

TAX CREDIT SCHOLARSHIP STUDENTS AND ACADEMIC FINDINGS

Typical student is poor, minority and was struggling in school

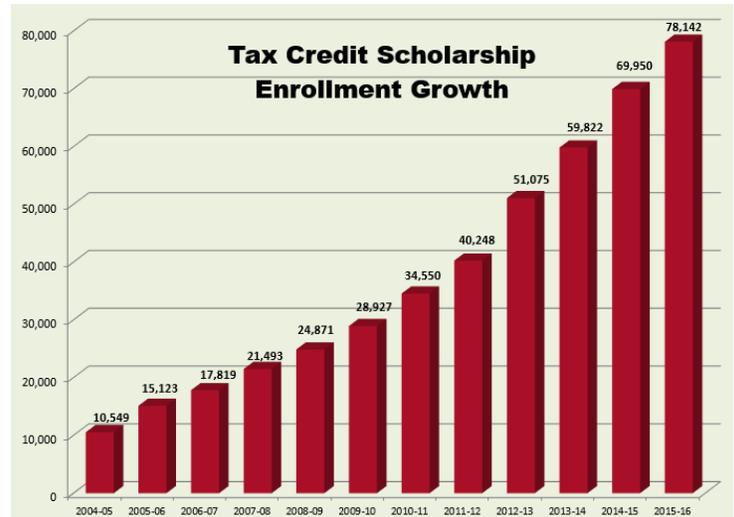
Lives near poverty: The average household income in 2015-16 is \$25,557. That's only 7 percent above the federal poverty level.

Is black or Hispanic: About 30 percent are black and 38 percent are Hispanic. Another 3 percent identify themselves as "multi-racial," and about 25 percent are white.

Live with one parent: More than half — 58.3 percent — lived in a single-parent home.

Has struggled academically: The scholarship attracts the lowest academic achievers from their previous public schools, a trend the state researcher wrote in August is "becoming stronger over time."

Lives in an urban area: Miami-Dade has 20,538 scholarship students, Orange has 7,633. Some 225 zip codes contain at least 100 scholarship students each, including 58 with more than 300 each. Two adjacent zip codes in west Orlando have 1,742 scholarship students.



Scholarship students keeping pace with those of all incomes

Testing is required: Every scholarship student in grades 3-10 must take a nationally norm-referenced test approved by the state, and most take the Stanford Achievement Test. Though some policymakers think the students should be required to take the state assessment, no one disputes the validity of these tests to measure student improvement. They have been required since 2006, and the Learning Systems Institute at Florida State University evaluates and reports publicly on the test scores each year.

Source: Florida Statutes 1002.395(8)(c) and (9)(i-j)

Students were behind academically: Over the course of seven annual reports, the state's researchers have found a consistent pattern: on average, students who choose the scholarship were struggling academically in their prior public school. This year Florida State researchers wrote, "New FTC students, as in previous years, tend to come from lower-performing public schools prior to entering the program. Moreover, they are more likely to be among the lower performing students in their prior school before attending the program, regardless of the performance level of their public school."

Source: http://www.fldoe.org/core/fileparse.php/5606/urlt/FTC_FinalReport-13-14.pdf

Students achieving solid annual gains: The researcher also has found a consistent trend in learning gains: Students are achieving the same gains in reading and math as student of all incomes nationally. The learning gains are measured by the difference between a student's national percentile ranking from one year to the next, with zero meaning the student kept pace with the national sample. For 2013-14, the average gain score was 0.4 percentile points in reading and 0.0 points in math. "This means that the typical FTC students tends to maintain his or her relative position in comparison with others nationwide," the researchers wrote. "It is important to note that these national comparisons pertain to all students nationally, and not just students from low-income families."

Source: http://www.fldoe.org/core/fileparse.php/5606/urlt/FTC_FinalReport-13-14.pdf

Public schools also doing well with low-income students: Two Northwestern University academic researchers reported in 2011 that the public schools most impacted by the potential and actual loss of students to the Florida Tax Credit Scholarship experienced increases in their own test scores. The researchers saw this improvement in the year between the law's passage in 2001 and its implementation in 2002-03. They also saw improvement over the next five years, in part because some of the lowest achieving students were choosing the scholarships.

Source: <http://www.stepupforstudents.org/docs/default-source/independent-studies/2010-study-on-impact-to-public-schools.pdf?sfvrsn=2>



TAX CREDIT SCHOLARSHIP FINANCIAL COSTS

Every study shows the scholarships save state tax money

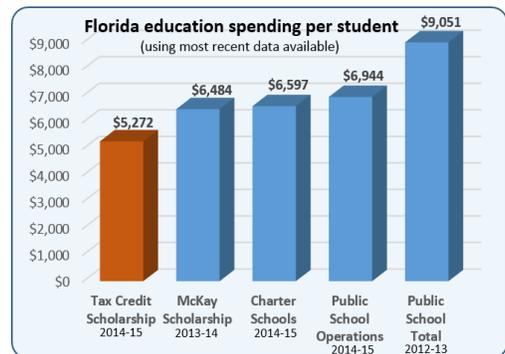
The tax credit limit: The state sets a limit each year on the total amount of tax-credited contributions corporations can make to scholarship funding organizations. For 2015-16, that cap is \$447 million. For 2016-17, the cap is \$559 million. The cap in future years will increase by 25 percent if at least 90 percent of the cap is raised in any given prior year. Otherwise it remains the same from year to year.

Source: <http://dor.myflorida.com/dor/tips/tip14adm-05.html>

Taxes lost, expenses cut: The money that is lost to the State Treasury through these tax credits must be spent, by law, on students who for the most part would otherwise be attending traditional public schools. So it is erroneous to talk about losses as though the tax credit is used to pay for business investment, economic development or Habitat for Humanity. With this credit, money not spent on scholarships must be returned to the Treasury (a one-year 25 percent carryover is permissible.)

Source: Florida Statutes 1002.395(6)(j)2

The basic math: Various independent studies on the cost of the scholarship program have employed some sophisticated levels of modeling, but the basic math is this: The scholarships this year cost \$5,677, which is only 80 percent of the operational amount public schools would spend on the same student through the Florida Education Finance Program (FEFP). In turn, the FEFP operational amount typically covers only 74 percent of the total state and local spending per student each year. That’s generally the reason every study has found the scholarship saves money.



Source: <http://www.fl DOE.org/fefp/pdf/1415-First.pdf>

The independent findings all point to savings: At least seven different independent analyses of the Tax Credit Scholarship have found that it saves tax money that can be used to enhance traditional public schools. Most observers consider the Florida Office of Program Policy Analysis and Government Accountability to have offered the most definitive study to date, and it found that the state saves \$1.49 for every \$1 lost in revenue. That study is now six years old, but the Consensus Revenue Estimating Conference projected two years ago that the scholarship saved \$57.9 million in 2012-13.

Sources: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0868rpt.pdf>
<http://www.stepupforstudents.org/docs/default-source/independent-studies/2012-revenue-estimating-conference.pdf?sfvrsn=2>

This doesn’t consider construction savings: 78,142 students will attend private schools this year on the scholarship. If the court returned all of them to public schools, one can only guess as to the impact. While some public schools currently have empty classroom seats, enrollment is picking up again and scholarship students are concentrated in urban areas where many schools are full. The concentrations of scholarship students are so great that 225 different zip codes this year have more than 100 scholarship students each, 58 zip codes have more than 300 each, and two adjacent zip codes in west Orlando have 1,742. If districts had to build schools to accommodate only half of these students, the capital cost alone would exceed \$1.1 billion (using state Department of Education cost estimates).

Source: <http://www.fl DOE.org/edfacil/oef/excel/2013CostConstructionReports.xls>

TAX CREDIT SCHOLARSHIP CASE LAW**Courts have treated vouchers and scholarships differently**

Voucher vs. tax credit scholarship: Merriam-Webster defines a voucher as “a coupon issued by government to a parent or guardian to be used to fund a child's education in either a public or private school.” On the other hand, a tax credit scholarship comes from tax-credited contributions made by private companies to a private nonprofit organization that in turn provides the money to a parent to fund a child's private school education.

Why this distinction matters: The lawsuit filed on Aug. 28, 2014 by the Florida Education Association claims the Florida Tax Credit Scholarship is unconstitutional. The FEA describes it as “voucher” because that feeds its legal strategy, not because the term is correct. In 2006, the Florida Supreme Court ruled against a government-issued voucher for students who attended public schools judged as failing. But the Tax Credit Scholarship is not a government-issued voucher, and that difference has special meaning in constitutional case law. To date, three state Supreme Courts and the U.S. Supreme Court have ruled in favor of tax credit scholarships, and none has ruled against.

What the courts have said about vouchers vs. scholarships

Arizona Christian School Tuition Organization v. Winn, U.S. Supreme Court, 2011: In a landmark ruling on tax credit scholarships, the high court rejected a federal challenge to the Arizona Tax Credit Scholarship by determining that tax-credited contributions are not the same as government expenditures even if the tax credits are 100 percent. Wrote Justice Anthony Kennedy for the majority: “Like contributions that lead to charitable tax deductions, contributions yielding (scholarship organization) tax credits are not owed to the state and, in fact, pass directly from taxpayers to private organizations.” When Arizona taxpayers choose to contribute to (scholarship organizations), they spend their own money, not money the State has collected from respondents or from other taxpayers.” The court therefore denied standing.

Source: <http://www.supremecourt.gov/opinions/10pdf/09-987.pdf>

Kotterman v. Killian, Arizona Supreme Court, 1999: The Arizona court ruled in favor of a tax credit scholarship program for all students, arguing that the tax-credited contributions are not the same thing as government expenditures. “Deductions and credits are legitimate tools by which government can ameliorate the tax burden while implementing social and economic goals. We conclude that the Arizona school tuition tax credit is one of an extensive assortment of tax-saving mechanisms available as part of a ‘genuine system of tax laws.’ ... This tax credit is not an appropriation of public money.” **Cain v. Horne, Arizona Supreme Court, 2009:** The court ruled against a government-issued voucher for special needs students and foster children. In so doing, it explained why it reached different conclusions on tax credit scholarships and government vouchers: “Because the funds in Kotterman were credits against tax liability, not withdrawals from the state treasury, the funds were never in the state's treasury; therefore, the credits did not constitute an appropriation. Unlike the funds in *Kotterman*, the funds at issue here are withdrawn from the public treasury and earmarked for an identified purpose.”

Source: <http://www.azcourts.gov/Portals/23/pdf1999/cv970412.pdf>

Source: <http://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2009/CV-08-0189-101300.PDF>

Duncan v. New Hampshire, New Hampshire Supreme Court, 2014: In a decision issued on Aug. 28, 2014, the same day the FEA filed suit in Florida, the New Hampshire court rejected a constitutional challenge to that state's Education Tax Credit Program. The court said the plaintiffs lacked standing to sue because their claims of lost funding to public schools were merely “speculative” due in part to the fact that the money was not withdrawn from the treasury: “Even if the tax credits result in a decrease in the number of students attending local public schools, it is unclear whether, as the petitioners allege, local governments will experience ‘net fiscal losses.’ The prospect that this will occur requires speculation about whether a decrease in students will reduce public school costs and about how the legislature will respond to the decrease in students attending public schools, assuming that occurs.”

Source: <http://www.courts.state.nh.us/supreme/opinions/2014/2014074duncan.pdf>

Magee v. Boyd, Alabama Supreme Court, 2015: In a decision issued on March 2, 2015, the court rejected all 10 legal claims made against the Alabama Accountability Act, including specific charges that the tax credit scholarship violated the State Constitution. The court overturned a circuit judge's decision: "We conclude that the circuit court's construction of the term 'appropriation' to include the tax credits provided by (the Alabama Accountability Act) is contrary to the Alabama Constitution, existing case law, and the commonly accepted definition of the term appropriation. ... The tax credit ... merely allows the taxpayers to retain more of their earned income as an incentive to contributing to scholarship-granting organizations. When the taxpayers contribute to scholarship-granting organizations, they spend their own money and not public revenue actually collected by the state."

Source: <https://acis.alabama.gov/displaydocs.cfm?no=642220&event=4AM11AJSP>

Bush v. Holmes, Florida Supreme Court, 2006: Opportunity Scholarships were government-issued vouchers offered to students who were assigned to public schools judged to be failing. The court threw out the program by ruling that it "diverts public dollars into separate private systems parallel to and in competition with the free public schools" and those schools were not "uniform" with public schools. The court explicitly applied this standard: "The Constitution prohibits the state from using public monies to fund a private alternative to the public school system, which is what the OSP does. Specifically, the OSP transfers tax money earmarked for public education to private schools that provide the same service." It went further, noting the law required the Department of Education to "transfer from each school district's appropriated funds the calculated amount from the Florida Education Finance Program."

Source: http://www.floridasupremecourt.org/pub_info/summaries/briefs/04/04-2323/Filed_01-05-2006_Opinion.pdf

Bush v. Holmes, Florida First District Court of Appeal, 2004: Prior to the state Supreme Court ruling in 2006, the appeals court rejected Opportunity Scholarships by arguing the vouchers violated the no-aid-to-religion clause. Its ruling also drew a distinction between vouchers and tax credits: "In each of the above cases, state government provided or allowed a form of assistance to a religious institution through such mechanisms as tax exemptions, revenue bonds, and similar state involvement. These forms of assistance constitute substantially different forms of aid than the transfer of public funds expressly prohibited by the no-aid provision. In the case of direct subsidy, the state forcibly diverts the income of both believers and nonbelievers to churches. In the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions."

Source: <http://opinions.lcra.org/opinions2004/11-12-04/02-3160rh.pdf>

Faasse v. Scott, Florida 2nd Judicial Circuit, 2014: On Dec. 30, 2014, 2nd Judicial Circuit Chief Judge Charles Francis denied standing in a case in which the Florida Education Association alleged that the 2014 Legislature violated proper procedure in enacting a law that included improvements to the Tax Credit Scholarship. The FEA alleged that public schools "have already lost considerable funding because of the implementation of the Tax Credit Scholarship" and "the significant expansion ... will result in additional funds being diverted from the public schools." The state cited precedents in Arizona, New Hampshire and Florida in arguing that no harm was created because no tax money was taken from public education. Francis agreed, ruling that the FEA "fail(ed) to allege a legally sufficient basis to sustain a finding of special injury." The FEA did not appeal the ruling.

Source: http://judicial.clerk.leon.fl.us/image_orders.asp?caseid=2640136&jiscaseid=&defseq=&chargeseq=&dktid=102858733&dktsource=CRTV

Zelman v. Simmons-Harris, U.S. Supreme Court 2002: In a landmark ruling on the Establishment Clause, the court determined that students in a Cleveland voucher program could use the vouchers to attend religious schools. The court found that parents could use public funds to pay for religious schools, provided the parents are making a genuine and independent choice and that the primary purpose is education. Wrote the court: "The Ohio program is neutral in all respects toward religion. It is part of a general and multifaceted undertaking by the State of Ohio to provide educational opportunities to the children of a failed school district."

Source: http://www.oyez.org/cases/2000-2009/2001/2001_00_1751