 2002.

USCCB Department of Education Revises Advocacy and Special Needs Resource Directories

In June 2004 the USCCB Department of Education posted a revised *Resource Directory for Catholic School Advocacy* on its website at www.usccb.org/education/fedasst/manual3.pdf

Originally published in January 2001 the *Directory* provides contact information for Catholic school advocacy organizations throughout the country and for state Catholic conferences, the public policy arms of Catholic dioceses within particular states.

Currently Catholic school advocacy networks exist in Arizona, Connecticut, Delaware, Florida, Illinois, Indiana, Maryland, Massachusetts, Mississippi, Nebraska, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, South Dakota, Tennessee, and Texas. In four other states—Kentucky, Louisiana, Michigan, and Virginia—Catholic schools are part of a nonpublic school advocacy organization. In California, two dioceses—Fresno and San Francisco—have established Catholic school parent alliances.

Dioceses in thirty-five states have combined to organize state Catholic Conferences to work on a broad array of legislative issues in state capitals. The *Resource Directory for Catholic School Advocacy* also provides information on sessions of state legislatures and the names of state Governors.

In December 2004 the revised edition of the *Special Needs Resource Directory* was also posted on the USCCB website at www.usccb.org/education/index.htm. This also is an updated version of a 2001 publication which identified the extent to which responding dioceses served students with special needs in their Catholic schools and religious education programs. Not all sections of the Directory have been revised. Those that have been are listed on the front cover and in the Table of Contents. Dioceses which submitted information have an asterisk next to their names. We hope Catholic educators and parents can benefit from the experience of those dioceses that have made major commitments to include persons with special needs in their programs.

Parts or all of either resource directory may be printed from the PDF files on the USCCB web site.

Court Cases To Note

FEDERAL COURTS

Hibbs v. Winn

In June 2004 the U.S. Supreme Court ruled 5-4 that opponents of an **Arizona tax credit program** which funds tuition scholarships to private schools could use federal courts to try and halt the program. The Arizona Supreme Court upheld the program in 1999. Subsequently, opponents began to use federal courts to attempt to stop the program. The first issue to be determined was whether federal courts could rule on a state tax program. Now that the U.S. Supreme Court has agreed that federal courts may have oversight of this program, legal arguments about the constitutionality of the Arizona tax credit program will begin in a federal district court in Phoenix.

Gary S. and Sylvie S. v. Manchester School District

The U.S. Court of Appeals for the First Circuit ruled in July 2004 that it was constitutional for a **New Hampshire** public school district to provide fewer services to a **student with a disability whose parents had enrolled the student in a private school** than the student would have been entitled to if enrolled in a public school. In a footnote, the decision stated that "The federal and state governments are entitled to fund programs associated with private schools if they so desire, provided they do not run afoul of the Establishment Clause. Our point is not that such funding is never allowed, but that it is not commonly expected in our society nor required."

Pierce v. Sullivan West Central School District

The U.S. Court of Appeals for the Second Circuit in August 2004 upheld **New York**

State's **released time policy** which allows public school students to arrive at school one hour late or leave one hour early in order to attend religious activities. The "released time" concept had been previously upheld by the U.S. Supreme Court in 1952 in the *Zorach v. Clausen* case.

STATE COURTS

Holmes v. Bush

In August 2004 a **three judge panel of the Florida First District Court of Appeal** ruled that **Florida's Opportunity Scholarship Program** violates the provision of the state Constitution which bars direct or indirect state aid to any sectarian institution. The ruling rejected the argument that the Opportunity Scholarships did not constitute indirect aid because they were provided to parents who endorsed them over to religious schools. In November 2004, the full 1st District Court of Appeal, in an 8-5-1 ruling, also concluded that the program aided religious schools and thus violated the Florida Constitution. The program continues while this decision is appealed to the Florida Supreme Court.

Owens v. Colorado Congress of Parents

This case is a continuation of litigation concerning the Colorado voucher program, known as the **Colorado Opportunity Contract Pilot Program**. In June 2004, the **Colorado Supreme Court** ruled the same as had a lower court the previous December. Both courts determined that the voucher program violated the Colorado constitution because local public school districts would lose control over instruction they are funding.

Since December 2003 an injunction has halted all activities relating to the implementation of this program. Supporters of the program have pledged to introduce legislation in the 2005 session of the Colorado legislature which would finance the Opportunity Program only from state funds, rather than partly from local real estate taxes. Such a change might allow the program to begin in the fall of 2005, but the November 2004 election results, which returned both houses of the Colorado legislature to Democratic Party control, may make legislation which includes private school choice more difficult to enact.

Anderson v. State of Maine

In October 2004 a **Maine Superior Court** judge ruled that Maine's law allowing **vouchers to be used only in private schools which were nonsectarian** did not violate the U.S. Supreme Court's 2002 *Zelman* decision. The Maine decision noted that the *Zelman* decision, which said that the use of vouchers in religious schools in Cleveland did not violate the U.S. Constitution, allowed parents to use vouchers at religious schools but did not require the state to include religious schools in a school choice program. This case will be appealed to the Maine Supreme Court. (In late October, a federal court reached in a similar conclusion in a separate case, *Eulitt v. State of Maine*.)

Gorman v. St. Raphael Academy

In July 2004 the **Supreme Court of Rhode Island** upheld the **right of a private school to enforce its hair code policy**, as long as the policy does not violate any law or public policy.

CONGRESSIONAL ADVOCACY DAYS 2005

20th Annual Legislative Conference

USCCB's Congressional Advocacy Days are intended to bring Catholic educators and parents together in Washington, DC to:

- increase the Catholic school community's presence and influence with Congress and the Administration
- heighten their understanding of federal issues affecting Catholic schools, their students and teachers
- support the USCCB's federal education agenda when meeting with your members of Congress

Constituent involvement in the legislative process is one of the most effective ways to influence members of Congress. Your presence can definitely make a difference —**JOIN US IN WASHINGTON!**

Tentative Agenda 2005

Sunday, February 27

12 noon Parent Advocacy Lunch
 2:00 p.m. Orientation - *first timers*
 3:30 p.m. Mass
 4:15 p.m. Opening Session -
all participants
 6:00 p.m. Welcome Reception

Monday, February 28

8:00 a.m. Continental Breakfast
 Congressional Overview
 USCCB Education Agenda
 12 noon Lunch – Speaker: *TBA*
 Panels/Discussion
 5:30 p.m. Reception at Capitol

Tuesday, March 1

8:00 a.m. Breakfast –
 Speaker: *TBA*
 9:30 a.m. Capitol Hill Visits
 5:00 p.m. Debriefing
 5:30 p.m. Adjourn

Web site for additional information and registration form: www.usccb.org/education/fedasst/conference.htm