



Kansas Legislative Research Department

Providing nonpartisan, objective research and fiscal analysis for the Kansas Legislature since 1934

68-West–Statehouse | 300 SW 10th Ave. | Topeka, Kansas 66612-1504
(785) 296-3181

kslegres@klrd.ks.gov

kslegislature.org/klrd

December 1, 2021

To: 2021 Special Committee on Education

From: Norma Volkmer, Fiscal Analyst

Re: School Choice Trends

SCHOOL CHOICE: PROGRAMS AND RECENT LEGISLATION

School Choice Programs

School choice programs can be generally divided into two areas: public and private. Public school choice programs are those that involve public funding and public schools, such as magnet schools, charter schools, and open enrollment. Private school choice programs are those that involve public funding and private schools, including voucher, tax credit scholarship, and education savings account (ESA) programs.

Public School Choice Programs

Magnet Schools

Magnet schools are schools of choice that operate within the public school system and are generally focused on a themed curricula. Curricula may be focused on science, technology, engineering, and mathematics (STEM), fine and performing arts, international studies, career and technical education, and world languages. Magnet schools are founded on five pillars: diversity, innovative curriculum and professional development, academic excellence, leadership, and family and community partnerships.¹

Charter Schools

In Kansas, charter schools are free, independent public schools that operate in a school district and are accredited by the State Board of Education (SBOE).² [KSA 72-4206 through 72-4213](#) provides for the establishment of alternative public education such as charter schools,

¹ See Magnets Schools of America, What are Magnet Schools, <https://magnet.edu/about/what-are-magnet-schools#1499667889100-039b81ce-813c>.

² Kansas State Department of Education, Career, Standards & Assessment Services, Charter Schools, <https://www.ksde.org/Agency/Division-of-Learning-Services/Career-Standards-and-Assessment-Services/CSAS-Home/Graduation-and-Schools-of-Choice/Charter-Schools>.

requiring the schools to be focused on outcomes or results, and that enrollment reflects the racial and socio-economic composition of the school district as a whole. Charter schools may seek waivers from SBOE accreditation, school district policies, and SBOE rules and regulations; a waiver would be granted by either the local board or SBOE. According to the Education Commission of the States (ECS), 45 states and Washington, D.C., have charter school laws as of January 2020.³

Open Enrollment

Open enrollment allows public school students to transfer from one public school to another, either within the same school district (intradistrict) or to another school district (interdistrict). States may require school districts to have open enrollment (mandatory) or leave it to the school district's discretion (voluntary). According to the ECS, as of October 2018, 15 states mandate intradistrict and interdistrict open enrollment for at least some student or circumstances, and 19 states allow for only voluntary open enrollment (intradistrict, interdistrict, or both).⁴ The 13 remaining states have a mixed policy, such as voluntary interdistrict and mandatory intradistrict (or *vice versa*) or mandatory for certain students, such as those attending low-performing schools, and voluntary for all other students.

[KSA 72-13,101](#) provides that local boards of education may enter into agreements allowing interdistrict attendance. These agreements are subject to the following limitations: a maximum term of five years, termination or alteration by the Legislature, and termination or alteration only by mutual agreement of the boards. These agreements must include plans for transportation of the student, payment or cost sharing for the expenses of the student at school, and for the authority and responsibility of participating boards of education.

Private School Choice Programs

School Voucher Programs

School voucher programs (voucher programs) are often used by states to offer students a scholarship in exchange for a transfer from a public school to a private school. Legislation often includes requirements for the private schools and parameters for student eligibility. Student eligibility requirements can include, but are not limited to: income thresholds, attendance at low performing schools, special needs or disabilities, military personnel families, and foster care. Voucher programs are generally funded at or near the state per pupil allocation. If the award is less than the amount a state would otherwise pay for a student to attend public school, the state recoups the difference.

According to a school choice survey published by the ECS on March 24, 2021, there are currently 27 voucher programs in 16 states and Washington, D.C., with some states establishing different programs to serve different student populations.

3 Education Commission of the States, 50-State Comparison: Charter School Policies, <https://www.ecs.org/charter-school-policies/>.

4 ECS, 50-State Comparison: Open Enrollment Policies, <https://www.ecs.org/open-enrollment-policies/>.

Tax Credit Scholarship Programs

Tax credit scholarship programs (tax credit programs) allow individuals or corporations to allocate a portion of their owed state taxes to private nonprofit organizations that issue private school scholarships to K-12 students. The individual or corporation donates to such an organization and receives a tax credit for the donation. The organization uses donations to provide scholarships to students.

Per the ECS school choice survey, Kansas and 18 other states operated 24 different tax credit programs prior to 2021. Arkansas and Ohio both passed legislation creating tax credit programs in 2021. Like the voucher programs, states generally limit eligibility to certain student populations; however, tax credit programs may also include limitations based on where students are currently attending school, what private schools are eligible, and the total amount of funding available to be credited.

The Tax Credit for Low Income Student Scholarship Program (TCLISSP), which was created in 2015, is governed by [KSA 72-4351 through 72-4357](#). In HB 2134, the 2021 Legislature amended provisions to:

- Clarify that “eligible students” are children eligible for free or reduced-price meals and who were enrolled in kindergarten to eighth grade at a Kansas public school in the previous year when the scholarship was first sought or to those who previously received a scholarship and have not graduated from high school or turned 21 years old;
- Expand eligibility by deleting the provision defining “public school” as the lowest performing 100 schools and replacing it with any school operated by a unified school district;
- Require qualified schools to post links to certain reports on the Kansas State Department of Education (KSDE) website; and
- Require the KSDE to include accredited nonpublic schools in achievement reports to the Governor and Legislature.

ESA Programs

ESA programs involve the depositing of public funds into government-administered accounts. Eligible students and their parents can use the funds for a variety of purposes, including private school tuition, tutoring, dual- or concurrent-enrollment credits, and other allowable purposes. These purposes are generally limited by legislation, but are broader than voucher programs that are often focused only on providing private school tuition. ESA programs may even allow a student to remain enrolled in public school part-time.

Currently, Arizona, Florida, Indiana, Mississippi, New Hampshire, North Carolina, Tennessee, and West Virginia have enacted ESA programs. West Virginia’s program is the broadest, open to any student enrolled in a public school, while Florida, Indiana, Mississippi, North Carolina, and Tennessee limit eligibility to those students with IEPs or disabilities. New Hampshire’s ESA program is for students in low-income households. Arizona students are eligible for the ESA program if they have a disability, attend a low-performing school, have a

parent who is on active duty or killed in the line of duty, is a juvenile court ward, is the sibling of a participating student, have a parent who is blind, deaf, or hard of hearing, live on a reservation, or previously participated. The Arizona Legislature considered a bill to expand student eligibility during its 2021 Session, but the bill was ultimately held in the House of Representatives.

2021 SB 175, among other provisions, would have created an ESA program in Kansas for eligible students, including students eligible for free and reduced meals. The conference committee report for SB 175 was not adopted by either chamber.

2021 Legislative Trends

2021 saw a variety of K-12 legislation, including bills creating and amending provisions relating to charter schools, vouchers, tax credit programs, and ESAs. According to the National Conference of State Legislatures, 27 states enacted 48 bills in 2021 that had provisions relating to charter schools. This legislation primarily amended pre-existing charter school programs rather than enacting new programs. The Montana Legislature did consider charter school legislation; Montana is one of the five states that does not have public charter schools.

Seven states did pass new school choice program legislation,⁵ including the following:

- Arkansas: [Act 904](#) created the Philanthropic Investment in Arkansas Kids Program Act, which is a tax credit for program for students with a household income less than 200.0 percent the federal poverty level.
- Indiana: [HB 1001](#) (the appropriations bill) increased funding for charter and virtual schools, expanded the voucher program, and created an ESA program for special education students.
- Kentucky: [HB 563](#) established the Education Opportunity Account Program, which is a tax-credit ESA program for eligible student to expend donated funds for tuition, fees, and other allowable uses. **The Franklin Circuit Court held the law unconstitutional in October 2021.**
- Missouri: [HB 349](#) created the Missouri Empowerment Scholarship Accounts Program, which allows contributed funds to be provided to student ESAs for use on tuition, fees, textbooks, and other allowable uses. Only Missouri and Kentucky have tax-credit ESA programs.
- New Hampshire: [HB 2](#) (the appropriations bill) established Education Freedom Accounts, an ESA program for students in low-income households.
- Ohio: [HB 110](#) (the appropriations bill) created a tax-credit program that prioritizes low-income students.
- West Virginia: [HB 2013](#) created the broadest ESA program.

Several other states, including Kansas, expanded or amended pre-existing school choice programs.

5 Patrick Gleason, "Children In 18 States Will Have More Education Options Thanks To 2021 Reforms," Aug. 4, 2021, <https://www.forbes.com/sites/patrickgleason/2021/08/04/children-in-18-states-will-have-more-education-options-thanks-to-2021-reforms/?sh=7d73355926a6>.