

Issue Brief: Opportunity Scholarship Program

Background

Established in 1999, the Opportunity Scholarship Program (OSP) was originally designed to offer students who attended, or who were assigned to attend, a failing public school the option to choose to attend a participating private school or a higher performing public school. Parents choosing to enroll a student in a private school were given a voucher in the amount of about \$3,500 to cover the cost of private school tuition.

A lawsuit challenging the constitutionality of the private school provisions was filed shortly after the OSP was enacted. Among other things, the suit alleged that the OSP violated two Sections of the Florida Constitution: Article IX, Section 1, known as the Education Provision, and Article I, Section 3, known as the No-Aid Provision. The circuit court ruled that the OSP violated both of these provisions. On appeal to the 1st District Court of Appeal (1st DCA), the 1st DCA reversed the circuit court ruling regarding the Education Provision, but upheld the circuit court ruling with regard to the No-Aid Provision. The case was then sent on to the Florida Supreme Court. In June 2005, The Florida Supreme Court heard arguments on the case and justices questioned the attorneys on issues relating to both the No-Aid Provision (Article I, Section 3) and the Education Provision (Article IX, Section 3). In January 2006, The Florida Supreme Court ruled that the OSP was unconstitutional based upon the Education Provision (reversing the 1st DCA and upholding the circuit court). Since the Florida Supreme Court did not issue a ruling on whether the OSP also violated the No-Aid Provision, the ruling of the circuit court, as upheld by the 1st DCA, that the OSP violated the "No-Aid" Provision remains intact. Thus, the OSP was found to violate both Provisions. (See "*Opportunity Scholarship Program Litigation*" for more information on this litigation.)

In the wake of the Supreme Court ruling, the private school option was stripped from the OSP and only the option to attend a higher performing public school remains in effect.

Current Status

Under the current OSP, the parent of a student currently enrolled in, or assigned to attend, a school that has earned a grade "F" or three consecutive "Ds" may choose:

- To enroll the student in a higher performing public school in their district, regardless of available space, with transportation provided by the district; **OR**
- To enroll the student in a higher-performing public school that has available space in any other school district in the state. Under this option, the parent must provide transportation.

Under either of these options, the student may continue attendance in the higher-performing public school feeder pattern until the student graduates from high school.

According to the most recent available data, in 2012-2013, 28 school districts, 99 public schools, and 3, 650 students participated in the OSP. However, the number of participating schools and students has increased significantly in the past two years.

Concerns

- The state does not provide any funding to school districts to comply with the OSP. School districts must absorb all costs associated with compliance with the Program.
- The school grading system has undergone dozens of changes over the past few years and, as the state transitions to new standards and assessments, even more changes to the school grading system are underway. In addition, the state has acknowledged that the development and grading of assessment instruments has been plagued with problems and errors. At the same time, the school grading system has yielded an unprecedented number of schools with grades of “D” or “F” along with a significant overall decline in school grades. As a result, school grades are not considered a reliable and valid measure of a school’s performance or for determining eligibility for the OSP.
- The district must provide transportation for students selecting the option to enroll in a higher performing public school within the district. The state currently funds student transportation at about 65% of the actual costs for vehicles, maintenance, fuel, personnel, and related costs. The OSP places an additional and substantial burden on school district budgets. In addition, and reduces the efficiency of transportation plans.
- The option to enroll in a higher performing public school within the district is available *regardless of available space and class size considerations in both the sending and the receiving school*. This is disruptive to district planning and budgeting for class size compliance.
- The option to enroll in a higher performing public school within the district is available *regardless of whether the receiving school is a magnet or theme school*. This places OSP students ahead of the line of other district students that have applied for and/or may be on a waiting list to attend the magnet or theme school.
- Students participating in the OSP, either within their district or in another district in the state, may continue attendance in the higher-performing public school feeder pattern until the student graduates from high school. This provides the potential for a school district to shoulder OSP costs for a student for as many as 13 years. In addition, it ignores the case in which the student’s assigned feeder pattern schools may be, or become, high performing or the case in which the student’s chosen feeder pattern schools may be low performing.
- Although State Board of Education Rule 6A-6.0950 establishes deadlines by which the school district must notify parents of student eligibility for the OSP, parents are not given a deadline by which they must notify the sending or receiving district or school of their intent to participate in the Program. This can be substantially damaging to the school’s and school district’s planning and budgeting.

Relevant Florida Statute and Rule

[Section 1002.38, F.S.](#)

[Rule 6A-6.0950, F.A.C.](#)