

Your Question:

You asked for information on how states have expanded or modified choice policies in response to the COVID-19 pandemic.

Our Response:

The following response is separated into two sections: state policy examples and CARES Act funding. Although there has been limited action to expand school choice in the states, states have used federal funds to support parental choice and flexibility.

State Examples

Private School Choice

In response to the COVID-19 pandemic some states have considered and enacted policies that address private school choice, charter schools and learning pods. Legislation has largely focused on administrative changes, but the following examples — all of which are pending or failed — represent more substantive proposals including tax credits, savings accounts and vouchers. Enacted legislation can be found using the “School Choice” issue area tag in our legislative tracking [database](#).

- **Colorado [H.C.R. 20-1003](#)** (failed)—Would have created a ballot referendum for a constitutional amendment to provide an income tax credit for taxpayers with qualified children who are instructed at home. This would have included students who are enrolled in a school district or homeschool program.
- **Illinois [H.B. 5834](#)** (pending)—Would create an income tax credit for eligible education expenses related to online learning, including computers, printers, internet access, textbooks, tutors and educational facilitators.
- **North Carolina [S.B. 857](#)** (failed)—Would have created an income tax credit for parents who have experienced decreased income and who have a student enrolled in a private school.
- **Pennsylvania [S.B. 1273](#)** (pending)—Would establish a centralized online clearinghouse of K-12 coursework available for students enrolled in public schools, private schools or home education programs.
- **Pennsylvania [S.B. 1230](#) and [H.B. 2696](#)** (pending)—Would create education scholarship accounts. Each eligible student would receive \$1,000, which would come from a portion of the state’s federal CARES Act funds.
- **Virginia [H.B. 5008](#)** (pending)—In the event that a public school is closed for in-person instruction for 30 or more days during a school year, the parent of an enrolled student who withdraws their child from attendance would receive an education voucher in an amount equal to a prorated share of the applicable per-pupil state funds to cover the expenses of providing home instruction or tuition and fees at a nonpublic school for the remainder of the school year.
- **Virginia [H.B. 5011](#)** (pending)—In the event that any school board does not provide the option of in-person instruction as the sole method of instruction for any enrolled student, the parent of the student who withdraws their child from attendance would receive an education voucher in an amount equal to a prorated share of the per-pupil state funds to cover the expenses of providing in-person instruction in an alternative setting.
- **Virginia [S.B. 5020](#)** (failed)—In the event that remote learning was offered in place of in-person instruction, this would have deposited a portion of unused funds resulting from a reduced schedule in a voucher account

for each student, for use on programs operated by the school division or other educational options, whether public, private or parochial.

Charter Schools

While most states have a charter school law and public charter schools in operation, they have largely been treated in the same manner as traditional public schools in response to the COVID-19 pandemic. The following examples represent two legislative proposals addressing the role of virtual charter schools in the state's pandemic response. These were pulled using the "Charter Schools" issue area tag in our legislative tracking [database](#).

- **North Carolina H.B. 1105** (enacted)—Lifts the cap on virtual charter school enrollment for charter schools participating in the virtual charter school pilot program.
- **Utah H.B. 6002** (enacted)—Directs the state board of education to use federal relief funds for the expansion of online charter schools.

Learning Pods

Learning pods have emerged as an option for some parents who want to provide their children in-person instruction, support remote learning, provide child care and facilitate social interaction. Despite the rapid growth of these pods, state policy does not necessarily address them. In some cases, these pods may fall under homeschooling statute if the student(s) is not enrolled in a local public school, while in other cases, they may be viewed as a childcare facility. Some states have issued guidance to ensure that parents and students are in compliance with state law.

- **Colorado**—Gov. Jared Polis issued an [executive order](#) addressing learning pods that spurred guidance from the state department of education. Guidance includes recommendations for health and safety protocols, curriculum and legal compliance.
- **Maine**—The Maine Department of Health and Human Services released a memorandum outlining legal requirements for learning pod providers.
- **Massachusetts**—Gov. Charles Baker issued an [executive order](#) governing learning pods that was accompanied by guidance from the department of early education and care. The order creates licensure exemptions for remote learning enrichment programs operated by municipal authorities and parent cooperatives.
- **Vermont**—Gov. Phil Scott issued an [executive order](#) to increase the capacity of the school-age children child care system to support K-6 students during remote learning days.

Some advocates [argue](#) that learning pods can exacerbate inequities. In response, schools, districts and nonprofits have [pursued initiatives](#) geared toward ensuring that the students who need it most can access the benefits of the pods. In some cases, after-school program providers are [using federal funds](#) to provide for learning pods or remote learning hubs.

Federal CARES Act Funds

In March 2020, the federal government passed the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#) to help stimulate the economy and support state and local governments. Within this, \$3 billion was directed to governors in the [Governor's Emergency Education Relief \(GEER\) Fund](#) for discretionary educational use.

After some initial uncertainty and challenges in the courts, this "[Providing Equitable Services to Students and Teachers in Non-Public Schools Under the CARES Act Programs](#)" document — released on October 9, 2020 by the U.S. Department of Education — provides some clarity on GEER funds and non-public schools. It states that legal challenges to the previous [interim final rule](#) "concluded that [districts] must determine the proportional share available to provide equitable services to non-public school students and teachers" in accordance with federal law.

According to an [analysis of states' GEER plans](#) from Future Ed and the Hunt Institute, 9 states have committed a portion of their GEER funds to private school and/or home schooling. Summaries of state GEER funding plans, along with links to their applications and other related resources, can be found [here](#).

States must file an initial report of their GEER Fund use with the U.S. Department of Education 45 days after the award is granted. Those initial reports can be found [here](#); below we provide excerpts from these reports that are relevant to private schools. You may wish to explore these documents fully in order to see the full extent and context of the quoted excerpts.

- **Florida**: “\$30 Million in grants to provide scholarships to K-12 students currently attending private schools who would be adversely impacted...\$15 Million in grants to private schools serving low income students, to assist those entities in responding to COVID-19 and continuing to operate”
- **Indiana**: “Ensure device availability for PK-12 students and empower creative, community-level internet connectivity solutions. Traditional public school corporations, public charter schools, and accredited non-public schools will receive preferential access to funding”
- **Maryland**: “The Competitive Innovation Grant opportunity will award grants to educational institutions [which, according to a [July 9, 2020 document](#) includes “nonpublic schools”] that present a unique or innovative approach to engage students, teachers and school communities while working to address academic accessibility as a result of the COVID-19 pandemic”
- **New Hampshire**: “The second use of GEER Funds will be through grant agreements between the NHDOR and two established New Hampshire scholarship funds that administer K-12 scholarships for underprivileged students to attend nonpublic schools”
- **Oklahoma**: “A program to provide accounts of \$1,500 directly to 5,000 Oklahoma families at or below the Federal poverty line to purchase curriculum content, tutoring services, technology and/or internet connectivity.”
- **South Carolina**: Gov. Henry McMaster attempted to use \$32 million of GEER funds to create the [Safe Access to Flexible Education](#) grant program, but the South Carolina Supreme Court [ruled](#) this program was unconstitutional. This program would have awarded grants to cover private school tuition for students from a household with an adjusted gross income of 300% or less of the federal poverty level. The program was challenged in court and on October 7, 2020 the [South Carolina Supreme Court ruled](#) that it would have meant “the use of public funds for the direct benefit of private educational institutions” in a manner prohibited by the South Carolina Constitution.

Rethink K-12 Education Models Grant Program

The U.S. Department of Education used \$180 million in CARES Act funding for the [Rethink K-12 Education Models](#) grant competition. The department awarded grants to 11 states for the purpose of 1) providing access to technology; 2) increasing access to statewide virtual learning programs, and 3) creating innovative models for remote instruction. The National Alliance for Public Charter Schools [summarized](#) and categorized state plans. The following examples provide a sampling of state efforts to increase flexibility and choice for parents.

- **Georgia** will use its funds to expand student connectivity and expand access to the Georgia Virtual School, which is a virtual learning program directly run by the Georgia Department of Education.
- **Iowa** will use its funds to establish and support Iowa e-Learning Central, which will provide students, teachers and families with access to virtual K-12 learning statewide, regardless of the status of school closures.
- **Louisiana** will provide over 75,000 students access to microgrants for remote learning resources, including at least 12,000 who will receive devices or hotspots through the program.
- **Rhode Island** will use its funds to expand the advanced course access network, develop an online platform for statewide virtual courses, and build upon a parent ambassador program.

- [South Carolina](#) will use its funds to provide all students access to a virtual education ecosystem, including the use of “[datacasting](#),” an innovative concept that can help provide instructional content to students without internet access.
- [Tennessee](#) will use its funds to provide families with access to instruction and tutoring, with an emphasis on early literacy.

Additional Education Commission of the States Resources

[Key Issues: School Choice](#): This landing page of ECS resources regarding school choice has links to many relevant 50-State Comparisons, policy reports and other information requests that may be of interest.

[50-State Comparison: Charter School Policies](#): This resource compiles information on charter school policies for the 45 states with charter school laws and the District of Columbia. It has 26 datapoints relevant to charter school policy, including statute citations.

[50-State Comparison: Private School Choice](#): This resource compiles information on state policies for voucher programs, education savings accounts and scholarship tax credits.

[50-State Comparison: 529 Education Savings Plan](#): This resource compiles information on 529 education savings plan policies in the 49 states that have such policies in place and the District of Columbia. Some of these state policies have been altered to mirror federal changes allowing K-12 tuition to be claimed as an eligible expense; that datapoint in particular can be found [here](#). More information on education savings accounts can be found [here](#).

[Education Savings Accounts: Key provisions and state variations](#): This Education Trends report explores the key components of Education Savings Accounts and examines ESA law and programs in several states.

[Policy Snapshot: Virtual School Policies](#): This Policy Snapshot captures legislative activity from 2017 to 2019 pertaining to virtual schools. Although not exclusive to school choice options, several bills regarding charter school policies and virtual schools are discussed.

[The Other Branch: Exploring Espinoza v. Montana Department of Revenue](#): This [Ed Note](#) blog post discusses a recent development in school choice policy that, although it is not tied directly to the pandemic, may be of interest. It discusses the 2020 Espinoza v Montana Supreme Court case regarding public funds, private religious schools, and state policies prohibiting the use of public funds to aid religious organizations.