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**DATE:** February 14, 2002

**HOUSE OF REPRESENTATIVES**  
**LIFELONG LEARNING COUNCIL**  
**ANALYSIS**

**BILL #:** CS/HB 1587  
**RELATING TO:** No Strings Attached/Freedom Scholarships  
**SPONSOR(S):** Council for Lifelong Learning, Representatives Kallinger, Arza, & others  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) LIFELONG LEARNING COUNCIL YEAS 9 NAYS 7
- (2)
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I. SUMMARY:

CS/HB 1587 creates the "No Strings Attached Act" and the Freedom Scholarship Program to provide school districts with flexibility over their budget and to provide opportunities for parents to enroll their child at an eligible private school.

The bill provides that if a district school board implements the parental choice provisions outlined in the act, the district will be exempt from various provisions of law. The bill requires that all participating school boards must establish a "Freedom Scholarship Program" to allow all students in the school district to choose to attend any public or private school.

The bill requires that a participating school district must timely offer each student's parent (1) the opportunity to enroll the student in another public school within the district of the parent's choice at any time during the school year, or (2) an opportunity to request a Freedom Scholarship to enroll the student in an eligible private school at any time during the school year. The parent must select the private school and apply for the admission of his or her child. The parent must request the Freedom Scholarship at least 60 days prior to the date of the first scholarship payment.

The bill provides that for purposes of continuity of educational choice, the Freedom Scholarship will remain in force until the student returns to a public school or graduates from high school. However, at any time, the student's parent may remove the student from the private school and place the student in another eligible private school or in another public school located in the district.

The annual value of the Freedom Scholarship is the lesser of either (1) the calculated amount spent by the State to provide for the education of a student at a public school, or (2) the total tuition and fees of the private school the student's parent chooses.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |         |       |        |
|-----------------------------------|---------|-------|--------|
| 1. <u>Less Government</u>         | Yes [X] | No [] | N/A [] |
| 2. <u>Lower Taxes</u>             | Yes [X] | No [] | N/A [] |
| 3. <u>Individual Freedom</u>      | Yes [X] | No [] | N/A [] |
| 4. <u>Personal Responsibility</u> | Yes [X] | No [] | N/A [] |
| 5. <u>Family Empowerment</u>      | Yes [X] | No [] | N/A [] |

B. PRESENT SITUATION:

**School Grading System**

Section 229.57, F.S., establishes the student assessment program to provide the information needed to improve the public schools by maximizing the learning gains of all students and to inform parents of the educational progress of their public school children. Public schools are graded by letter grades A-F based on its students' performance on the statewide assessment, the Florida Comprehensive Assessment Test (FCAT). Beginning in the 2001-2002 school year and thereafter, a school's grade is based on the following: student learning gains as measured by the FCAT in grades 3-10; improvement in the lowest 25<sup>th</sup> percentile of students in the school in the reading portion of the FCAT, unless these students are performing above satisfactory performance; and students meeting minimum performance standards. For the 2000-2001 school year there were 568 "A" schools, 429 "B" schools, 1112 "C" schools, 293 "D" schools, and no "F" schools in the state.

**School Recognition Program**

Section 231.2905, F.S., creates the School Recognition Program. The program was created in 1997 to provide increased autonomy and financial awards to schools that receive an "A" performance grade, or to schools that improve at least one letter grade from the previous year. Schools that receive an "A" and schools that improve at least two letter grades are eligible for increased autonomy.

Schools that meet the criteria for increased autonomy may be given deregulated status as outlined in s. 228.0565 (5), (7), (8), (9), and (10), F.S. They may be exempt from all statutes of the Florida School Code, except those pertaining to civil rights and student health, safety, and welfare. In addition, they have greater authority over the school's total budget, including, but not limited to, allocation of instructional staff and the acquisition of instructional materials, equipment, and technology.

Financial award amounts are equivalent to \$100 per student based on the school's prior year enrollment. The Department of Education reports that 842 schools were eligible for \$76.4 million in recognition and financial awards for the 2001 School Recognition Program.

### **School Funding**

School districts receive a portion of their funding through mandated categorical programs. Some of these programs are:

1. Students Transportation funds, s. 236.083, F.S. Districts must use these funds for student transportation as provided by law.
2. Inservice educational personnel training funds, s. 236.081(3), F.S. Districts are required to use a percentage of its base student allocation per full-time equivalent student on educational training programs as determined by the district school board.
3. Safe Schools funding. According to proviso language in the 2001-2002 General Appropriations Act, districts may use this money for: (1) after school programs for middle school students, (2) improvements to enhance the learning environment, including implementation of conflict resolution strategies, (3) alternative school programs for adjudicated youth, (4) other programs to make the school a safe place to learn.
4. Public school technology funds.
5. Funds for teacher recruitment and retention.

School districts have expressed a desire to receive an education budget with lump sum funding for categoricals, thus allowing local school boards more flexibility in the use of funds in order to meet the specific needs of their students.

### **School district Accountability and Expenditure requirements**

The Legislature has set many accountability measures and expenditure requirements for school districts. Some of these measures include the following:

1. Equity in school level funding, s. 236.08103, F.S. Districts are required to allocate Florida Education Finance Program (FEFP), lottery and discretionary local revenue to schools based on each school's proportionate share of the revenue earned. This requires school districts to treat all schools equitably in the allocation of FEFP funds.
2. Minimum classroom expenditure requirements, s. 236.08102, F.S. The Legislature may require any school district that fails to meet the minimum academic performance standards it sets to increase emphasis on classroom instruction activities from the operating funds the district receives.
3. Educational funding accountability, s. 236.685, F.S. Each school district is required to submit annually a school financial report. The purpose of the school financial report is to better inform parents and the public concerning how revenues were spent to operate the school during the prior fiscal year.
4. Program Expenditure requirements, s. 237.34(3), F.S. Districts are required to expend at least the percent of the funds generated by each of the following programs on the aggregate total school costs for such programs: Grades K-3: 90%, grades 4-8: 80%, grades 9-12:80%, programs for exceptional students: 90%, grades 7-12 vocational education programs: 80%, student-at-risk programs: 80%, juvenile justice programs: 80%.

5. Small schools requirement, s. 235.2157, F.S. Beginning in July 1, 2003 all plans for new educational facilities must be plans for small schools or for a school-within-a-school, as defined in statute.

### **K-20 Funds Flexibility Act**

The September 11, 2001, terrorist attacks on America and other economic factors caused a reduction in Florida revenue collections for the 2001-2002 fiscal year. The Legislature was forced to convene a special session in order to balance the budget in the face of a \$1.3 billion loss to general revenue. Approximately 53% of the total state general revenue fund is appropriated for education; therefore cuts in the education budget were inevitable.

To mitigate the mid-year reduction of approximately \$309 million in the FEFP, the Legislature enacted ch. 2001-374, L.O.F., which creates the "K-20 Funds Flexibility Act." This law provides school boards flexibility to spend categorical funds appropriated in the 2001-2002 General Appropriations Act for essential classroom instruction.

### **Public School Choice**

In 1996, the Legislature enacted s. 229.057, F.S., requiring school districts to design a controlled open enrollment plan. However, the law does not require districts to implement the plan. In Florida, controlled open enrollment means a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor. Currently, 18 school districts have implemented public school choice open enrollment programs.

### **Private School Choice Programs**

Currently, there are programs in place within the state which provide public dollars for payment of educational services provided by private entities in the K-12 system:

- Section 229.05371, F.S., establishes the McKay Scholarship for students with disabilities, which provides scholarships for eligible students with disabilities to attend an eligible public or private school of their choice. Students with disabilities include K-12 students who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospitalized or homebound, or autistic. Any parent of a public school student with a disability who is dissatisfied with the student's progress in their public school may receive a McKay Scholarship.
- Section 229.0537, F.S., establishes the Opportunity Scholarship Program, which provides scholarships for students in schools that have received a grade of "F" twice in a 4-year period. The parents of students enrolled at those schools have the option of (1) continuing to enroll the student at that school, (2) enrolling the student at a higher performing public school within the district, (3) enrolling the student at a higher performing public school in an adjacent district, as long as space is available, or (4) requesting an Opportunity Scholarship. These scholarships can be used for the child's education at an eligible private school.
- Section 230.23 (4)(m), F.S., authorizes school districts to contract with a non-public school or community facility for the purpose of special education and related services to eligible exceptional students.
- Section 230.23161(12), F.S., authorizes and strongly encourages school districts to contract with a private provider for the provision of educational programs to youths placed with the

Department of Juvenile Justice (DJJ). Recent survey results indicate that private providers account for 37% of the educational services delivered to students in juvenile justice facilities.

### **Private Schools**

Private elementary and secondary schools in Florida are not licensed, approved, accredited or regulated by the state. However private schools are required by section 229.808, F.S., to make their existence known to the Department of Education (DOE) and respond to an annual survey designed to make information about them available to the public. Section 229.808, F.S., also requires that each person who establishes, purchases, or otherwise becomes an owner of a private school must, within 5 days of assuming ownership, file with the Florida Department of Law Enforcement (FDLE), a complete set of fingerprints for a criminal background check. The owner of a private school may require school employees to file a complete set of fingerprints with FDLE.

According to DOE, in the 2001-2002 school year, there are 2,048 known private schools. Private schools may be accredited by one of several accrediting associations, such as the Southern Association of Colleges and Schools (SACS), Florida Catholic Conference (FCC), or Florida Association of Christian Colleges & Schools (FACCS). These accrediting associations have required standards in several areas such as: admission policies, financial status, salaries and working conditions, record keeping, transportation, length of school year, school size, class size, teacher training and experience, physical plant and equipment, academic programs and media, standardized testing and assessment, health and safety, and discipline.

According to the Florida Association of Academic Nonpublic Schools, an organization representing 85% of the private schools in Florida, the average tuition at private elementary schools is \$3,400/year, while the average tuition at private secondary schools is \$4,000/year.

### C. EFFECT OF PROPOSED CHANGES:

#### **No Strings Attached Act**

CS/HB 1587 creates the "No Strings Attached Act." The bill provides that if a district school board implements the parental choice provisions outlined in the act, the district will be exempt from various provisions of law. These provisions are:

- The school and district grading system, established in s. 229.57(7), (8), (9), (10), and (16), F.S., unless 50% of the parents of the students in that public school request that the school be graded.
- Requirements for the use of funds for student transportation, as provided in s. 236.083, F.S.
- Requirements for the use of funds for inservice educational personnel training.
- Requirements for the use of funds for safe schools.
- Requirements for the use of funds for public school technology.
- Requirements for the use of funds for teacher recruitment and retention.
- Equity in school-level funding, as provided in s. 236.08103, F.S.
- Minimum classroom expenditure requirements, as provided in s. 236.08102, F.S.
- Educational funding accountability, as provided in s. 236.685, F.S.
- Program expenditure requirements, as provided in s. 237.34(3), F.S.
- Small schools requirement, as provided in s. 235.2157, F.S.

### **Freedom Scholarship Program**

The bill requires that all school boards participating in the “No Strings Attached” program must establish a “Freedom Scholarship Program” to allow all students in the school district to choose to attend any public or private school. The participating school board must provide the following options to the parents of each student in attendance in the school district:

- The student may attend a public school of the parent’s choice within the school district other than the one to which the student is assigned; or
- The student may accept a Freedom Scholarship to attend an eligible private school of the parent’s choice.

### **Scholarship Eligibility**

Any parent of a public school student in a participating school district may request and receive a Freedom Scholarship for the student to enroll in and attend a private school if: (1) the student has spent the prior school year in attendance at a Florida public school. “Prior school year in attendance” means that the student was enrolled and reported by a school district for funding during the preceding October and February FEFPS surveys in K-12; or (2) the student is entering kindergarten or first grade. In order to receive the Freedom Scholarship, the parent must also have obtained acceptance for admission of the student to an eligible private school.

The bill provides that for purposes of continuity of educational choice, the Freedom Scholarship will remain in force until the student returns to a public school or graduates from high school. However, at any time, the student’s parent may remove the student from the private school and place the student in another eligible private school or in another public school located in the district.

Students who are enrolled in a school operating for the purpose of providing educational services to youth in Department of Juvenile Justice commitment programs are not eligible to receive the scholarship.

### **Public School Choice Option**

The bill requires that a participating school district must timely notify parents of all eligible students in the school district of all options available under the “No Strings Attached Act” and must offer each student’s parent the opportunity to enroll the student in another public school within the district of the parent’s choice at any time during the school year. The parent is not required to accept this option in lieu of requesting a Freedom Scholarship to attend an eligible private school. However, if the parent chooses the public school option, the student may continue attending the public school he or she currently attends, or the parent may select another public school for the child to attend until the student graduates from high school.

If the parent chooses a public school consistent with the district’s controlled open enrollment plan, the school district must provide transportation to the public school selected by the parent. If the parent chooses a public school that is not consistent with the district’s open enrollment plan, the parent is responsible for providing the transportation of the student to the public school.

Because the “No Strings Attached Act” provides for exemption from the school grading system provided in s. 229.57, F.S., the bill provides that if at least 50 percent of the parents in a public school in a participating school district vote to participate in the school grading system, the school district and DOE are required to include that school in the school grading system program. Such a

school would receive a school performance grade and be eligible for participation in the School Recognition Program established in s. 231.2905, F.S.

### **Private School Choice Option**

The bill requires that participating school districts must timely notify parents of all eligible students of all available options, and must offer each student's parent an opportunity to request a Freedom Scholarship to enroll the student in an eligible private school at any time during the school year. The parent is not required to accept a Freedom Scholarship in lieu of selecting another public school in the school district. However, if the parent chooses to receive a Freedom Scholarship, the student may continue attending a private school or select another private school chosen by the parent until the student graduates from high school.

The bill provides if a parent whose child receives a Freedom Scholarship requests that the student take the statewide assessment (FCAT), the school district is required to provide locations and times for the student to take all statewide assessments. If the parent exercises the option, he or she is responsible for transporting the student to the assessment site designated by the school district.

The bill requires that the school district must notify DOE within 10 days after it receives notification of a parent's intent to apply for a Freedom Scholarship.

### **Private School Eligibility**

CS/HB 1587 specifies that in order to be eligible to participate in the Freedom Scholarship Program, a private school:

- Must be a Florida private school.
- May be sectarian or nonsectarian.
- Must demonstrate fiscal soundness by being in operation for one school year or by providing DOE with a statement by a certified public accountant confirming that the private school is insured and that the owner(s) of the school have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with all revenues that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter may be filed with DOE.
- Must notify DOE of its intent to participate in the scholarship program and the notice must specify the grade levels that the private school has available for students participating in the Freedom Scholarship Program.
- Must comply with the antidiscrimination provisions of 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin.
- Must be academically accountable to the parent for meeting the educational needs of the student.
- Must employ or contract with teachers who hold baccalaureate or higher degrees, have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge or expertise that qualifies them to provide instruction in the subjects taught.
- Must comply with all state laws relating to the general regulation of private schools.
- Must adhere to the tenets of its published disciplinary procedures prior to the expulsion of a scholarship student.

### **Obligations of Program Participants**

CS/HB 1587 specifies that a parent who applies for a Freedom Scholarship is exercising his or her parental option to place his or her child in a private school. The bill requires the parent to select the private school and apply for the admission of his or her child. The parent must request the

Freedom Scholarship at least 60 days prior to the date of the first scholarship payment. A student who receives a Freedom Scholarship is required to remain in attendance at the chosen private school throughout the school year, unless excused by the school for illness or other good cause. The student must also comply with the private school's code of conduct.

The parent of the student receiving a Freedom Scholarship is required to fully comply with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.

The bill requires that upon the receipt of a scholarship warrant, the parent to whom the warrant is made must restrictively endorse the warrant to the private school for deposit into the account of the private school.

### **Freedom Scholarship Funding**

The bill specifies that the maximum scholarship granted for an eligible student is a calculated amount equal to the base student allocation in the FEFP multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the public school to which he or she is assigned, multiplied by the district cost differential. In addition, this calculated amount must include the per-student share of supplemental academic instruction funds, instructional material funds, technology funds, and other categorical funds as provided for in the General Appropriation Act.

The actual amount of the Freedom Scholarship will be the calculated amount (as determined by the formula explained above) or the amount of the private school's tuition and fees, whichever is less.

### **Freedom Scholarship Payment**

The school district must report to DOE all students who are attending a private school under the Freedom Scholarship Program. However, the students attending private schools with a Freedom Scholarship must be reported separately from other students reported for purposes of the FEFP. School districts must report to DOE the number of program participants on July 1, September 1, December 1, and February 1 of each year. Following the required notification of the number of program participants, DOE must transfer the amount of the Freedom Scholarships from the school district's total funding entitlement under the FEFP and from authorized categorical accounts to a separate account for the scholarship program for quarterly disbursement to the parents of participating students. The DOE is not authorized to make any retroactive payments.

Upon proper documentation reviewed and approved by DOE, the Comptroller is required to make scholarship payments to the parent in four equal amounts no later than September 1, November 1, February 1, and April 15 of each academic year in which the scholarship is in force. The initial scholarship payment will be made after DOE verifies admission acceptance of the student to an eligible private school. Subsequent scholarship payments will be made upon verification of the student's continued enrollment and attendance at an eligible private school.

The bill requires that scholarship payments be made by individual warrant made payable to the student's parent and mailed by DOE to the private school of the parent's choice. The parent is required to restrictively endorse the warrant to the private school for deposit into the account of the private school.



### **Administration of the Freedom Scholarship Program**

The bill requires the State Board of Education (SBE) to monitor a school district's implementation of the public and private school choice options established in the "No Strings Attached Act." If the SBE determines that a school district is not complying with the law or with state board rule, the school district will lose the exemptions from the provisions of law it was exempt from by reason of participation in the Freedom Scholarship Program. The bill specifies that if the SBE makes such a determination and takes back the district's exemptions, any parent who has already received a Freedom Scholarship for their child will continue to receive the scholarship.

The bill authorizes the SBE to adopt rules pursuant to current law in order to administer the Freedom Scholarship Program. The bill specifies that the inclusion of eligible private schools as an option under the Program does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of private schools beyond those reasonably necessary to enforce the Freedom Scholarship Program.

The bill specifies that no liability will arise on the part of the state based on the award or use of a Freedom Scholarship.

#### D. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Creates a new section of law in order to (1) allow for school district freedom, (2) create the Freedom Scholarship Program in districts who choose to exercise freedom from certain statutes, (3) specify scholarship eligibility, (4) specify school district and DOE obligations, (5) specify private school eligibility, (6) specify program participants' obligations, (7) provide for scholarship funding and liability, (8) specify that no liability arises on the part of the state based on the award or use of a Freedom Scholarship, (9) specify accountability measures, and (10) provide the SBE with rulemaking authority.

**Section 2:** Provides for the bill to become effective upon becoming law.

#### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

##### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill would have no effect on state revenues.

2. Expenditures:

This bill does not require an appropriation.

##### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill would not have a fiscal impact on local revenues per student.

2. Expenditures:

Variable expenditures (such as classroom supplies) would be reduced for a school district if a public school student takes a Freedom Scholarship to attend a private school.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The annual value of the Freedom Scholarship is the lesser of either (1) the calculated amount spent by the State to provide for the education of a student at a public school, or (2) the total tuition and fees of the private school the student's parent chooses. The scholarship is to be used by parents to pay for the child's attendance at an eligible private school.

D. FISCAL COMMENTS:

The annual value of the Freedom Scholarship is the lesser of either (1) the calculated amount spent by the State to provide for the education of a student at a public school, or (2) the total tuition and fees of the private school the student's parent chooses. Therefore, if the amount of the private school tuition is less than the calculated amount that the state would have spent on the student had the student remained in the public school system, the state will save that difference.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

**Florida Cases**

Article IX, Section 1 of the Florida Constitution provides that:

"The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows student to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require."

This language was added to the State Constitution by a 1998 amendment and, consequently, has not had time to be fully constitutionally explored by the courts. However, the latest ruling on this language is a unanimous decision by the First District Court of Appeal in *Bush v. Holmes*. See 767

So. 2d 668 (Fla. 1 DCA 2000). The Florida Supreme Court has denied a petition for review of the decision by the 1<sup>st</sup> DCA.<sup>1</sup>

The First DCA's decision court stated that:

"Nothing in article IX, section 1 [of the Florida Constitution] clearly prohibits the Legislature from allowing the well-delineated use of public funds for private school education, particularly in circumstances where the Legislature finds such use is necessary. We therefore reject the trial court's finding that the constitution not only mandates that the State 'make adequate provision for the education of all children' in Florida, but that it also prescribes the sole means for implementation of that mandate. Contrary to the conclusion of the trial court, and the argument advanced by [the plaintiffs], article IX, section 1 does not unalterably hitch the requirement to make adequate provision for education to a single, specified engine, that being the public school system." See 767 So. 2d 668 at 675 (*emphasis added*).

The court noted that the legislature found that a student should not be compelled, against the wishes of the student's parent or guardian, to remain in a school found by the state to be failing for 2 years in a 4-year period.<sup>2</sup> The legislature also attempted to improve those failing schools by raising expectations for and creating competition among schools, while at the same time not penalizing the students attending failing schools.<sup>3</sup>

The Florida Supreme Court had previously upheld a legislative program authorizing the payment of private school tuition for students whose needs could not be met in the public schools and specified that, in implementing this program, students could not be deprived of a "right to a free education."<sup>4</sup> The Court explained that "realizing that the public schools may not have the special facilities or instructional personnel to provide for the exceptional students, the legislature has allowed the school boards to make contractual arrangements with private schools." By analogy, the *Bush v. Holmes* court stated that the voucher statute "does not deprive students of a right to a free education and requires participating private schools to accept as full tuition and fees the amount provided by the state for each student"<sup>5</sup>

The Florida Supreme Court had previously stated in *School Board of Escambia County v. State*, 353 S.2d 834, 837 (Fla.1977), that "by definition...a uniform system results when the constituent parts, although unequal in number, operate to a common plan or serve a common purpose."

The Florida Supreme Court further explained its notion of a "uniform system of free public schools" in *St. Johns County v. Northeast Florida Builder's Association, Inc.*, 583 S.2d 635 (Fla. 1991):

"We see nothing in this section of the Constitution that mandates uniform sources of school funding among the several counties...The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature."

The Court in *Florida Department of Education v. Glasser*, 622 So.2d 944 (Fla. 1993), continued to suggest "that the uniformity clause will not be construed as tightly restrictive but merely as establishing a larger framework in which a broad degree of variation is possible."

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<sup>1</sup> See 2001 Fla. LEXIS 952. Decided on April 24, 2001.

<sup>2</sup> See *id.* at 675 (*emphasis added*).

<sup>3</sup> See Ch. 99-398, at 4273, Laws of Fla.

<sup>4</sup> See *Scavella v. School Board of Dade County* 363 So. 2d 1095 (Fla. 1978).

<sup>5</sup> See 767 So. 2d at 676.

The Court has consistently stated that decisions concerning the uniformity of the state's school system should be left to the legislature. In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400 (Fla. 1996), the Florida Supreme Court once again refused to examine the adequacy of legislative findings by explaining:

"[W]e must consider this issue in the context that appropriations are textually and constitutionally committed to the legislature. Any judicial involvement would involve usurping the legislature's power to appropriate funds for education. The judiciary must defer to the wisdom of those who have carefully evaluated and studied the social, economic, and political ramifications of this complex issue - the legislature."

In conclusion, the Court held that:

"[T]he legislature has been vested with enormous discretion by the Florida Constitution to determine what provision to make for an adequate and uniform system of free public schools." Id at 408.

### **Jackson v. Benson (Wisconsin Supreme Court, 1998)**

In June of 1998, the Wisconsin Supreme Court upheld the nation's first private school choice program against legal challenge (*Jackson v. Benson*, 218 Wis. 2d 835). In November of 1998 the United States Supreme Court declined to review the Wisconsin Supreme Court decision.

Wisconsin's private school choice plan was challenged on a number of constitutional grounds:

#### Establishment Clause of the U.S. Constitution:

The court held the plan did not violate the Establishment Clause "because it has a secular purpose, it will not have the primary effect of advancing religion, and it will not lead to excessive entanglement between the State and participating sectarian private schools." The court noted "eligibility...is determined by neutral, secular criteria that neither favor nor disfavor religion, and aid is made available to both religious and secular beneficiaries on a nondiscriminatory basis," that the plan "places on equal footing options of public and private school choice, and vests power in the hands of parents to choose where to direct the funds allocated for their children's benefit." The court found no excessive entanglement because "the program does not involve the State in any way with the (private) schools' governance, curriculum, or day-to-day affairs. The State's regulation of participating private schools, while designed to ensure that the program's educational purposes are fulfilled, does not approach the level of constitutionally impermissible involvement."

#### Wisconsin Uniformity Clause:

Responding to arguments that the legislature was prohibited from spending public education funds for private education purposes, the court held that while the uniformity clause "requires the legislature to provide the opportunity for all children in Wisconsin to receive a free uniform basic education," this "provides not a ceiling but a floor upon which the legislature can build additional opportunities for school children in Wisconsin."

#### Wisconsin Public Purpose Doctrine:

The court held that "education constitutes a valid public purpose (and) that private schools may be employed to further that purpose." The court concluded "the statutory controls applicable to private schools coupled with parental choice sufficed to ensure that the public purpose was met."

Federal and State Equal Protection Rights:

Pointing out that all participating private schools must comply with federal antidiscrimination provisions when selecting students, the court held that “on its face, the (plan) is race-neutral . . . it allows a group of students, chosen without regard to race, to attend schools of their choice.”

**Mitchell v. Helms (United States Supreme Court, 2000)**

In June 2000 the United States Supreme Court held that Chapter 2 of the Education Consolidation and Improvement Act of 1981, which provides government aid in materials and equipment to public and private schools, was not a law establishing religion. The court reasoned that this law did not violate the First Amendment because it neither resulted in religious indoctrination by the government, nor defined its recipients by reference to religion.

The Court relied on the criteria set out in *Agostini v. Felton*, 521 U.S. 203, to determine whether Chapter 2 violated the Establishment Clause. Government aid has the effect of advancing religion only if it (1) results in governmental indoctrination, (2) defines its recipients by reference to religion, or (3) creates an excessive entanglement. The Court only addressed the first two criteria because the lower court’s finding that Chapter 2 did not create an excessive entanglement was not challenged.

Governmental Indoctrination

“In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, the Court has consistently turned to the neutrality principle. . . . As a way of assuring neutrality, the Court has repeatedly considered whether any governmental aid to religious institutions results from the genuinely independent and private choices of individual parents.

The Court further stated that Chapter 2 did not result in government indoctrination because, “It determines eligibility for aid neutrally, making a broad array of schools eligible without regard to their religious affiliations or lack thereof. It also allocates aid based on the private choices of students and their parents as to which schools to attend.”

Defining recipients

The Court noted that Chapter 2 does not define its recipients by reference to religion, “since aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis.”

In conclusion, the U.S. Supreme Court has ruled in recent years that as long as a law concerning government aid for private education does not aid or establish one religion in favor of another, it is constitutional. Furthermore, the first three state Supreme Courts to consider the constitutionality of school choice have upheld the programs under the First Amendment.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the State Board of Education to adopt rules in order to administer the provisions of the “No Strings Attached Act.”

**C. OTHER COMMENTS:**

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the Council for Lifelong Learning amended the bill and made it into a council substitute. The council substitute:

- Clarifies that participating school districts are exempt only from school grading, not from FCAT testing;
- Clarifies that participating school districts still receive categorical funding. Districts are only exempt from the requirement of the use of the funds;
- Deletes the exemption from the use of Supplemental Academic Instruction funds;
- Deletes the exemption from the use of instructional materials funding;
- Clarifies that participating districts are not exempt from cost accounting and reporting requirements, rather they are exempt only from the expenditure requirements;
- Allows parents receiving Freedom Scholarships to choose any private school for their child to attend, not just a private school within the school district;
- Clarifies that if the State Board of Education determines that a participating school district has not fully implemented full parental choice and the State Board decides to take back that district's exemptions, any parent who has already received a Freedom Scholarship in that district will continue to receive the scholarship.

VII. SIGNATURES:

LIFELONG LEARNING COUNCIL:

Prepared by:

Staff Director:

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Anitere Flores

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Patricia Levesque