

117TH CONGRESS
1ST SESSION

S. 74

To expand opportunity through greater choice in education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mr. SCOTT of South Carolina (for himself, Mr. RUBIO, Mr. CORNYN, Mr. BRAUN, Mr. WICKER, Mr. SASSE, Mr. SCOTT of Florida, and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To expand opportunity through greater choice in education,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Creating Hope and
5 Opportunity for Individuals and Communities through
6 Education Act” or the “CHOICE Act”.

1 **TITLE I—EDUCATION PORTABIL-**
 2 **ITY FOR INDIVIDUALS WITH**
 3 **DISABILITIES**

4 **SEC. 101. PURPOSE.**

5 The purpose of this title is to provide options to
 6 States to innovate and improve the education of children
 7 with disabilities by expanding the choices for students and
 8 parents under the Individuals with Disabilities Education
 9 Act (20 U.S.C. 1400 et seq.).

10 **SEC. 102. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**
 11 **ABILITIES EDUCATION ACT.**

12 (a) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY
 13 THEIR PARENTS.—Section 612(a)(10)(A) of the Individ-
 14 uals with Disabilities Education Act (20 U.S.C.
 15 1412(a)(10)(A)) is amended by adding at the end the fol-
 16 lowing:

17 “(viii) PARENT OPTION PROGRAM.—If
 18 a State has established a program that
 19 meets the requirements of section
 20 663(c)(11) (whether statewide or in limited
 21 areas of the State) and that allows a par-
 22 ent of a child described in section
 23 663(c)(11)(A) to use public funds, or pri-
 24 vate funds in accordance with

1 633(c)(11)(B)(ii), to pay some or all of the
2 costs of attendance at a private school—

3 “(I) funds allocated to the State
4 under section 611 may be used by the
5 State to supplement such public or
6 private funds, if the Federal funds are
7 distributed to parents who make a
8 genuine independent choice as to the
9 appropriate school for their child, ex-
10 cept that in no case shall the amount
11 of Federal funds provided under this
12 subclause to a parent of a child with
13 a disability for a year exceed the total
14 amount of tuition, fees, and transpor-
15 tation costs for the child for the year;

16 “(II) the authorization of a par-
17 ent to exercise this option fulfills the
18 State’s obligation under paragraph (1)
19 with respect to the child during the
20 period in which the child is enrolled in
21 the selected school; and

22 “(III) a selected school accepting
23 such funds shall not be required to
24 carry out any of the requirements of
25 this title with respect to such child.”.

1 (b) RESEARCH AND INNOVATION TO IMPROVE SERV-
2 ICES AND RESULTS FOR CHILDREN WITH DISABIL-
3 ITIES.—Section 663(c) of the Individuals with Disabilities
4 Education Act (20 U.S.C. 1463(c)) is amended—

5 (1) in paragraph (9), by striking “and” after
6 the semicolon;

7 (2) in paragraph (10), by striking the period at
8 the end and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(11) supporting the post-award planning and
11 design, and the initial implementation (which may
12 include costs for informing the community, acquiring
13 necessary equipment and supplies, and other initial
14 operational costs), during a period of not more than
15 3 years, of State programs that allow the parent of
16 a child with a disability to make a genuine inde-
17 pendent choice of the appropriate public or private
18 school for their child, if the program—

19 “(A) requires that the child be a child who
20 has received an initial evaluation described in
21 section 614(a) and has been identified as a
22 child with a disability, in accordance with part
23 B;

24 “(B)(i) permits the parent to receive from
25 the State funds to be used to pay some or all

1 of the costs of attendance at the selected school
2 (which may include tuition, fees, and transpor-
3 tation costs); or

4 “(ii) permits persons to receive a State tax
5 credit for donations to an entity that provides
6 funds to parents of eligible students described
7 in subparagraph (A), to be used by the parents
8 to pay some or all of the costs of attendance at
9 the selected school (which may include tuition,
10 fees, and transportation costs);

11 “(C) prohibits any school that agrees to
12 participate in the program from discriminating
13 against eligible students on the basis of race,
14 color, national origin, or sex, except that—

15 “(i) the prohibition of sex discrimina-
16 tion shall not apply to a participating
17 school that is operated by, supervised by,
18 controlled by, or connected to a religious
19 organization to the extent that the applica-
20 tion of such prohibition is inconsistent with
21 the religious tenets or beliefs of the school;
22 and

23 “(ii) notwithstanding this subpara-
24 graph or any other provision of law, a par-

1 ent may choose, and a school may offer, a
2 single-sex school, class, or activity;

3 “(D) notwithstanding any other provision
4 of law, allows any school participating in the
5 program that is operated by, supervised by,
6 controlled by, or connected to, a religious orga-
7 nization to exercise its right in matters of em-
8 ployment consistent with title VII of the Civil
9 Rights Act of 1964 (42 U.S.C. 2000e et seq.),
10 including the exemptions in that title;

11 “(E) allows a school to participate in the
12 program without, consistent with the First
13 Amendment of the Constitution of the United
14 States—

15 “(i) necessitating any change in the
16 participating school’s teaching mission;

17 “(ii) requiring any private partici-
18 pating school to remove religious art,
19 icons, scriptures, or other symbols; or

20 “(iii) precluding any private partici-
21 pating school from retaining religious
22 terms in its name, selecting its board
23 members on a religious basis, or including
24 religious references in its mission state-

1 ments and other chartering or governing
2 documents; and

3 “(F) requires a participating school se-
4 lected for a child with a disability to be—

5 “(i) accredited, licensed, or otherwise
6 operating in accordance with State law;
7 and

8 “(ii) academically accountable to the
9 parent for meeting the educational needs
10 of the student.”.

11 **TITLE II—MILITARY** 12 **SCHOLARSHIPS**

13 **SEC. 201. PURPOSE.**

14 The purpose of this title is to ensure high-quality
15 education for children of military personnel who live on
16 military installations and thus have less freedom to exer-
17 cise school choice for their children, in order to improve
18 the ability of the Armed Forces to retain such military
19 personnel.

20 **SEC. 202. MILITARY SCHOLARSHIP PROGRAM.**

21 (a) **DEFINITIONS.**—In this section:

22 (1) **ESEA DEFINITIONS.**—The terms “child”,
23 “elementary school”, “secondary school”, and “local
24 educational agency” have the meanings given the

1 terms in section 8101 of the Elementary and Sec-
2 ondary Education Act of 1965 (20 U.S.C. 7801).

3 (2) ELIGIBLE MILITARY STUDENT.—The term
4 “eligible military student” means a child who—

5 (A) is a military dependent student;

6 (B) lives on a military installation selected
7 to participate in the program under subsection
8 (b)(2); and

9 (C) chooses to attend a participating
10 school, rather than a school otherwise assigned
11 to the child.

12 (3) MILITARY DEPENDENT STUDENTS.—The
13 term “military dependent students” has the meaning
14 given the term in section 572(e) of the National De-
15 fense Authorization Act for Fiscal Year 2006 (20
16 U.S.C. 7703b(e)).

17 (4) PARTICIPATING SCHOOL.—The term “par-
18 ticipating school” means a public or private elemen-
19 tary school or secondary school that—

20 (A) accepts scholarship funds provided
21 under this section on behalf of an eligible mili-
22 tary student for the costs of tuition, fees, or
23 transportation of the eligible military student;
24 and

1 (B) is accredited, licensed, or otherwise op-
2 erating in accordance with State law.

3 (5) SECRETARY.—The term “Secretary” means
4 the Secretary of Defense.

5 (b) PROGRAM AUTHORIZED.—

6 (1) IN GENERAL.—From amounts made avail-
7 able under subsection (g) and beginning for the first
8 full school year following the date of enactment of
9 this Act, the Secretary shall carry out a 5-year pilot
10 program to award scholarships to enable eligible
11 military students to attend the public or private ele-
12 mentary schools or secondary schools selected by the
13 eligible military students’ parents.

14 (2) SCOPE OF PROGRAM.—

15 (A) IN GENERAL.—The Secretary shall se-
16 lect not less than 5 military installations to par-
17 ticipate in the pilot program described in para-
18 graph (1). In making such selection, the Sec-
19 retary shall choose military installations where
20 eligible military students would most benefit
21 from expanded educational options.

22 (B) INELIGIBILITY.—A military installa-
23 tion that provides, on its premises, education
24 for all elementary school and secondary school
25 grade levels through one or more Department

1 of Defense dependents' schools shall not be eli-
2 gible for participation in the program.

3 (3) AMOUNT OF SCHOLARSHIPS.—

4 (A) IN GENERAL.—The annual amount of
5 each scholarship awarded to an eligible military
6 student under this section shall not exceed the
7 lesser of—

8 (i) the cost of tuition, fees, and trans-
9 portation associated with attending the
10 participating school selected by the parents
11 of the student; or

12 (ii)(I) in the case of an eligible mili-
13 tary student attending elementary school—

14 (aa) \$8,000 for the first full
15 school year following the date of en-
16 actment of this Act; or

17 (bb) the amount determined
18 under subparagraph (B) for each
19 school year following such first full
20 school year; or

21 (II) in the case of an eligible military
22 student attending secondary school—

23 (aa) \$12,000 for the first full
24 school year following the date of en-
25 actment of this Act; or

1 (bb) the amount determined
2 under subparagraph (B) for each
3 school year following such first full
4 school year.

5 (B) ADJUSTMENT FOR INFLATION.—For
6 each school year after the first full school year
7 following the date of enactment of this Act, the
8 amounts specified in subclauses (I) and (II) of
9 subparagraph (A)(ii) shall be adjusted to reflect
10 changes for the 12-month period ending the
11 preceding June in the Consumer Price Index
12 for All Urban Consumers published by the Bu-
13 reau of Labor Statistics of the Department of
14 Labor.

15 (4) PAYMENTS TO PARENTS.—The Secretary
16 shall make scholarship payments under this section
17 to the parent of the eligible military student in a
18 manner that ensures such payments will be used for
19 the payment of tuition, fees, and transportation ex-
20 penses (if any) in accordance with this section.

21 (c) SELECTION OF SCHOLARSHIPS RECIPIENTS.—

22 (1) RANDOM SELECTION.—If more eligible mili-
23 tary students apply for scholarships under the pro-
24 gram under this section than the Secretary can ac-
25 commodate, the Secretary shall select the scholar-

1 ship recipients through a random selection process
2 from students who submitted applications by the ap-
3 plication deadline specified by the Secretary.

4 (2) CONTINUED ELIGIBILITY.—

5 (A) IN GENERAL.—An individual who is
6 selected to receive a scholarship under the pro-
7 gram under this section shall continue to re-
8 ceive a scholarship for each year of the program
9 until the individual—

10 (i) graduates from secondary school or
11 elects to no longer participate in the pro-
12 gram;

13 (ii) exceeds the maximum age for
14 which the State in which the student lives
15 provides a free public education; or

16 (iii) is no longer an eligible military
17 student.

18 (B) CONTINUED PARTICIPATION FOR MILI-
19 TARY TRANSFERS.—

20 (i) TRANSFER TO PRIVATE NON-MILI-
21 TARY HOUSING.—Notwithstanding sub-
22 paragraph (A)(iii), an individual receiving
23 a scholarship under this section for a
24 school year who meets the requirements of
25 subparagraphs (A) and (C) of subsection

1 (a)(2) and whose family, during such
2 school year, moves into private non-mili-
3 tary housing that is not considered to be
4 part of the military installation, shall con-
5 tinue to receive the scholarship for use at
6 the participating school for the remaining
7 portion of the school year.

8 (ii) TRANSFER TO A DIFFERENT MILI-
9 TARY INSTALLATION.—Notwithstanding
10 subparagraph (A)(iii), an individual receiv-
11 ing a scholarship under this section for a
12 school year whose family is transferred to
13 a different military installation shall no
14 longer be eligible to receive such scholar-
15 ship beginning on the date of the transfer.
16 Such individual may apply to participate in
17 any program offered under this section for
18 the new military installation for a subse-
19 quent school year, if such individual quali-
20 fies as an eligible military student for such
21 school year.

22 (d) NONDISCRIMINATION AND OTHER PROVISIONS.—

23 (1) NONDISCRIMINATION.—A participating
24 school shall not discriminate against program par-

1 ticipants or applicants on the basis of race, color,
2 national origin, or sex.

3 (2) APPLICABILITY AND SINGLE-SEX SCHOOLS,
4 CLASSES, OR ACTIVITIES.—

5 (A) IN GENERAL.—Notwithstanding any
6 other provision of law, the prohibition of sex
7 discrimination in paragraph (1) shall not apply
8 to a participating school that is operated by, su-
9 pervised by, controlled by, or connected to a re-
10 religious organization to the extent that the appli-
11 cation of paragraph (1) is inconsistent with the
12 religious tenets or beliefs of the school.

13 (B) SINGLE-SEX SCHOOLS, CLASSES, OR
14 ACTIVITIES.—Notwithstanding paragraph (1) or
15 any other provision of law, a parent may
16 choose, and a participating school may offer, a
17 single-sex school, class, or activity.

18 (3) CHILDREN WITH DISABILITIES.—Nothing
19 in this section may be construed to alter or modify
20 the Individuals with Disabilities Education Act (20
21 U.S.C. 1400 et seq.).

22 (4) RULES OF CONDUCT AND OTHER SCHOOL
23 POLICIES.—A participating school, including the
24 schools described in subsection (e), may require eli-
25 gible students to abide by any rules of conduct and

1 other requirements applicable to all other students
2 at the school.

3 (e) RELIGIOUSLY AFFILIATED SCHOOLS.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, a participating school that is oper-
6 ated by, supervised by, controlled by, or connected
7 to, a religious organization may exercise its right in
8 matters of employment consistent with title VII of
9 the Civil Rights Act of 1964 (42 U.S.C. 2000e et
10 seq.), including the exemptions in that title.

11 (2) MAINTENANCE OF PURPOSE.—Notwith-
12 standing any other provision of law, funds made
13 available under this title to eligible military students
14 that are received by a participating school, as a re-
15 sult of their parents' choice, shall not, consistent
16 with the First Amendment of the Constitution of the
17 United States—

18 (A) necessitate any change in the partici-
19 pating school's teaching mission;

20 (B) require any private participating
21 school to remove religious art, icons, scriptures,
22 or other symbols; or

23 (C) preclude any private participating
24 school from retaining religious terms in its
25 name, selecting its board members on a reli-

1 gious basis, or including religious references in
2 its mission statements and other chartering or
3 governing documents.

4 (f) REPORTS.—

5 (1) ANNUAL REPORTS.—Not later than July 30
6 of the year following the year of the date of enact-
7 ment of this Act, and each subsequent year through
8 the year in which the final report is submitted under
9 paragraph (2), the Secretary shall prepare and sub-
10 mit to Congress an interim report on the scholar-
11 ships awarded under the pilot program under this
12 section that includes the content described in para-
13 graph (3) for the applicable school year of the re-
14 port.

15 (2) FINAL REPORT.—Not later than 90 days
16 after the end of the pilot program under this section,
17 the Secretary shall prepare and submit to Congress
18 a report on the scholarships awarded under the pro-
19 gram that includes the content described in para-
20 graph (3) for each school year of the program.

21 (3) CONTENT.—Each annual report under
22 paragraph (1) and the final report under paragraph
23 (2) shall contain—

24 (A) the number of applicants for scholar-
25 ships under this section;

1 (B) the number, and the average dollar
2 amount, of scholarships awarded;

3 (C) the number of participating schools;

4 (D) the number of elementary school stu-
5 dents receiving scholarships under this section
6 and the number of secondary school students
7 receiving such scholarships; and

8 (E) the results of a survey, conducted by
9 the Secretary, regarding parental satisfaction
10 with the scholarship program under this sec-
11 tion.

12 (g) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to carry out this section
14 \$10,000,000 for each of fiscal years 2022 through 2026.

15 (h) OFFSET IN DEPARTMENT OF EDUCATION SALA-
16 RIES.—Notwithstanding any other provision of law, for
17 fiscal year 2022 and each of the 4 succeeding fiscal years,
18 the Secretary of Education shall return to the Treasury
19 \$10,000,000 of the amounts made available to the Sec-
20 retary for salaries and expenses of the Department of
21 Education for such year.

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