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November 18, 2009

09 - 0085

Amdt. #1-S.

Via Hand Delivery

Krystal Paris, Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED

NOV 18 2009

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

RE: Request to Make Non-Substantive Amendment
Foster Child Opportunity Scholarship Act, No. 09-0085

Dear Ms. Paris:

Attached is a corrective copy of the proposed initiative submitted on November 16, 2009. Proposed section 42900 of the Education Code, paragraph (7) of subdivision (a), on the top of page 5, is more precise as follows:

All school-aged foster children shall be eligible to accept opportunity scholarships ~~for~~ *beginning with the 2011-2012 school year, if this section is adopted by the voters in November 2010, or that being the first school year that begins at least six months after adoption of this statute by the voters at a subsequent election.*

Please contact me at (415) 389-6800, if you have any questions.

Thank you for your assistance.

Sincerely,

William E. Oberndorf, Proponent

Vigo G. Nielsen, Jr., Attorney for
Proponent William E. Oberndorf

Enclosure: Proposed Initiative

**THE FOSTER CHILD OPPORTUNITY SCHOLARSHIP ACT
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE**

SECTION ONE. TITLE.

This Act shall be known as the "Foster Child Opportunity Scholarship Act"

SECTION TWO. FINDINGS AND DECLARATIONS.

The people of the State of California find and declare as follows:

- (a) Approximately 50,000 K-12 school-age foster children reside in California.
- (b) The appropriate responsible adults in foster children's lives have legal and effective responsibility to make decisions that will best help each foster child become an educated, productive member of society.
- (c) Most foster children attend public schools in the district of their foster residence. Often foster children change residences and therefore must change schools. This is not always best for their educational needs.
- (d) Private schools are currently not an available option to most foster children, but their ability to attend them could improve their educational outcomes and provide a dimension of stability to this aspect of their lives.
- (e) California should expand opportunities for foster children to be educated in schools that best suit their needs by permitting the funding used to otherwise pay for costs of educating foster children in public schools to be used toward the costs of their education at California qualified private schools chosen by the appropriate responsible adult in their lives.

SECTION THREE. PURPOSE AND INTENT.

In enacting this Foster Child Opportunity Scholarship Act, it is the purpose and intent of the people of the State of California to:

- (a) Provide foster children in California with educational opportunities best suited for their individual needs by annually awarding each foster child an annual opportunity scholarship that may be accepted toward the cost of education at a California qualified private school.
- (b) Value the opportunity scholarships at no more than the amount of the per pupil allocation provided for charter school pupils in order to ensure that public school pupils in kindergarten and grades one through twelve inclusive will not have their per pupil school funding reduced.
- (c) Require that foster children on opportunity scholarships take the state mandated academic tests required for public school pupils in order to provide accountability for this scholarship program.

SECTION FOUR.

Section 17 of Article IX of the California Constitution is added to read:

- SEC 17. (a) Notwithstanding any other provisions in this Constitution, including but not limited to Section 8 of Article IX and Sections 3 and 5 of Article XVI, the State shall annually award an opportunity scholarship to every foster child eligible to attend kindergarten and grades one through twelve inclusive in the California public school system. An opportunity scholarship may be accepted by the foster parent or foster agency, as defined for this Section by statute, for a foster child and may be redeemed only for the costs of education for the benefit of the foster child at a California qualified opportunity scholarship-redeeming private school in kindergarten and grades one through twelve inclusive.
- (b) Scholarship awards are grants of aid to foster children and not grants to their foster parents or foster agencies or to the private schools in which the foster children are enrolled.
 - (c) The foster parent or foster agency, as defined for this section by statute, shall be free to choose a California qualified scholarship-redeeming private school, and such selection shall not constitute a decision or act of the State or any of its subdivisions.
 - (d) "California qualified scholarship-redeeming private schools," as defined for this Section by statute, shall not be subjected to any additional laws or regulations beyond

those which apply to private schools that have not accepted opportunity scholarship payments, except that foster children accepting opportunity scholarships are required to take the academic tests required of pupils attending public schools.

- (e) If the state decides to fund public pre-kindergarten education, this section shall apply to those years.
- (f) Any action or proceeding contesting the validity of (1) this Act, (2) any provision of this Act, or (3) the adoption of this Act shall be commenced within six months from the date of the election at which this Act is approved; otherwise, this Act and all of its provisions shall be held valid, legal, and uncontestable. However, this limitation shall not of itself preclude an action or proceeding to challenge the application of this section or any of its provisions to a particular person or circumstance.
- (g) The Legislature shall appropriate funds for purposes of implementing this Section.

SECTION FIVE.

Section 8.6 of Article XVI of the California Constitution is added to read:

- (a) Expenditures for redeeming opportunity scholarships awarded to foster care pupils pursuant to Section 17 of Article IX shall count toward the minimum funding requirements for education established by Sections 8 and 8.5 of this Article.
- (b) Foster care pupils redeeming opportunity scholarships provided pursuant to Section 17 of Article IX shall be counted toward the state total enrollment in public schools and community colleges for purposes of the minimum funding requirements for education established by Sections 8 and 8.5 of this Article.

SECTION SIX.

Section 42900 is added to the Education Code as part of a new Chapter 11 to read:

- (a) Opportunity Scholarships. (1) Pursuant to Section 17 of Article IX of the California Constitution, the State shall annually award an opportunity scholarship to every school age foster child. An opportunity scholarship may be accepted by the foster parent or foster agency primarily responsible for the educational well-being of the foster child for that foster child and may be redeemed only for the costs of education for the benefit of the foster child at a California qualified scholarship-redeeming private school in kindergarten and grades one through twelve inclusive. An opportunity scholarship for a foster child need not be accepted by a foster parent or foster agency. The foster parent or foster agency shall be free to choose a California qualified scholarship-redeeming private school, and such selection shall not constitute a decision or act of the State or any of its subdivisions.

- (2) The maximum value of an opportunity scholarship for a foster child in each corresponding grade shall be equivalent to the funding per unit of average daily attendance for the general-purpose entitlement calculated pursuant to section 47633 combined with the funding per unit of average daily attendance for the categorical block grant calculated pursuant to section 47634.1, using the same fund sources and accounts as factors specified in these or the respective successor statutes. However, the redeemed amount shall not exceed the lesser of the cost of education at the California qualified opportunity scholarship-redeeming private school or the maximum per unit of average daily attendance allotment provided to a charter school for the corresponding grade in which a pupil is enrolled as determined pursuant to the aforementioned sections.
- (3) The maximum opportunity scholarship award value shall be equal for every foster child in any given grade. In case of a pupil transfer, the scholarship shall be adjusted for the proportion of the school year that the pupil attended each California qualified opportunity scholarship-redeeming private school. No scholarship may be redeemed for that portion of a school year during which the pupil is enrolled in a public school.
- (4) Nothing in this section shall prevent California qualified opportunity scholarship-redeeming private schools from using supplemental assistance from any source, public or private, for the benefit of enrolled foster children.
- (5) Opportunity scholarships awarded pursuant to Section 17 of Article IX of the California Constitution are grants of aid to foster children and not to foster parents or foster agencies or to the California qualified scholarship-redeeming private schools in which the foster children enroll. Opportunity scholarships that are accepted shall not constitute taxable income.
- (6) Foster children who have accepted opportunity scholarships that have been redeemed at California qualified scholarship-redeeming private schools shall take the tests required of pupils in public schools by Education Code 60640 et. seq., or its successor statutes. These State mandated tests shall be administered by the California qualified opportunity scholarship-redeeming private schools and will be given at a time that will not interfere with the academic programs of those private schools. The State shall grade these tests at no cost to these private schools. The State shall release the results of the State mandated tests taken by these opportunity scholarship pupils on a composite countywide basis reflecting year over year comparative results. The State shall also release on a composite countywide basis high school graduation rates and college matriculation rates of these opportunity scholarships pupils reflecting year over year comparative results. State mandated tests and high school graduation and college matriculation results for foster children attending California qualified opportunity scholarship-redeeming private schools shall be released at the same time. Individual results for the aforementioned data shall be released only to the school and the foster parent or foster agency.

- (7) All school-aged foster children shall be eligible to accept opportunity scholarships beginning with the 2011-2012 school year, if this section is adopted by the voters in November 2010, or the first school year that begins at least six months after adoption of this statute by the voters at a subsequent election.
- (8) If the State decides to fund public pre-kindergarten education, Section 17 of Article IX of the California Constitution applies to those years.
- (b) California Qualified Opportunity Scholarship-Redeeming Private Schools. A full time private school that files annual Private School Affidavits with the California Department of Education may become a California qualified opportunity scholarship-redeeming private school, as defined in this section, by satisfying each of these three requirements:
- (1) The private school shall treat opportunity scholarship pupils the same as all other students.
 - (2) The private school has no fewer than 10 pupils per grade unless the Legislature provides otherwise.
 - (3) The private school agrees to the testing requirements in (a)(6) of this section.
- (c) Notification of Opportunity Scholarships. As soon as possible after this statute is adopted by the voters and during each September thereafter, the appropriate state or county agency, or both, shall notify each biological parent, the adult who has the education responsibility for the child and the foster parent in a separate mailing to them that foster children are annually awarded opportunity scholarships and provide them information on how to accept them and to redeem them. This information shall also be part of information packets provided to foster parents when a child is initially placed with them.
- (d) Redemption and Payment of Opportunity Scholarships.
- (1) The State shall post the value of opportunity scholarships on its websites, including at least those of the Department of Education and the Department of Social Services.
 - (2) Once a California qualified opportunity scholarship-redeeming private school has accepted the foster child for the next school year and has been told by the foster parent or foster agency to redeem the scholarship on behalf of that child, it shall promptly request that child's opportunity scholarship by providing to the county office of education in the county in which the California qualified scholarship-redeeming private school is located proof of enrollment, cost of education information and its address.

- (3) The county office of education shall submit the statement of current enrollment, cost of education and address of the California qualified scholarship-redeeming school to the State Controller within 30 days of receipt or on a deadline set by the State Controller to be able to make the payments required by paragraph (4) of subdivision (d) of this section.
- (4) The State Controller shall disburse to the California qualified opportunity scholarship-redeeming school the foster child's scholarship funds on the same disbursement schedule as the State otherwise funds charter schools.
- (5) If a foster child receiving an opportunity scholarship transfers from one California qualified scholarship-redeeming private school to a different California qualified scholarship-redeeming private school, both schools shall provide written notification of the transfer and its effective date to their county office of education within 10 days of the transfer. The county offices of education shall notify the State Controller of the transfer, and the State Controller shall pro-rate the disbursement(s) to reflect only the period of time during which the child was actually enrolled in each California qualified opportunity scholarship-redeeming private school and make no payments for the time the pupil was enrolled in public schools.

(e) Definitions.

- (1) "Cost of education" is the California qualified opportunity scholarship-redeeming private school's annual cost per pupil in that grade including but not limited to costs associated with the eligible pupil's special needs, fees for books, supplies, academic testing and transportation, but for purposes of Section 17(a) of Article IX of the California Constitution and paragraph (1) of subdivision (a) of this section, it cannot exceed the funding per unit of average daily attendance allocated to a charter school for a pupil in a corresponding grade from allotments described in paragraph (2) of subdivision (a) of this section.
- (2) "Foster child" is a child in foster care, as defined by Health and Safety Code Sections 1500 et. seq. or successors to these sections, eligible to attend public schools in kindergarten and grades one through twelve inclusive in the public school system and includes children in the Kin-GAP programs as set forth in Articles 4.5 and 4.75 (commencing with section 11360) of the Welfare and Institutions Code or successor statutes. Once a foster care child has accepted an opportunity scholarship award and redeemed it at a California qualified opportunity scholarship-redeeming private school, the child shall continue to be eligible to receive annual opportunity scholarship awards through the end of the child's twelfth grade school year even if the child is no longer in foster care.

- (3) "Foster parent" and "foster agency" for purposes of this section means the person or agency having authority to exercise the educational rights of the foster child, including the biological parent of the child, where the biological parent has the authority to exercise those rights, or a court appointed education representative, as applicable. A public "foster agency" for purposes of Section 17 of Article IX of the California Constitution and for this section is in this instance acting in loco parentis.
- (4) A "California qualified opportunity scholarship-redeeming private school" is any full time private school located within California, except home schooling schools or exclusively on-line schools, which meets the requirements of subdivision (b) of this section. No private school shall be compelled to become a California qualified opportunity scholarship-redeeming private school. No California private school which meets the requirement of subdivision (b) of this section shall be prevented from becoming a California qualified scholarship-redeeming private school.
- (5) A "pupil" or "school-age child" as used in this section is a child attending any of the grades kindergarten and grades one through twelve inclusive.
- (f) Implementation. The Legislature shall annually appropriate funds for purposes of implementing Section 17 of Article IX of the California Constitution and this section and may enact additional provisions to this section through legislation that is consistent with furthering the purposes of Section 17 of Article IX of the California Constitution and of this section. The provisions of this section being enacted by the voters may be amended only to further its purposes, and only by a statute passed by roll call vote entered in the journal, three-fourths of the membership of each house of the Legislature concurring, and signed by the Governor.
- (g) Enforcement and Penalties. (1) Any person who knowingly or willfully accepts or redirects, or attempts to accept or redirect, an opportunity scholarship for any purpose other than the education costs of the foster child to whom it is awarded is guilty of a misdemeanor.
- (2) Any person who knowingly or willfully misrepresents to foster parents that they need to retain a paid agent to be able to secure an opportunity scholarship is guilty of a misdemeanor.
- (3) In addition to other penalties provided by law, a fine of up to ten thousand dollars (\$10,000) may be imposed upon conviction for each misdemeanor violation.
- (4) Prosecution for violations of this Section must be commenced within four years after the date on which the violation occurred.

SECTION SEVEN. CONFLICTING BALLOT MEASURES.

In the event that this measure and another measure or measures relating to educational scholarships for foster children appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void. If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting measure is later held invalid, this measure shall be self-executing and given the full force of law.

SECTION EIGHT. SEVERABILITY.

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.