



# ACTION ALERT

**ISSUE:** S-1872 (Lesniak, Kean, and Kyrillos), the Opportunities Scholarship Act, has been introduced into the New Jersey Senate and referred to the Senate Economic Growth Committee. The bill is a revised version of the Urban Enterprise Zone Jobs Scholarship Act from last session. The major revision is that there is a dual qualifying standard of 1) poverty and 2) residence in a district that has a chronically failing school for students to receive scholarships. Additionally, the bill has an Education Improvement Fund available as competitive grants to chronically failing schools to finance the adoption of innovative educational practices with the objective of improving student performance.

**OUR POSITION:** The New Jersey Catholic Conference and the New Jersey Network of Catholic School Families support this legislation as an opportunity to provide students with meaningful school choice options.

**ACTION:** The following actions are directed to members of the New Jersey Senate and designed to enhance the passage of this legislation. Contact with the legislators should be made regularly and *not just on a one time basis*.

Please enact the following:

1. Call or email Senator Raymond Lesniak (908-624-0880, [SenLesniak@njleg.org](mailto:SenLesniak@njleg.org)), Chair of the Senate of the Economic Growth Committee, and sponsor of the bill to thank him for introducing the legislation.
2. Call the offices or email the offices of Senators Thomas Kean (908-232-3673, [SenTKean@njleg.org](mailto:SenTKean@njleg.org)) and Joseph Kyrillos (732-671-3206, [SenKyrillos@njleg.org](mailto:SenKyrillos@njleg.org)) to thank them for serving as co-sponsors of the bill.
3. Contact the members of the Senate Economic Growth Committee and the Senate Budget and Appropriations Committee expressing your support for S-1872. Use the accompanying description of the legislation and the Q&A in order to facilitate your response. You may also use the New Jersey Catholic Conference Capwiz system which may be accessed at:

<http://www.capwiz.com/njcathconf/home/>

The members of the Senate Economic Growth and Senate Budget and Appropriations Committees are attached to this Alert for your use.

Please maintain contact with these legislators as the bill begins to move through the New Jersey Legislature. The earliest that the bill could be heard at the Senate Economic Growth Committee will be in early May, when the Legislature reconvenes from its annual Budget break.

Thank you for your immediate response to this request.

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## Q & A on S-1872

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 (potential employees). If they are satisfied with the 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 eligible districts, they can contribute to the appropriate scholarship organization. Note that the Commerce and Industry Association of New Jersey, the New Jersey Business and Industry Association, and other business groups have endorsed the bill.

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

A. Nothing could be further from the truth. The difference in state aid to the district and the amount of the scholarship can be used for an Education Innovation Fund to spur reform in public education.

The State needs viable public and nonpublic schools because not every school is right for every child.

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 for religious schools as part of this program, the decision about the choice of school is placed in the hands of the parents. Among the educational options available are other public schools who are willing to take the amount of the scholarship as full payment for tuition.

The scholarships are available to a neutrally defined category of beneficiaries (economically disadvantaged families and those eligible to attend a school in a district with a chronically failing public school). This is hardly equivalent to a subsidy to a nonpublic school because no funds would be transmitted directly to a private religious or secular school (or another public school for that matter) except by the independent decision 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.

On October 27, 2009, the Arizona Supreme Court refused to hear a challenge of the Arizona state law which permits businesses to reduce their tax liabilities by contributing money to organizations that distribute nonpublic school tuition payments on behalf of students. The US Supreme Court and the Arizona Supreme Court dismissed a previous challenge. Pennsylvania's Corporate Tax Scholarship Program, upon which S-1872 is modeled, has never been challenged in the courts.

**4. 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 live in a district with a chronically failing public school. It is important to note that, in most 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.

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

A. As previously noted, there is no direct subsidy to a nonpublic school. However, in a variety of areas that impact its residents, the State of New Jersey has indeed supported private enterprises with public money. 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.

6. ***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.

Unfortunately, these nonpublic school students do not receive the same level of state and federal aid given to public school students. In last year's budget, special education for public school students was funded at a level of over \$700M in State aid. This is in addition to the millions of dollars in additional federal aid or local aid given 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 needs that the public school student has and the services to be received using a combination of state, federal, and local dollars. The ISP is more restrictive 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. In other words, the IEP reflects what special education services students need, while the ISP dictates to their parents what services they will receive.

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, especially since it would still result in a lower overall cost to the taxpayers in total education dollars expended.

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

A. Students who are succeeding at the highest levels in their current schools are normally not applicants for school choice programs. Happy, high-achieving students will stay in their current schools. The students in the districts with chronically failing schools who are currently attempting to attend nonpublic schools are those who are not succeeding, and thus their parents are seeking an alternative education choice, for reasons such as academics and/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 severe indictment of their ability to educate and attract students.

8. ***Q. Why should I be interested in S-1872, if my district has no chronically failing schools?***

A. All citizens of New Jersey need to be interested in the quality of education offered in all districts in the State. Taxes paid to the State support districts whose tax base is not sufficient to cover their needs. A large portion of these State dollars go toward support of public education in the districts with chronically failing schools. All citizens need to be aware of the implications of paying for chronically failing schools whose students graduate (or who drop out), because their future success will cost taxpayers even more money for things like retraining or government assistance to those unable to obtain employment. Offering these students an option to go to a school where they can be more successful benefits all New Jersey's citizens. Furthermore, none of the scholarship money goes to any of the districts which have chronically failing schools; rather it goes toward the education of the child in a more successful public or nonpublic school setting.

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 (over 90% 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.

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

A. The Opportunity Scholarship Act also requires testing of scholarship students. Nonpublic schools annually administer national tests aligned with the New Jersey Core Curriculum Content Standards. 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 in 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 alone makes a quality teacher. 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, a 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.** *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. For example, 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.