

FSBA UPDATE: Voucher Program Litigation

Litigation Timeline

1999 Legislation enacted that established the Opportunity Scholarship Program (OSP). Suit was filed shortly thereafter challenging the constitutionality of the OSP on three counts:

One count alleged that the OSP violated the Establishment Clause of the First Amendment to the United States Constitution (this clause addresses the separation of church and state at the federal level). However, the U.S. Supreme Court ruled that a similar voucher program in Ohio did not violate the U.S. Constitution. Subsequently, the plaintiffs voluntarily dismissed this count.

Another count alleged that the OSP violated Article IX, Section 1 of the Florida Constitution which required that “Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...” Although the trial court (Leon County Circuit Court) ruled that the OSP did violate Article IX, Section 1, the First District Court of Appeal (1st DCA) subsequently reversed that ruling.

The third count alleged that the OSP violated Article I, Section 3 of the Florida Constitution which states that “... No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” This section of the Florida Constitution is referred to as the “No-Aid Provision.”

2002 Leon County Circuit Court Judge Kevin Davey ruled that the OSP violated Florida’s No-Aid Provision. This decision was appealed to the 1st DCA.

Aug. 2004 A three judge panel of the 1st DCA upheld the trial court ruling that the OSP violated Florida’s No-Aid Provision. In response, the defendants moved for a rehearing of the case by the full 15 member court.

Nov. 2004 The full 1st DCA upheld the ruling of their three judge panel that the OSP violated Florida’s No-Aid Provision. In addition, five of the judges with the majority wrote a concurring opinion saying that the OSP also was unconstitutional because it violated Article IX, Section 1 which states that “Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools...” The 1st DCA certified the question to the Florida Supreme Court.

June 2005 The Florida Supreme Court heard arguments on the case. Justices questioned the attorneys on issues relating to the No-Aid Provision (Article I, Section 3) and on the Education Provision (Article IX).

Jan. 2006 The Florida Supreme Court ruled that the OSP is unconstitutional based upon the Education Provision (Article IX). Because the Court determined that the OSP is an unconstitutional violation of Article IX, the Court felt it was unnecessary to address whether the OSP is also a violation of the “No-Aid Provision in Article I. The summary of their decision reads, in part:

“Our inquiry begins with the plain language of the second and third sentences of article IX, section 1(a) of the Constitution. The relevant words are these: “It is . . . a paramount duty of the state to make adequate provision for the education of all children residing within its borders.” Using the same term, “adequate provision,” article IX, section 1(a) further states: “Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools.” For reasons expressed more fully below, we find that the OSP violates this language. It diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida’s children. This diversion not only reduces money available to the free schools, but also funds private schools that are not “uniform” when compared with each other or the public system. Many standards imposed by law on the public schools are inapplicable to the private schools receiving public monies. In sum, through the OSP the state is fostering plural, nonuniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools.”

Full text of the Supreme Court opinion available at
http://www.floridasupremecourt.org/pub_info/summaries/briefs/04/04-2323/Filed_01-05-2006_Opinion.pdf

Voucher statistics:

- Opportunity Scholarship Program – approximately 760 students enrolled in the program. The average scholarship is worth about \$4,100, for a total annual cost of about \$3,127,000.
- McKay Scholarship Program – approximately 15,900 students enrolled, 84% of whom are Matrix 251 or 252. Average scholarship worth about \$6,100, for a total annual cost of about \$97,280,000.
- Corporate Tax Credit / Scholarship Program – approximately 10,500 students enrolled. Average scholarship worth about \$3,500, for a total annual cost of about \$36,660,000.
- There are about 1000 private schools participating in one or more of the voucher programs. About 75% of the participating schools are religious schools.

Voucher Statistics Source: Florida Department of Education
for the 2004 - 2005 school year
<http://www.floridaschoolchoice.org>