Introduction

School choice continues to generate debate in state legislatures, even as several states move toward offering their students options beyond the K-12 public school setting. However, given the particular circumstances of children with special needs, less debate and controversy has surrounded the implementation of school choice programs for students in special education classrooms. Since state governments have a constitutional obligation to provide an education to all children, creating more educational options for children with special needs has the most potential for providing them the best education possible. Meanwhile, considering that the average annual cost of a special education student is $9,369 above the norm, the provision of legally required additional services for special needs students can prove costly for public schools with a small student population, where economies of scale are not feasible. Allowing and supplying additional school options for special education students, in these cases, may provide savings for schools unable to provide cost-effective specialized services for the limited number of students requiring them.

This SLC Regional Resource examines the strategies taken by Southern states to increase school options for special education students through the implementation of state-funded school voucher programs, focusing on their many forms and variations, and addresses school voucher programs that provide direct payments or reimbursements to private alternative schools or parents and legal guardians, respectively. While several strategies beyond school voucher programs, such as tax credits and educational savings accounts, have been implemented as additional strategies to increase school choice, these programs are not included within this Regional Resource.

Individualized Education Programs

The federal Individuals with Disabilities Education Act (IDEA), a 1990 reauthorization of the Education for All Handicapped Children Act of 1975, requires all public schools to craft an Individualized Education Program (IEP) for any child with a learning disability.

The Act identifies the following conditions as a disability requiring special education and related services:

« Mental retardation;
« Hearing impairment (including deafness);
« Speech or language impairment;
« Visual impairments (including blindness);
« Serious emotional disturbance;
« Orthopedic impairments;
« Autism;
» Traumatic brain injury;
» Other health impairment; and
» Specific learning disability.

The purpose of an IEP is to ensure that every child with special needs receives a “free appropriate public education” that ultimately provides them with “equality of opportunity, full [civic] participation, independent living, and economic self-sufficiency.” Notably, IEPs are individualized, meaning that every IEP is a unique document, tailored for the specific circumstances of each student. However, each IEP is required to have several common, but individualized, components, including:

» **Current performance**: information about how the child is performing in his or her classes;
» **Annual goals**: measurable objectives of learning and advancement for each school year;
» **Special education and related services**: a list of the special education and related services that will be provided to the child or on behalf of the child;
» **Participation with nondisabled children**: notes to what extent the child will not participate in regular classroom and other school activities;
» **Participation in state- and district-wide tests**: a determination of what standardized testing is appropriate for the child, and what special accommodations will be required. If the child is exempted from testing, an alternative measure must be identified;
» **Dates and places**: a statement identifying the beginning, frequency, location, and completion date for the special education services provided;
» **Transition service needs**: a requirement for students at age 14, identifying courses needed to realize post-school goals;
» **Needed transition services**: required for students at age 16, identifying what transition services are needed to assist the child to succeed upon leaving school; and
» **Progress measurements**: an outline of how the student’s progress will be measured and what information will be reported to the parents or legal guardians.\(^3\)

\(^3\)“Free appropriate public education” refers to the educational right of children with disabilities in the United States guaranteed by the Rehabilitation Act of 1973 and IDEA.

In essence, IDEA and its requirements for IEPs provide basic rights and protections to children with special needs attending public schools within the United States. Each IEP and any modifications made to a student’s learning plan requires approval by parents or legal guardians. Further, if parents or legal guardians wish to challenge any decisions about their child’s eligibility, evaluation, placement, and the services that the school provides, they may negotiate directly with the school or request remediation up to due process. It is important to note that federal regulations created through IDEA apply only to public schools, and not private institutions. That is to say, once a child leaves the public school system, the protections provided by IDEA no longer apply. Given these circumstances, states considering the implementation or revision of a state-funded private school voucher system for special education students should consider how the protections granted by IDEA transfer to schools of choice, and if private schools will be able to provide, and do provide, the appropriate services needed by special education students.

**504 Accommodation Plans**

A 504 Accommodation Plan is named after Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against qualifying individuals with disabilities in federal agencies and programs, activities that receive federal financial assistance, or activities conducted by a federal agency. Section 504 defines a disability more generally as “a physical or mental impairment that substantially limits a person’s ability to participate in a major life activity.”\(^4\) As such, a student with a less severe learning disability that does not qualify for an IEP but still impedes the student’s ability to learn in a general education classroom – e.g., an attention deficit hyperactivity disorder – may qualify for a 504 Accommodation Plan. The federal requirements for a student 504 Accommodation Plan also are less stringent, with Plans generally confined to a list of any special accommodations that will be provided to the student, identification of any and all service providers, and the identification of an administrator who provides oversight and ensures the Plan is properly followed.\(^5\)
State-Funded School Voucher Programs for Special Education Students in the SLC Member States

School voucher programs for special education students have been present in the SLC member states since 1999, when Florida became the first state in the nation to enact a program. To date, seven of 15 SLC member states have implemented a similar program, demonstrating a discernible trend toward increasing school choice options for special needs student populations.

Arkansas

On April 8, 2015, Governor Asa Hutchinson signed House Bill 1552, establishing the Succeed Scholarship Program for students with disabilities. The legislation allows public school students with an IEP to apply for a state-funded scholarship to pay for private school tuition. To qualify, a student must have attended a public school for one year or be a dependent of an active-duty military member, and must have been accepted into a private school of choice.

The Succeed Scholarship will be implemented during the 2016-17 school year, and will operate as a pilot program in its first year, with a cap of approximately 100 students. Individual scholarships will be funded at the lesser of either the state’s foundation funding amount for the current school year – $6,646 for fiscal year 2017 – or the tuition and fees of a selected private school. The parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees. The payments will be disbursed to participating schools on a monthly basis.

Florida

Florida’s John M. McKay Scholarships for Students with Disabilities Program is the first school voucher program in the United States specifically directed at special education students. Created in 1999, and expanded in 2000, the program has provided more than 270,000 scholarships since its inception. To be eligible for the scholarship, students must have an IEP or 504 Accommodation Plan and have attended a Florida private school that wishes to qualify as a school voucher option must:

- Meet the accreditation requirements set by the state Board of Education, Arkansas Nonpublic School Accrediting Association or its successor, or another accrediting association recognized by the State Board of Education as providing services to severely disabled individuals;
- Demonstrate fiscal soundness by having been in operation for one school year; providing a statement by a certified public accountant confirming that the private school is insured and has sufficient capital or credit to operate in the upcoming school year; or submitting a surety bond or letter or credit for the amount equal to the scholarship funds;
- Comply with federal antidiscrimination provisions;
- Meet state and local health and safety requirements;
- Be academically accountable to parents or legal guardians for meeting the educational needs of the student;
- Employ or contract with teachers who hold baccalaureate degrees or higher;
- Comply with all state laws and regulations governing private schools;
- Adhere to the tenets of published disciplinary procedures before an expulsion of a student receiving a scholarship; and
- Submit all other appropriate documentation within the state-specified deadlines.

Qualifying private schools also must measure student performance annually with a nationally recognized norm-referenced test determined by the state Board of Education, unless a student IEP provides an exemption from such testing. If the student is exempted, the school must prepare a student progress portfolio for review by parents or legal guardians on an annual basis.

Due to the different nomenclature used by individual states, this report uses the words, “scholarship,” “grant” and “voucher” interchangeably to refer to private school vouchers.

Arkansas’s Public School Funding Act of 2003 defines foundation funding as “an amount of money specified by the General Assembly for each school year to be expended by school districts for the provision of an adequate education for each student.” The foundation amount comprises two parts – the local contribution and the state equalization amount. Citizens pay an amount based on their property assessment each year, which is used to create the per-pupil local contribution. The state then subtracts the per-pupil local contribution from the foundation amount and pays the remaining amount to the districts.
SPECIAL EDUCATION SCHOOL VOUCHERS: A LOOK AT SOUTHERN STATES

PreK-12 public school or the Florida School for the Deaf and Blind during the previous school year, or be a dependent child of a member of the United States Armed Forces who was transferred to Florida from out of state. Once qualified, parents and legal guardians have three placement options for their child: a different public school within the same school district; a public school in an adjacent school district with available space and appropriate services; or an eligible private school.

Once qualified, parents and legal guardians have three placement options for their child: a different public school within the same school district; a public school in an adjacent school district with available space and appropriate services; or an eligible private school.

The amount awarded for each qualifying student is the lesser of the tuition and fees at a selected private school or the cost of special education and services that the student would receive in their current school. The parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees. If the private school option is selected, payments are sent quarterly by the state Department of Education to the school on behalf of the parents or legal guardians. Most current statistics indicate that the state awarded $184 million in scholarships to 28,370 students for the 2013-14 school year, with an average award of $7,278 for students with an IEP and $4,146 for students with a 504 Plan.

Once awarded, a John M. McKay Scholarship remains in effect until the receiving student either returns to a public school, graduates from high school, or becomes 22 years of age. While in the program, a student also loses eligibility for the award if any of the following events occur:

- The student receives a Florida Tax Credit Scholarship;
- The student participates in the state’s Personal Learning Scholarship Account program;
- The student participates in a home education program;
- The student participates in a private tutoring program; or
- Within a year, the student participates in more than two courses provided through a state-funded virtual school, correspondence school, or distance learning program.

Private schools that wish to qualify as a school voucher option must:

- Employ or contract with teachers who hold baccalaureate or higher degree(s), have at least three years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualify them to provide instruction in subjects taught;
- Meet applicable state and local health, safety, and welfare laws, codes, and rules;
- Require state and federal background checks for any employee with direct student contact, and bar those with certain felonies or misdemeanors from positions requiring direct student contact;
- Demonstrate fiscal soundness and accountability;
- Comply with federal antidiscrimination provisions;
- Meet all reporting and documentation submission deadlines required by the state Department of Education;
- Provide an annual report of student progress to parent or legal guardians; and
- Administer a statewide assessment for a student whose parents or legal guardians request their participation in the public school statewide student testing program.

The Florida Tax Credit Scholarship Program, established in 2001, provides state tax credits for contributions to nonprofit scholarship funding organizations which, in turn, award scholarships of up to $5,272 (for the 2014-15 school year) to eligible children of low-income families.

The Personal Learning Scholarships Accounts (PLSA) program allows nonprofit scholarship funding organizations to provide educational savings accounts to parents or legal guardians raising a child with a disability. The amount of a child’s PLSA is dependent on a number of different factors, including grade level, county of residence, and a student’s individual level of need. The average for the 2015-16 school year is approximately $10,000.
The John M. McKay Scholarships for Students with Disabilities Program has experienced one legal challenge to date. In November 2009, Citizens for Strong Schools, Inc. and Fund Education Now filed a lawsuit against the state, demanding that it comply with a 1998 constitutional referendum to ensure a “uniform, efficient, safe, secure and high quality” public education system. In May 2014, the coalitions amended their suit to include new claims addressing the Florida Tax Credit Scholarship Program and the John M. McKay Scholarships for Students with Disabilities Program. The amended complaint asserts that these school voucher programs, among others, unconstitutionally divert money from Florida’s public schools. The case is scheduled for a five-week trial in the circuit court of the second judicial circuit of Leon County beginning March 2016.

Georgia

The Georgia Special Needs Scholarship Program (GSNS) was created through Senate Bill 10 of 2007, or the Georgia Special Needs Scholarship Act, and signed into law by then-Governor Sonny Perdue as a school choice program for special needs students with an IEP attending Georgia public schools. To qualify, a student must have a parent or legal guardian who has resided in the state for at least one year, been enrolled in grades K-12 and completed the most recent school year in a Georgia public school, and received special education services through an IEP. Meanwhile, pre-kindergarten students, home school students, students in private residential treatment facilities, students in a Georgia Department of Juvenile Justice school, students in an Early Intervention Program, and students with a 504 Accommodation Plan are not eligible. Furthermore, a student becomes ineligible if he or she leaves an authorized private school and does not re-enroll immediately in another, graduates from high school, or turns 21 years old.

If the eligibility criteria for a GSNS are met, a student may request a transfer from their current public school to: 1) another public school within their current school district; 2) another public school outside their current school district; 3) one of three state schools for the blind or deaf; or 4) a private school that has been authorized to accept students through the GSNS program. Scholarship payments for GSNS students are calculated using data from the last year the student was in a Georgia public school. Payment amounts are based on the cost of services provided to each individual student and can vary widely depending on the degree of disability. For the 2014-15 school year, scholarships generally ranged from $2,500 to $13,500, with the average award totaling $5,700. The parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees. State payments to private schools are sent quarterly by the Department of Education directly to the school.

Schools participating in the GSNS program ultimately control which students are accepted. However, once a student is accepted, he or she must be allowed to complete all grades offered. For example, a middle school must allow a GSNS student to stay until the student completes grade 8, unless the student becomes ineligible for the program.

Private schools that wish to participate in the GSNS program must:

» Be physically located in the state;
» Be accredited through an approved regional or state accrediting entity;
» Demonstrate fiscal soundness;
» Employ or contract only with teachers who hold a bachelor’s degree or higher degree, or have at least three years of experience in either education or health;
» Meet applicable state and local health, safety, and welfare laws, codes, and rules;
» Comply with federal antidiscrimination provisions;
» Conduct criminal background checks on teachers that will come into contact with a GSNS student, and have protocols to handle any criminal histories that may surface;
» Only students with significant visual disabilities, deafness and/or hardness of hearing may request a transfer to a state school for the blind or deaf.
» Provide clear, written descriptions of academic progress to the parents or legal guardians of GSNS students during a school year;
» Administer valid and reliable beginning-of-grade and end-of-grade assessments to GSNS students and report test results to parents or legal guardians; and
» Complete other applicable reporting requirements.25

**Louisiana**

In 2010, the *School Choice Pilot Program for Certain Students with Exceptionalities Act* was passed by the Legislature and signed into law by then-Governor Bobby Jindal. Originally implemented as a pilot program for grades K-8 during the 2011-12 school year, it was expanded in 2012 to include grades K-12. The School Choice Program for Certain Students with Exceptionalities offers students with certain disabilities residing in a parish with a population of 190,000 or more – currently seven of the state’s 64 parishes – tuition assistance to attend eligible participating schools that offer special needs programs.26 The Program offers tuition assistance for up to 50 percent of the state per pupil funding for the student’s school district – approximately $2,200 per year – and cannot exceed the cost of the private school tuition.27 If the cost is higher than the amount of tuition assistance, the parents or legal guardians of special needs students are responsible for paying the difference. Program participation totaled 342 students for the 2015-16 school year.

To qualify for the program, students must:

» Have been identified by a Louisiana public school district as a student with autism, a developmental delay, a mental disability, other health impairment, specific learning disability, or a traumatic brain injury;
» Have an IEP; and
» Be eligible to attend public school in Louisiana.28

In addition to the parish population requirements, private schools that wish to qualify as a school choice option must:

» Be approved by the Board of Elementary and Secondary Education;
» Comply with the racial nondiscrimination requirements set forth in *Brunfield v. Dodd*;20
» Have provided educational services to students with qualifying diagnoses for at least two years prior to participation;
» Employ teachers who hold appropriate certification in special education; and
» Submit all other appropriate documentation within the state-specified deadlines.29

**Mississippi**

In 2012, with the passage of House Bill 1031, signed into law by Governor Phil Bryant, Mississippi became the first state in the nation to create a school voucher program targeted particularly for children with dyslexia. Specifically, the Dyslexia Therapy Scholarship for Students with Dyslexia Program provides children with dyslexia the option of attending a public school other than their current one or receiving a scholarship to attend a private school of their choice.30 The scholarship amount is determined by the Mississippi Adequate Education Program (MAEP)† base student cost for the school year and equaled approximately $4,918 for the 2015-16 school year, with 116 students participating.31 The parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees. Scholarships for private schools are paid by the state directly to private schools in 12 installments.

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*The judicial orders issued in *Brunfield v. Dodd* prohibited the provision of public funds or other assistance “to any racially discriminatory private school or to any racially segregated private school” and created a certification process to establish private school eligibility for receiving public funds.

†The Mississippi Adequate Education Program (MAEP), created in 1997, established the funding formula used to provide adequate current operation funding levels necessary for the programs of each school district to meet a successful level of student performance as established by the state Board of Education. The MAEP formula produces a base student cost, considered to be the amount necessary to provide each student an adequate education in a Mississippi school.
To qualify for the program, students must:

» Have been properly screened and diagnosed with dyslexia;
» Be entering grade 1-6;
» Have attended a full school year at a Mississippi public school or any other state-approved nonpublic school within Mississippi providing instruction in dyslexia intervention; and
» Have been accepted into a school that is eligible for the program.12

However, students do not qualify for the program if they are:

» Enrolled into a state school operated by Department of Juvenile Justice (due to detainment for a criminal offense);
» Participating in a home school education program; or
» Taking more than two courses per school year in a virtual school, correspondence school, or distance learning program that receives state funding under the student’s participation;

Private schools that wish to qualify as a school voucher option for the Dyslexia Therapy Scholarship for Students with Dyslexia Program must:

» Maintain a physical location within the state;
» Be accredited by the state Department of Education as a special purpose nonpublic school;
» Use licensed dyslexia therapists or trainees of an approved program to provide dyslexia therapy to qualifying students;
» Provide instruction for students with dyslexia using the Orton-Gillingham Approach;†
» Have school leadership with additional training in the characteristics of dyslexia;
» Conform to required criminal history record checks and fingerprinting requirements to determine employment eligibility of teachers and other school personnel;
» Provide, at a minimum, an annual progress report to a student’s parents or legal guardians;
» Follow generally accepted accounting principles and submit to annual audits by the state auditor; and
» Submit all other appropriate documentation within the state-specified deadlines.13

In 2013, Mississippi expanded its school vouchers options for special education students with House Bill 1004, establishing the Nate Rogers Scholarship for Students with Disabilities Program. Similar to the Dyslexia Therapy Scholarship for Students with Dyslexia Program, the Nate Rogers Scholarship provides a scholarship for qualifying students to attend a private school that offers speech-language therapy. The scholarship amount also is determined by the MAEP base student cost for each school year; however, the average scholarship for the 14 students participating in the program in 2014-15 equaled $5,155.14 The parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees.

The student requirements to qualify for the Nate Rogers Scholarship are the same as those for the Dyslexia Therapy Scholarship, except that the student must have a speech-language impairment‡ and must have received speech-language therapy and intervention. The criteria for disqualification are equal to those of the Dyslexia Therapy Scholarship for Students with Dyslexia Program.

Private schools that wish to qualify as a school voucher option for the Nate Rogers Scholarship for Students with Disabilities Program must:

» Maintain a physical location within the state;
» Be accredited by the state Department of Education as a special purpose nonpublic school that emphasizes

† The legislation also requires every school district to screen public school students for dyslexia twice, once in kindergarten and again in grade 1.

‡ Orton-Gillingham Approach is an instructional technique intended primarily for use with persons who have difficulties in reading, spelling, and writing typically associated with dyslexia. The Approach generally recommends a one-on-one teacher-student instructional model or small-group instruction.

(Source: Academy of Orton-Gillingham Practitioners and Educators)

† The legislation also requires that local school districts screen students for speech, language, voice and fluency disorders before the end of grade 1.
instruction in speech-language therapy and intervention as its primary purpose;
» Employ licensed and certified speech-language pathologists to provide an appropriate and specialized speech-language instructional program to participating students;
» Conform to required criminal history record checks and fingerprinting requirements to determine employment eligibility of teachers and other school personnel;
» Provide, at a minimum, an annual progress report to the student’s parents or legal guardians;
» Follow generally accepted accounting principles and submit to annual audits by the state auditor; and
» Submit all other appropriate documentation within the state-specified deadlines.

North Carolina

In 2013, the General Assembly passed House Bill 269, creating Special Education Scholarship Grants for Children with Disabilities to replace an existing Tax Credit for Children with Disabilities. In October 2013, the North Carolina State Education Assistance Authority began accepting and reviewing applications for the program, giving priority to families who previously were granted a Tax Credit for Children with Disabilities. Once pre-qualified families are approved for scholarship grants, new applications are considered on a first-come, first-served basis. The program provides up to $8,000 per school year by reimbursing parents or legal guardians for qualifying expenses for children with disabilities who attend school in an eligible nonpublic setting. The parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees. During the 2014-15 school year, 611 students participated in the program and were awarded $5,070 on average.

To qualify for the program, students must:
» Be a child with a disability and an IEP;
» Be reevaluated and identified as “a child with a disability” by their local public school district at least every three years;
» Have been previously approved to receive the grant, or enrolled in a North Carolina public school for the entire previous semester, or eligible for enrollment in kindergarten or grade 1 within a North Carolina public school;
» Be five to 22 years of age;
» Be enrolled in an approved eligible school or home school program; and
» Receive special education at least 75 days per semester.

Meanwhile, a student is ineligible if they have:
» Been enrolled in a nonpublic school at public expense;
» Received public school services while using the grant;
» Earned a high school diploma; or
» Been enrolled full-time at a postsecondary institution (college or technical school).

Notably, and unlike many other state special education voucher programs, North Carolina does allow parents or legal guardians of qualifying children to opt for home schooling and receive reimbursements for costs associated with special education instruction, related services, and educational technology. However, if parents or legal guardians choose to home school a child, the grant program does not allow for reimbursements for any tuition payments, even if the student enrolls in a private school for part of the semester.

Private schools that wish to qualify as a school voucher option must:
» Meet all applicable state and local fire, safety, sanitation and immunization requirements;
» Agree to provide state access to all student records related to the administration of the voucher program;
» Report tuition and fees charged to the student;
» Perform a criminal background check on the school staff member with the highest decision-making authority and confirm that person has not been convicted of certain misdemeanors or felonies;
» Provide to the tuition-paying parent or legal guardian of an eligible student an annual written explanation of the student’s progress;
» Administer a nationally standardized test or other nationally standardized equivalent measurement to all students in grade 3 or higher participating in the program, at least annually;
» Report graduation rates and aggregate standardized test performance of participating students;
» Contract with a certified public accountant to perform a financial review during each school year scholarship program students served were awarded more than $300,000;
» Comply with federal antidiscrimination provisions; and
» Submit all other appropriate documentation within the state-specified deadlines.  

Oklahoma

Lindsey Nicole Henry Scholarships for Students with Disabilities were first established in 2010 through House Bill 3393, creating additional funds for students with disabilities to attend PreK-12 in a private school of choice approved by the state Board of Education. In 2011, the program was updated through House Bill 1744, clarifying student IEP requirements, exempting children of military parents or legal guardians from school attendance requirements, and providing additional guidance and instruction. The scholarship amount is the lesser of the funds that would have been designated for public school education or private school tuition and fees. The average award during the 2014-15 school year was $6,632 per student for 377 participating students. The parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees. Payments are made quarterly to the private school of choice on behalf of the parents or legal guardians.

To qualify for the program, students must:

» Be a child with a disability and an IEP;
» Have spent the prior school year in attendance at a public school in Oklahoma, be the child of a member of the United States Armed Forces transferred to Oklahoma, or have an Individualized Family Service Plan; and
» Have been accepted into an eligible private school of choice.

Private schools that wish to qualify as a school voucher option must:

» Meet state accreditation standards;
» Demonstrate fiscal soundness;
» Report to the state Department of Education the services which the school has available for students with disabilities;
» Comply with federal antidiscrimination provisions;
» Meet state and local health and safety laws and codes;
» Be academically accountable to the parent or legal guardian for meeting the educational needs of the student;
» Employ or contract teachers who hold a bachelor’s degree or higher, or have at least three years of teaching experience in public or private schools, or have special skills, knowledge, or expertise that qualifies them to provide instruction;
» Comply with all state laws relating to general regulation of private schools;
» Adhere to published disciplinary procedures prior to the expulsion of a scholarship student; and
» Submit all other appropriate documentation within the state-specified deadlines.

Since its passage, the Lindsey Nicole Henry Scholarships for Students with Disabilities Act has been legally challenged twice, with litigation ongoing as of December 2015. In January 2011, four school districts filed suit against the state attorney general on the grounds that the Act violates “the Oklahoma Constitution’s prohibition of using public funds to aid, directly or indirectly, any sectarian institution, and of making a gift of public funds.” After an appeal of a Tulsa County Court ruling finding the school

† An Individualized Family Service Plan (IFSP) is a plan for early intervention for children with special needs, focusing on the role of the family. Special services for a child are guided by the IFSP from birth to age 3. At age 3, the IFSP transitions into an IEP. Since Oklahoma’s Nicole Henry Scholarships for Students with Disabilities program serves children entering PreK, some parents or legal guardians may apply for the scholarship through an IFSP.
voucher law unconstitutional, the Oklahoma Supreme Court struck down the earlier decision, ruling that the school districts did not have the legal standing to challenge the law. After the state Supreme Court ruling, a new suit was filed in October 2013 by a group of Oklahoma citizens on the same grounds as before and, in August 2014, Oklahoma County District Judge Bernard Jones became the second judge to rule the law unconstitutional. However, Judge Jones ruled that only the section of the law allowing state money to private sectarian schools was unconstitutional and that payments to private non-sectarian schools was constitutional. In addition, after the state attorney general announced that the state would appeal the decision, Judge Jones stayed his ruling, allowing the program to continue uninterrupted, in its entirety, until the state Supreme Court takes up the appeal. The state Supreme Court has yet to decide if it will consider the appeal.

**Conclusion**

While the U.S. Constitution does not guarantee education as a human right, every state has a constitutional provision, commonly called the “education article,” granting its citizens access to a free, public education, generally through the 12th grade. For decades, both education funding equity and access issues have been constant topics of discourse among public policymakers. In an effort to address pervasive challenges ranging from poor-performing schools to low teacher retention, poor graduation rates to teacher evaluation and certification, from hunger and nutrition to school climate, policymakers have examined and addressed myriad ways to improve the multiple aspects of the K-12 public education system.

As an enterprise-wide endeavor, the U.S. public education system has demonstrated many successes in providing a free education to millions of the nation’s children. However, during the past 30 years, much criticism has been levied against the system’s ability to adequately educate and prepare students for careers or higher education. In an effort to find alternative solutions and offer greater access to options other than public education, school voucher programs were legislated, whereby funding historically tied to the public

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<th>State</th>
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<th>Year Introduced</th>
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<td>2015</td>
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<td>$6,500 (projected)</td>
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</table>

Source: Friedman Foundation for Educational Choice
As school vouchers continue to be part of the mainstream education landscape, policymakers most recently have turned their attention to providing the same option to families with special educational needs. Although a smaller population in relation to the larger body of students attending both public and private schools, their needs are no less important. Increasingly, parents and legal guardians of special needs children are seeking alternatives to the public school environment, and implementation of school vouchers for special education students is becoming more commonplace. Since Florida became the first state in the nation to establish a school voucher program for special education students in 1999, several states followed with similar programs, adapted for their particular circumstances. As these programs are considered, and previously implemented programs continue to grow and evolve, policymakers have several strategies to consider that will determine the effectiveness of these programs vis-à-vis their ability to serve special education students.

Given that the parents or legal guardians of special needs students are responsible for paying the difference between the scholarship and private school tuition and fees, one particular consideration before lawmakers is how to ensure that low-income families have the ability to utilize any state school voucher programs.
Low-income households have the least disposable income to allocate toward the special needs of their child, creating many impediments to individualized services. Capping scholarships for special education services adversely affects families with limited finances, as private schools may remain out of reach even with a partial scholarship.

A potential solution to the problem of accessibility is the creation and authorization of dual participation in both special education and low-income school voucher programs. In addition to school vouchers for special education students, many states have established similar programs for low-income families. North Carolina is an example of a Southern state that has implemented this approach. However, a limitation of the North Carolina model is that it reimburses parents and legal guardians for costs associated with special education in lieu of providing payments up front, which prevents access for families that do not have the means to prepay private tuition and fees. Making special education vouchers need-based is another option, and one with the potential to provide additional funds for families that are not able to participate without a scholarship covering private school tuition and fees in full.

In addition to financial concerns, when a student enters a private educational institution, parents or legal guardians relinquish all protections and rights afforded to them by the federal Individuals with Disabilities Education Act and Individualized Education Plans. Given that the ultimate objective of school voucher programs is to give parents or legal guardians the ability to choose the best option for their child’s education, ensuring that public school alternatives are able to serve a special education student and provide a proper learning environment for them is critical. Southern states have taken several approaches to ensuring that certain fail-safes are in place for schools of choice, including:

» Requiring that the teachers serving program students have proper teaching credentials and training for special education students; an advanced level of postsecondary education; or special skills, knowledge, or expertise that qualifies them for their position;
» Requiring that schools themselves are designed and administered specifically as one serving special education students;
» Requiring the administration of yearly student assessments and student progress reports; and
» Requiring background checks for teachers and personnel.

School vouchers for special education students have the potential to assist families and their children in finding a learning environment tailored for their particular circumstances. However, an appropriately structured program is critical for meeting this end. As policymakers consider the options before them, several Southern states have replicable program components that can create a successful program for meeting the needs of special student populations.
Endnotes


10) Ibid.

11) Ibid.


15) “McKay Scholarship Program FAQs.”

16) Florida Statutes §§ 1002.39 and 1002.421.


18) “Florida – John M. McKay Scholarships for Students with Disabilities Program.”

19) “A Case for High Quality Education.”


22) “Georgia Special Needs Scholarship Program - Understanding the Program.”


24) “Georgia Special Needs Scholarship Program - Understanding the Program.”


29) Ibid.


33) Ibid.


38) Ibid.
39) Ibid.
40) Ibid.
46) Ibid.
49) Archer, Kim. “Student Voucher Law Unconstitutional due to ‘No-Aid-to-Religion’ Provision, Judge Rules.”
This report was prepared by Mikko Lindberg, Policy Analyst for the Education Committee of the Southern Legislative Conference (SLC) of The Council of State Governments (CSG), under the chairmanship of Senator Dolores Gresham of Tennessee. This report reflects the body of policy research made available to appointed and elected officials by the Southern Office.

The Southern Office of The Council of State Governments, located in Atlanta, Georgia, fosters and encourages intergovernmental cooperation among its 15 member states. In large measure, this is achieved through the ongoing work of the standing committees of its Southern Legislative Conference. Through member outreach in state capitol, policy research, international member delegations, staff exchange programs, meetings and fly-ins, staff support state policymakers and legislative staff in their work to build a stronger region.

Founded in 1947, the SLC is a member-driven organization and the largest of four regional legislative groups operating under CSG and comprises the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia.

The SLC’s six standing committees provide a forum which allows policymakers to share knowledge in their area of expertise with colleagues from across the South. By working together within the SLC and participating on its committees, Southern state legislative leaders are able to speak in a distinctive, unified voice while addressing issues that affect their states and the entire region.