



'Bumper crop of litigation' threatens school choice in Florida

By Mary C. Tillotson

September 10, 2014

Faith Manuel, a Florida mom, said she was disappointed to see the school choice programs challenged by multiple lawsuits.

Students with special needs or from low-income families in Florida are seeing school options threatened by "a bumper crop of litigation," says Joshua Dunn, associate director of the Center for the Study of Government and the Individual at the University of Colorado at Colorado Springs.

[The latest of three lawsuits threatening school choice in the Sunshine State](#) was filed Aug. 28. If it is successful, 67,000 children from low-income families will be forced out of the schools they chose and back into the traditional public schools they had opted out of for so many years.

"I don't understand why there is such controversy surrounding the program," said Faith Manuel, a Florida mom whose three children have participated in one of the programs. "I've only experienced benefits from it for my children ... It just really helps me do the job I wanted to do in creating and raising people who are going to be good human citizens, and it's been successful in doing that."

Florida's tax-credit scholarship program has been running for 13 years and serves tens of thousands of children. So it's unusual that a lawsuit would come now, Dunn said.

"The opponents of school choice like to attack the (programs) early and quickly because the longer the program exists, the more of a constituency is developed, and the bigger the constituency, the more dangerous it is, politically, to attack it," he said.

"Opponents of school choice have been very vigorous in attacking these programs shortly after they're passed."

Plaintiffs in the lawsuit include the Florida Education Association, Florida School Boards Association, the PTA, Florida Association of School Board Administrators and the League of Women Voters of Florida. They allege the tax-credit scholarship is unconstitutional.

The program is similar to a voucher program, but with a key difference: It's not funded with public money. Instead, private donors receive tax credits for donations to a nonprofit, and the nonprofit gives the scholarships to the students.

A second lawsuit seeks to overturn an expansion to the scholarship program and the new personalized learning accounts program. PLSAs help families of children with severe disabilities pay for tuition, tutoring, therapy and other educational expenses.

The lawsuit alleges legislators [did not follow the proper procedure when passing the bill](#). Florida's constitution contains a "single subject" rule — that is, any legislation must only cover one topic. If a lawmaker wanted change the laws involving road construction and minimum wage, two separate bills would be required.

The law being challenged included the tax-credit scholarship expansion and the PLSAs, but both were education related, so it's difficult to predict what the courts will say about it, said Jason Bedrick, policy analyst for the Center for Educational Freedom at the Cato Institute.

"What does 'one subject' mean? If it's all under education, maybe that qualifies," he said.

A similar bill last year allowed all the teachers to get raises, among other education-related changes, but the teachers union didn't file a lawsuit at that time.

"One wonders how much they care about the constitution here," he said.

The third lawsuit has been continuing for several years, filed by Fund Education Now, but only recently involved school choice. According to this lawsuit, the state is not adequately funding public education.

"It's sort of typical," said Richard Komer, senior attorney for the Institute for Justice, which has intervened in the lawsuit. "It's been tried in every state. Some courts go for it and some don't."

The complaint names two school choice programs — the tax-credit scholarship program and the McKay Scholarship program, a voucher for students with special needs or learning disabilities — and claims they are in part responsible for the state's alleged underfunding of public schools.

Unlike the tax-credit scholarships, the McKay Scholarship program is funded from the education budget.

"Both of these programs are valuable inducements to help public schools do a better job," Komer said. "Studies of those two programs have shown that they do have that effect — they're making the public schools do better. So why should you attack something that's making the public schools do better because you think the public schools need to do better? I think it's just foolish, and I don't think the way advocates for public schools should operate is to take away additional opportunities from families."

Ron Meyer, attorney for the FEA and school boards association, did not return calls seeking comment.