

# BACKGROUND

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## From Piecemeal to Portable: Transforming Title I into a Student-Centered Support System

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### Abstract

*Title I of the Elementary and Secondary Education Act (ESEA) has failed to meet its objective of improving in the most effective way possible the educational outcomes for children from disadvantaged families. Title I programs involve funding complexities, administrative burdens, and legal restrictions that substantially reduce their usefulness. The nearly \$15 billion Title I program consists of a stream of convoluted and piecemeal formula grants that have little relationship to actual poverty. As long as Congress uses federal tax dollars to aid states with education of disadvantaged children, Congress should ensure that the tax dollars actually achieve that objective and do so efficiently and effectively. To that end, Congress should replace the existing Title I program with a straightforward and effective program that allows states the flexibility to make Title I dollars “portable,” so that the dollars follow the child to the school or education option the child’s parents choose as best for their child. Thus, Title I distributions would be based on a set per-pupil allocation, and states would have the opportunity to deposit funds in parentally controlled Education Savings Accounts, creating a powerful tool for low-income families to direct their child’s education, limit federal bureaucracy, and provide much better opportunities to achieve the goal of a high-quality education for the child. Congress should also include strong protections for religious, home, and other private schools, to ensure that, to the extent disadvantaged families choose to use the money from the Education Savings Accounts to send their child to such a school, acceptance of those funds to educate the child does not bring the federal bureaucracy into the school.*

### KEY POINTS

- The federal Title I program, part of the 1965 Elementary and Secondary Education Act, has become cumbersome and obsolete, with distributions today having little connection to school-district-level poverty.
- States should have the option of making their Title I dollars portable, and state policymakers should allow students to use Title I funding for individual courses, online learning, textbooks, and a host of other education-related services, products, and providers.
- Private schools should not be bound by new regulations or otherwise have to compromise their culture and autonomy as a result of Title I portability.
- States should establish education savings accounts (ESAs), as offered in Arizona and Nevada, and allow parents to deposit their Title I dollars into an ESA.
- Title I portability would catalyze school choice at the state level and would help achieve Lyndon Johnson’s intention in establishing Title I—providing a quality education for every child “no matter where he lives.”

This paper, in its entirety, can be found at <http://report.heritage.org/bg3066>

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At the federal, state, and local level, policymakers and education-reform advocates have been striving to improve educational options and outcomes for all children, focusing in particular on improving outcomes for children from disadvantaged families. This effort is not new, nor is the sense that K–12 education is falling short, particularly for those children who need education options the most. In fact, President Lyndon B. Johnson’s support for, and the subsequent enactment of, the Elementary and Secondary Education Act (ESEA) in 1965—the first significant federal intervention into education, which continues to authorize the bulk of federal K–12 spending today—was born out of a belief that existing education programs and spending were not adequate for poor children.

Title I refers to Title I of the ESEA, which was viewed as the education component of Johnson’s Great Society initiatives and today remains the nation’s largest federal law governing education policy. Johnson outlined four challenges confronting U.S. policymakers as they considered the ESEA: (1) to provide better education to millions of poor children; (2) to improve education innovations and equipment; (3) to improve teacher training and technology; and (4) to incentivize lifelong learning. “But most of all,” Johnson implored, “we must provide a good education for every boy and girl—no matter where he lives.”<sup>1</sup>

Johnson proposed to give first priority to a program of aid to low-income school districts, a priority that would form the basis of Title I.<sup>2</sup> Today, the nearly \$15 billion Title I program consists of a stream of convoluted formula grants that have little relationship to actual poverty. These “opaque and unaccountable”<sup>3</sup> grant streams have done little to address education-related issues in schools in districts of concentrated poverty, evidenced in part by the presence of academic achievement and attainment gaps

between disadvantaged children and their non-poor peers, which have persisted over the decades since the ESEA was signed into law.

Instead of continuing to funnel the bulk of ESEA funding through the labyrinthine Title I program, federal policymakers should give states the option to make Title I dollars portable, following children to any school or education option of choice. Restructuring Title I funding formulas into a single formula stream based on a set per-pupil allocation, and providing states the option to allocate Title I dollars to students in the form of a flexible education savings account (ESA), would create a powerful tool for low-income families to direct their own children’s education, limit federal bureaucracy, and provide a better chance of achieving Johnson’s goal of a quality education for every child “no matter where he lives.”

### Title I Funding Streams: An Overview

A quick overview of the four grant streams that comprise Title I illustrates the complexity of the Elementary and Secondary Education Act’s largest Title. Because of this complexity, “it is likely that no more than a handful of experts in the country clearly understand the process from beginning to end or could project a particular district’s allocation based on information about its low-income students,” as researcher Susan Aud has noted.<sup>4</sup>

**1. Basic Grants.** The Basic Grant formula provides Title I funds to any school district with at least 10 children, or 2 percent, depending on which is greater, from low-income families. Because the formula allocates funds to districts based on such a low proportion of poor children, nearly every school district in the country qualifies for Basic Grant funding, “even very affluent school districts.”<sup>5</sup> Approximately 45 percent of Title I funds

1. The American Presidency Project, “Lyndon B. Johnson, Presidential Policy Paper No. 1: Education,” November 1, 1964, <http://www.presidency.ucsb.edu/ws/index.php?pid=26703> (accessed September 11, 2015).

2. The American Presidency Project, “Lyndon B. Johnson, Special Message to the Congress: ‘Toward Full Educational Opportunity,’” January 12, 1965, <http://www.presidency.ucsb.edu/ws/index.php?pid=27448> (accessed September 11, 2015).

3. Susan Aud, “A Closer Look at Title I: Making Education for the Disadvantaged More Student-Centered,” Heritage Foundation *Special Report* No. 15, June 28, 2007, <http://www.heritage.org/research/reports/2007/06/a-closer-look-at-title-i-making-education-for-the-disadvantaged-more-student-centered>.

4. *Ibid.*

5. New America Foundation, “NCLB Title I Distribution Formulas,” May 21, 2015, <http://atlas.newamerica.org/no-child-left-behind-act-title-i-distribution-formulas> (accessed September 11, 2015).

are allocated through the Basic Grant formula (\$6.4 billion during fiscal year (FY) 2014).<sup>6</sup>

**2. Concentration Grants.** School districts can access Concentration Grants in addition to their Basic Grant funding if at least 15 percent of children who reside within the district are poor, or if there are at least 6,500 poor children. Concentration Grants have a hard cut-off, so that a district in which 6,500 children are poor qualifies for funding, but a district in which 6,499 children are poor does not. Concentration Grant funding accounts for approximately 9 percent of Title I-A funding (\$1.4 billion during FY 2014).<sup>7</sup>

**3. Targeted Assistance Grants.** Although they have different thresholds for accessing funding, Basic and Concentration Grants provide the same amount of funding per pupil to eligible districts. Unlike Basic Grants and Concentration Grants, Targeted Assistance Grants are distributed per student to the district in a proportional manner as the percentage of children in poverty increases. As the New America Foundation’s Budget Project has detailed, for every child above the 38 percent threshold, a district receives four times as much funding in Targeted Assistance for a child as it receives for the first 16 percent of children in poverty. For every additional poor child above the 35,515 threshold, the district receives “three times as much Title I funding as its first 691 children in poverty.”<sup>8</sup> Targeted Assistance Grants account for approximately 23 percent of Title I-A funding (\$3.3 billion during FY 2014).<sup>9</sup>

**4. Education Finance Incentive Grants.** Education Finance Incentive Grants reward states with little variance in school district spending within the state using an “equity factor” to determine how evenly per-pupil spending is distributed between districts. The U.S. Department of Edu-

TABLE 1

### Targeted Assistance Grants Poverty Weights

School District’s Percentage of Children in Poverty	Per-Child Weight in Funding Formula
0–15.6	1
15.7–22.1	1.75
22.2–30.2	2.5
30.3–38.2	3.25
More than 38.2	4

  

School District’s Number of Children in Poverty	Per-Child Weight in Funding Formula
0–691	1
692–2,262	1.5
2,263–7,851	2
7,852–35,514	2.5
More than 35,515	3

**Source:** New America Foundation, “NCLB Title I Distribution Formulas,” <http://atlas.newamerica.org/no-child-left-behind-act-title-i-distribution-formulas> (accessed September 8, 2015).

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cation derives the equity factor by calculating the average deviation in per-pupil spending from the state mean to create a weighted coefficient of variation.<sup>10</sup> If a state’s equity factor is 0.17, for example, its average district spending variation is 17 percent from the state mean of per-pupil spending. The department rewards states with lower variation coefficients, which it interprets as reflecting a more equitable distribution of funding across the state. If a state with a 0.17 coefficient spent \$13,000 per pupil, the average variance among district spending within the state would range from \$11,310 to \$14,690 per pupil (\$1,690 above or below the mean of \$13,000).

6. Ibid.

7. Ibid.

8. Ibid.

9. Ibid.

10. Clare McCann, “Title I School Funding Equity Factor,” New America Ed Central, undated, <http://www.edcentral.org/edcyclopedia/no-child-left-behind-act-title-i-school-funding-equity-factor/> (accessed September 11, 2015).

The Department of Education considers funds to be inequitably distributed in states with coefficients of variation above 0.2.<sup>11</sup> The Education Finance Incentive Grants also take into account the amount of state revenue dedicated to education relative to per capita income, as well as per-pupil spending and the percentage of students in poverty. Approximately 23 percent of Title I-A funds are distributed through the Education Finance Incentive Grant formula (\$3.3 billion during FY 2014).<sup>12</sup> As Aud notes, the Education Finance Incentive Grant is particularly problematic because it incentivizes states to equalize spending across districts when there is no evidence that such an approach is an effective way to improve outcomes for poor children.<sup>13</sup>

### Private School Participation

Access to Title I funds is not restricted to traditional public schools. Title I “provides services to both public and private school children who need additional educational help and who live in Title I public school attendance areas.”<sup>14</sup> If a private school has students who qualify for Title I, those students can access programs and services provided by the district in which the private school is located. For example, an eligible student in a private school could access a district-run Title I after school program. Private schools receive funding for Title I programs and services through a process and regulatory structure that is as convoluted as the four grant streams that comprise Title I itself.

Children from low-income families who attend private schools and live in a public school attendance zone that participates in Title I programs generate funds for instructional services at their private schools. Private schools that choose to participate

in Title I must work in consultation with the local education agency (LEA), meaning the school district, in which the school is located in order to determine the proportion of its students who are eligible for services. The process for determining funding eligibility is as follows:

1. The LEA compiles a list of all of the private schools with enrolled children who reside within the geographic boundaries of the school district. This is typically done in late fall in anticipation of the following school year. The school district constructs the list of private schools in order to ask private school leaders whether they want their students who would be Title I-eligible to participate in Title I programs the following year.<sup>15</sup>
2. For those private schools that wish to have eligible children participate in Title I programs, a private school principal or school official must then provide appropriate student-poverty data to the LEA. These data are obtained using the same poverty measure used in the public schools—the number of students eligible for free and reduced-price lunches—along with surveys of private-school parents to obtain information about income, and additional measures of poverty, such as scholarship eligibility, Temporary Assistance for Needy Families (TANF), or Medicaid enrollment. Instead of providing data through free-lunch and reduced-price-lunch metrics, surveys, and other proxies for poverty, the private school can instead choose to use proportionality to demonstrate student eligibility. (See footnote 16 for an explanation of proportionality.)<sup>16</sup>

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11. New America Foundation, “NCLB Title I Distribution Formulas.”

12. Ibid.

13. Aud, “A Closer Look at Title I: Making Education for the Disadvantaged More Student-Centered.”

14. U.S. Department of Education, “Ensuring Equitable Services to Private School Children: A Title I Resource Tool Kit,” September 2006, <https://www2.ed.gov/programs/titleiparta/ps/titleitoolkit.pdf> (accessed September 11, 2015).

15. Ibid.

16. Using the addresses and grade levels of students in participating private schools, contrasted with the estimated percentage of students from low-income families in the school district, an LEA can calculate the percentage of private school students who are eligible for Title I services. For example, if 75 percent of students residing in an LEA are Title I eligible, the LEA applies that percentage to the number of private school students living within the district’s geographic boundaries. If there are 150 private school students living in the LEA boundary, then 75 percent of 150 students (approximately 112 students) are considered to be from low-income families and eligible for Title I services. The school district then calculates the per-pupil amount for 112 students.

3. Once the private school determines the percentage of students in the school who are Title I eligible using the appropriate metrics and supplies that information to the LEA, the LEA then matches the addresses of eligible private school students to the students' public school attendance zone. The LEA then estimates how much instructional funding eligible private school students would have generated in their zoned public school had they attended, using the same per-pupil amount spent in the public school.
4. LEA officials meet with the participating private school to inform school leaders about the collected poverty data and the estimated amount of instructional funding that their eligible students generated.
5. The LEA works with the participating private school to generate a list of names, addresses, and grades of eligible private school students, and then determines from that list, in consultation with the private school, those students who are most at risk of failing. Those students are then eligible for Title I services.
6. LEA officials next work with the participating private school's officials to determine the appropriate Title I services to meet the needs of the eligible students. Using the estimated amount of funding generated by the low-income students enrolled in the participating private school, the LEA then works with the private school to design services.
7. The LEA generates a list of the private school students who will receive Title I services the following school year. The LEA also informs the participating private school about how services will be designed and delivered.
8. Finally, in September of the following school year, the LEA begins providing Title I services to eligible private school students identified the previous spring.

In consultation with private school officials, the LEA may use either an individual school-by-school option or a pooling option to determine how funds will be distributed to participating private schools. The individual school option provides equitable services funding to a private school based on enrollment of eligible children. The U.S. Department of Education provides three examples:

1. "Chapman Friends Schools has a K-12 enrollment of 800 students. The per-pupil allocation (PPA) for services under Title IV, Part A, Safe and Drug-Free Schools and Communities, is \$10. Thus, the LEA has \$8,000 to provide services for students and teachers in the school."
2. "St. Columba School has a K-8 enrollment of 300 students. Applying the same PPA, the LEA has \$3,000 to provide services for students and teachers in the school."
3. "Bellehaven Academy has a K-5 enrollment of 150 students. Applying the same PPA, the LEA has \$1,500 to provide services for students and teachers in the school."<sup>17</sup>

Through the pooling option, available at the discretion of the district, schools instead combine funds allocated for eligible private school students to create a pool available to the LEA to provide equitable services. "Under this option, the services provided to private school students and teachers in any particular school are not dependent on the amount of funds generated by students and teachers in that school, but rather by the amount of funds generated in total and the criteria developed for allocating services among the private school students and teachers."<sup>18</sup> The Department of Education provides by way of example:

The LEA combines the total amount of funds generated for services for students and teachers in Chapman Friends School (\$8,000), St. Columba School (\$3,000), and Bellehaven Academy (\$1,500). The LEA has \$12,500 to spend on Title

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17. Texas Education Agency, "Participation of Eligible Children in Private Nonprofit Schools," No Child Left Behind Program Series, February 1, 2010, [http://www.nclb.esc2.net/documents/TIPA\\_PNP\\_Packet.pdf](http://www.nclb.esc2.net/documents/TIPA_PNP_Packet.pdf) (accessed September 11, 2015).

18. Ibid.

TABLE 2

## How an LEA Allocates Funds for Title I Instructional Services for Eligible Private School Children

NUMBER OF PRIVATE SCHOOL CHILDREN FROM LOW-INCOME FAMILIES, BY PUBLIC SCHOOL ATTENDANCE AREAS

Public School Attendance Area	Number of Low-Income Children Attending Private School No. 1	Number of Low-Income Children Attending Private School No. 2	Per-Pupil Allocation	Funds Generated
Public School A (Title I Area)	20	0	\$400	\$8,000
Public School B (Title I Area)	20	0	\$200	\$4,000
<b>Total Funds Generated by Children Attending Private School No. 1</b>				<b>\$12,000</b>
Public School C (Title I Area)	0	13	\$200	\$2,600
Public School D (non-Title I Area)	2	0	\$0	\$0
Public School E (non-Title I Area)	0	4	\$0	\$0
<b>Total Funds Generated by Children Attending Private School No. 2</b>				<b>\$2,600</b>
<b>Total Funds Generated by Children Attending Both Private Schools</b>				<b>\$14,600</b>

Source: U.S. Department of Education, “Ensuring Equitable Services to Private School Children,” September 2006, <https://www2.ed.gov/programs/titleiparta/ps/titleitoolkit.pdf> (accessed September 8, 2015).

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IV, Part A, Safe and Drug-Free Schools and Communities, services for all 1,250 students. In consultation with private school officials, the LEA then decides how the funding will be allocated for services to meet the various needs of the students and teachers. Under this option, the services provided to students and teachers in a particular private school are not dependent upon the amount of funding generated for services by the students in that school.<sup>19</sup>

### Covered Services

In conjunction with the participating private school (or consortium of private schools, such as a Catholic diocese), the LEA determines how and where and by whom Title I services will be provided. Examples of services include additional weekly reading instruction, after school mathematics instruction, summer literacy programs, and teach-

er professional development for those teaching students eligible for Title I. Any services funded through Title I for eligible private school students “must be provided in a separate space that is under the LEA’s control when Title I services are being provided.”<sup>20</sup> Specifically, private schools must partition off space in classrooms or libraries if Title I services are being provided there. Any computers purchased with funding through the Title I program may only be used by Title I-eligible students in the private school.

According to the U.S. Department of Education, allowable Title I program expenditures include books and other materials, but they must be labeled “Property of \_\_\_\_\_ School District” and may only be used by Title I participants. Title I expenditures cover extended-day services, Saturday and summer programs, counseling programs, home tutoring, and computers and software. Title I funds also cover expenses associated with service providers,

19. Ibid.

20. U.S. Department of Education, “Ensuring Equitable Services to Private School Children: A Title I Resource Tool Kit.”

such as the salaries and benefits of teachers hired by the school district, para-professionals, third-party contractors overseen by the LEA, and LEA contracts with retired teachers who teach in the private school.<sup>21</sup> Funds provided to private schools through the federal Title I program must fund services that are “secular, neutral, and nonideological,”<sup>22</sup> which, as the Council on American Private Education has noted, “limits the kinds of services the *government* can provide, not what private schools themselves can provide.”<sup>23</sup>

### Further Complicating Title I: The Community Eligibility Provision

Further complicating Title I funding distributions is the Community Eligibility Provision (CEP) option, which was authorized by the Healthy, Hunger-Free Kids Act of 2010. CEP requires all participating schools, both public and private, to provide free breakfast and lunch to all students enrolled in the school. School CEP eligibility is determined for an entire LEA, a group of schools within an LEA, or a single school within an LEA. To be eligible to participate in CEP, the percentage of identified students (students who qualify for free lunch without an application because their families qualify for another means-tested program, such as TANF) must constitute at least 40 percent of enrollment. If an LEA chooses to participate and has at least 40 percent of its student population counted as Identified Students, that LEA then provides free breakfast and lunch to every student within each school in its district. Schools are reimbursed for the program through the U.S. Department of Agriculture (USDA), which multiplies the percentage of Identified Students by 1.6 to determine the reimbursement amount. The 1.6 multiplier “is intended to reflect the average ratio of the number of Identified Students to the number of stu-

dents receiving free or reduced-price school meals.”<sup>24</sup> If, for example, 62.5 percent of a school’s students are categorized as Identified Students, the school would be reimbursed at a rate of 100 percent from the USDA ( $62.5 \times 1.6 = 100$ ). A school with 52.1 percent of Identified Students would be reimbursed at a rate of 83 percent, with the remaining 17 percent being reimbursed at the federal “paid” reimbursement rate.<sup>25</sup>

The U.S. Department of Education, noting the various aspects of Title I that use poverty data as a metric to distribute funding, issued guidance concerning the intersection between Title I grant calculations and the Community Eligibility Provision. The equitable-services provision for private schools, within-district funding allocations, and within-state allocations all rely on measures of poverty to distribute funding through Title I, and as such, could be impacted by the Community Eligibility Provision. Moreover, some 90 percent of school districts use free-lunch and reduced-price-lunch counts as the proxy for poverty to demonstrate eligibility for Title I funding.<sup>26</sup> Schools participating in CEP that no longer collect such data must now use alternative measures to meet Title I’s eligibility and reporting requirements, such as a combination of household applications and direct certification. Moreover, CEP has likely increased Title I’s complexity for districts, which must now consider that some schools within the district may be CEP schools, while others may not.

### The Case for Title I Portability

Currently, private schools can access Title I funds, but only by way of having students enrolled in their schools participate in public school programs and services offered through Title I. It is clear that Title I, as currently allocated to private schools, is convoluted and in need of reform. Instead of serving as a funding source that is student-centered,

21. Ibid.

22. ESEA, section 9501(a)(1)-(2).

23. Joe McTighe, “Joe’s Take: Truthiness,” Council for American Private Education, February 28, 2015, <http://capenetblog.blogspot.com/2015/02/truthiness.html> (accessed September 11, 2015).

24. Wayne Riddle, “Implications of Community Eligibility for the Education of Disadvantaged Students Under Title I,” Center on Budget and Policy Priorities, June 20, 2015, <http://www.cbpp.org/research/implications-of-community-eligibility-for-the-education-of-disadvantaged-students-under> (accessed September 11, 2015).

25. For current-year reimbursement rates, see U.S. Department of Agriculture, Food and Nutrition Service, “School Meals: Rates of Reimbursement,” July 20, 2015, <http://www.fns.usda.gov/cnd/Governance/notices/naps/NAPs.htm> (accessed September 11, 2015).

26. Riddle, “Implications of Community Eligibility for the Education of Disadvantaged Students Under Title I.”

TABLE 3

## School Enrollment Scenarios Under Title I Portability

Scenario	Title I Outcome
Johnny from affluent neighborhood attends public school.	No Title I dollars.
Sally from low-income neighborhood attends public school.	Access to programs funded through Title I at her public school.
Mitzi from affluent neighborhood attends private school.	Pays out of pocket for private school tuition; no Title I dollars.
Mark from low-income neighborhood in state without a school choice program and in which the state chooses not to opt in to Title I portability; chooses to attend a private school.	Pays out of pocket for private school tuition; no Title I dollars.
David from low-income neighborhood in state without a state school choice program, but in which the state chooses to make Title I dollars portable; chooses to attend a private school.	Primarily pays out of pocket for private school tuition; no state scholarship dollars to defray costs, but can use portable federal Title I dollars that follow David to help with tuition.
Tammy from low-income neighborhood in state with a school choice program and in which the state opts in to Title I portability; chooses to attend a private school.	Uses state-funded scholarship to offset tuition at chosen private school; Title I dollars follow Tammy to her private school, also defraying costs.*

\* States should allow Tammy to use Title I funding for private school tuition, individual courses, online learning, textbooks, etc. This form of education choice, typically offered as an education savings account (ESA), is explained later in this *Background*, and should be an allowable use of Title I funds.

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Title I dollars are made available to private schools through the equitable services provision, which provides private schools that meet eligibility criteria access to Title I programs and services, not Title I dollars. Existing law stipulates that Title I funds are not to benefit a private school, and that a subgrantee is barred from using program funds to support existing instruction or the general needs of students enrolled in a private school.<sup>27</sup> Schools accessing Title I cannot use funds for any particular program; funding is provided to schools proportionally, to cover the cost of access to a relatively small list of federally approved Title I programs in which eligible students can then participate—separated from the rest of the students who are not Title I eligible.

Today, convoluted Title I formulas coupled with policies in some states that assign students to public schools based on their parents’ zip code, do not make Title I a vehicle conducive to achieving its primary purpose of “provid[ing] a good education for every boy and girl—*no matter where he lives.*” By reforming Title I to give states the option to make dollars portable, following children from low-income families to schools or education options of choice, policymakers would create much-needed flexibility for schools and families, and increase the likelihood of

achieving that goal. Title I portability would significantly increase families’ abilities to match education options to their children’s unique learning needs.

### Protections for Participating Private Schools

The Elementary and Secondary Education Act includes important protections for private schools. Specifically, section 9506 of the ESEA states that nothing in the law shall be construed to (a) “affect any private school that does not receive funds or services under” ESEA; (b) “affect a home school”; or (c) “permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school.” Private schools that participate in Title I’s equitable services provision specifically are not subject to ESEA’s Highly Qualified Teacher (HQT) requirement nor to the law’s Adequate Yearly Progress (AYP) mandate.

Stakeholders in the private school community occasionally raise objections to Title I portability out of concern over the possibility of federal regulations following dollars to participating private schools. To mitigate those concerns, any portability proposal should include strong protections for private school autonomy.

27. U.S. Government Publishing Office, “Part 76-State-Administered Programs,” September 9, 2015, <http://www.gpo.gov/fdsys/pkg/CFR-2014-title34-vol1/pdf/CFR-2014-title34-vol1-part76.pdf> (accessed September 11, 2015).



**Private School Participation.** Existing private school participation in the Title I program is already significant. More than 20 percent of private schools currently participate in Title I programs. Notably, the proportion of religious private schools that participate in Title I is much higher. According to the National Center for Education Statistics, nearly half of all Catholic schools (47.8 percent) participate in Title I programs, along with 13 percent of schools designated as “other religious.” Taken together, nearly one-quarter (24.9 percent) of religiously affiliated schools already participate in Title I. Fewer non-religious schools (8 percent) participate in Title I.<sup>28</sup>

**Strong Protections for Private Schools.** Any proposal to allow states to have their Title I dollars follow children to private schools of choice must be coupled with strong protections for private schools. Title I portability proposals should incorporate language similar to that included in the law authorizing the D.C. Opportunity Scholarship Program, which provides scholarships to children from low-income families living in the nation’s capital to attend a private school of choice. Many private schools do not want to be considered “recipients of federal financial assistance” out of concern that such a designation would make them subject to the onerous federal regulations and enforcement actions (such as those that fall under Title IX) of the federal civil rights agencies, including the U.S. Department of Education’s Office for Civil Rights (OCR). The Institute for Justice crafted language for the D.C. Opportunity Scholarship Program that specified that children, not schools, received scholarship proceeds and thus schools were not to be considered recipients of federal funds. Subsections 308(d) and (e) of the D.C. School Choice Incentive Act of 2003 (Title III in Division C of Public Law 108-199) state:

(d) RELIGIOUSLY AFFILIATED SCHOOLS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a school participating in any pro-

TABLE 4

**Private Schools Participating in Title I, 2011-2012**

Nearly half of all Catholic schools participate in Title I programs, along with 13 percent of schools designated as “Other Religious.”

School Type	Number of Schools	Percent Receiving Services
Catholic	6,760	47.8%
Other Religious	13,040	13.0%
Nonsectarian	6,430	8.0%
All Private Schools	26,230	20.8%

**Source:** U.S. Department of Education, National Center for Education Statistics, “Characteristics of Public and Private Elementary and Secondary Schools in the United States: Results from the 2011-12 Schools and Staffing Survey,” Table 1, p. 8, <http://nces.ed.gov/pubs2013/2013312.pdf> (accessed September 8, 2015).

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gram under this title that is operated by, supervised by, controlled by, or connected to, a religious organization may exercise its right in matters of employment consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1 et seq.), including the exemptions in such title.

(2) MAINTENANCE OF PURPOSE.—Notwithstanding any other provision of law, funds made available under this title to eligible students that are received by a participating school, as a result of their parents’ choice, shall not, consistent with the first amendment of the United States Constitution, necessitate any change in the participating school’s teaching mission, require any participating school to remove religious art, icons, scriptures, or other symbols, or preclude any participating school from retaining religious terms in its name, selecting its board members on a religious basis, or including

28. Amy Bitterman, Lucinda Gray, Rebecca Goldring, and Stephen Broughman, “Characteristics of Public and Private Elementary and Secondary Schools in the United States: Results from the 2011-12 Schools and Staffing Survey,” National Center for Education Statistics, “Table 1. Total number of schools and students, and percentage of schools and students that participated in the Title I and federal free or reduced-price lunch programs, by school type and selected school characteristics: 2011-12—Continued,” August 2013, <http://nces.ed.gov/pubs2013/2013312.pdf> (accessed September 11, 2015).

religious references in its mission statements and other chartering or governing documents.

(e) **RULE OF CONSTRUCTION.**—A scholarship (or any other form of support provided to parents of eligible students) under this title shall be considered assistance to the student and shall not be considered assistance to the school that enrolls the eligible student. The amount of any scholarship (or other form of support provided to parents of an eligible student) under this title shall not be treated as income of the parents for purposes of Federal tax laws or for determining eligibility for any other Federal program.<sup>29</sup>

This language was necessary because of the unfortunate United States Supreme Court decision in *Grove City College v. Bell* in 1984, which held that colleges that accepted students participating in the federal Pell Grant program were recipients of federal funds and therefore subject to federal oversight. This led Grove City and Hillsdale Colleges to withdraw from the Pell Grant program.

Title I portability would allow money to follow the student rather than being a payment to a school. Adding those federal dollars to a state-awarded scholarship should not impact school operations, mission, or culture, as such funds would be provided directly to the participating student. Including language used in the D.C. Opportunity Scholarship Program authorizing statute would provide a framework for additional protections within a portability option.<sup>30</sup>

Government-run public schools have depended on regulations to ensure conformity to standards. In a marketplace of educational options, parents' ability to choose among options drives schools' interest in pursuing standards of excellence. The kinds of regulations used in a government-provider system (which have not served public schools well) are inappropriate in a marketplace and can have the net effect of limiting the schooling choices available to families. Private schools already operate under the most rigorous form of accountability: Parents who are dissatisfied

for any reason can “vote with their feet” and choose another schooling option. The Title I programs and services that are made available to students in participating private schools are subject to this strictest form of accountability—the voluntary nature of parents' choice to attend a given private school.

By extension, strong protections for private schools must be included in any portability proposal that gives states the option for Title I dollars to be student-centered and portable. Private schools should not be bound by new regulations or otherwise have to compromise their culture and autonomy as a result of Title I portability. Shifting to a system of student-centered Title I funding that is portable will not only better target dollars and increase the likelihood that funding reaches the low-income students it was designed to help, but will have the additional benefit of catalyzing school choice expansion at the state level, which could be one of federal portability's most significant potential impacts.

### Steps for Policymakers

Federal Title I portability proposals should give states the option to make dollars portable, and states that opt in to a Title I portability arrangement should afford poor students as much flexibility with those dollars as possible. State policymakers should allow students to use Title I funding for individual courses, online learning, textbooks, and a host of other education-related services, products, and providers.

Federal policymakers should:

- **Simplify Title I funding formulas and establish a set per-pupil amount.** Congress should streamline the four existing Title I grant streams into a single, clear formula based on the number of children from low-income families by state. At the same time, Congress should establish a straightforward determination of Title I award amounts per pupil based on the total amount appropriated to Title I divided by the number of eligible children from low-income families in a state. The amount per pupil would be roughly \$1,000, and could then be weighted by the cost of living in different states.<sup>31</sup>

29. U.S. Department of Education, “Legislation, Regulations, and Guidance—Legislation: D.C. School Choice Incentive Act of 2003,” <http://www2.ed.gov/programs/dcchoice/legislation.html> (accessed September 11, 2015).

30. Congress could also incorporate protections, such as those in the proposed First Amendment Defense Act (FADA), which would protect schools' ability to maintain their religious and cultural character free of government coercion.

31. Aud, “A Closer Look at Title I: Making Education for the Disadvantaged More Student-Centered.”

- **Allow states to make their Title I dollars portable.** As a start, Congress should allow states to make their Title I dollars portable, following a child from a low-income family to a private school of choice. Senator Tim Scott (R-SC) and Representative Luke Messer (R-IN) have each introduced proposals (Title I portability amendment to S. 1177/H.R. 5477, 114th Cong.) that, in certain circumstances, would give states the option to make their share of Title I dollars portable, following children to any school that meets their unique learning needs.

State policymakers should:

- **Establish education savings accounts.** States should follow the lead of Arizona, Nevada, Florida, Mississippi, and Tennessee and establish ESAs. Through ESA options, states deposit a portion of the money that the state would have spent on a child in a public school into a parent-controlled, restricted-use savings account. Parents can then use those dollars to pay for any education-related service, product, or provider, including private school tuition, online learning, special education services and therapies, textbooks, curricula, and college courses, among other education expenditures. Notably, parents can roll over unused funds from year to year to save for anticipated future education-related expenses, such as high school or college tuition.
- **Allow parents to deposit Title I dollars into state or district school choice programs.** States should establish school choice options, such as vouchers, tuition tax credit scholarships, and ESAs, and should then allow Title I dollars to be deposited into those options. For example, states should establish ESAs, and then under a federal Title I portability option, choose to allow parents to deposit their Title I funds into their child's ESA. In Nevada, students from low-income families who participate in the ESA option will have \$5,700 annually deposited into their accounts beginning in the 2015–2016

school year. If Title I portability were established federal policy, Nevada could then opt in to the portability arrangement, and parents could have an additional amount (likely close to \$1,000) deposited into their ESA, taking their account distribution closer to \$6,700 annually, greatly increasing their education purchasing power.

## Conclusion

The design of the federal Title I program has become cumbersome and obsolete, with distributions today having little connection to district-level poverty. The program fails to empower low-income families to access education options that meet their children's unique learning needs, and as a result, is failing to achieve President Johnson's intention in establishing Title I—providing a quality education for every child “no matter where he lives.” Restructuring Title I funding formulas into a single formula stream based on a set per-pupil allocation, and providing states the option to allocate Title I dollars to students in the form of a flexible ESA, would create a powerful tool for low-income families to direct their own children's education. Moreover, nearly one-quarter of religiously affiliated schools already participate in Title I, including nearly half of Catholic schools. Private schools should not be bound by new regulations or otherwise have to compromise their culture and autonomy as a result of Title I portability. Instead of continuing to funnel the bulk of ESEA funding through the convoluted Title I program, Title I portability would catalyze school choice at the state level and greatly empower low-income families to fund education options that meet the unique learning needs of their children.

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