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2013 Legislative Review

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Summary Points

- Lawmakers made decisions on number of education bills regarding school choice:
  - Inter-District School Choice Bill: A net 3% of a district's students can transfer to other districts, with districts able to opt out due to desegregation orders by ADE approval.
  - Charter Schools: The ADE is now the authorizing entity of charter schools.
  - No voucher bills passed into law.
- Despite discussion by lawmakers regarding poverty funding, there were no substantial changes other than expected funding increases to the school funding system or to the ADE's operating budget.
- Other "high-profile" bills include a bill creating "Districts of Innovations" and bills creating a new school rating school system and a rewards system for high-achieving and high-growth schools in Arkansas.

This Brief

The 89th General Assembly in Arkansas convened on Monday January 14th and would file 2,640 pieces of legislation over the next 100 days. Of this legislation, there were 145 House Bills, 4 House Resolutions, and 97 Senate Bills referred to either the House or Senate Education Committees. That is a grand total of 246 pieces of "education" legislation representing roughly 9 percent of legislation filed in the session. The purpose of this policy brief is to review some of the "high-profile" education bills during the session. The highlighted bills here are split into three categories: 1) school choice, 2) funding, and 3) a number of other bills of note are discussed.

School Choice Legislation

Issues of school choice garnered much attention going into and throughout the session. There were three main school choice issues at hand: **inter-district school choice** (i.e. students ability to transfer to non-resident districts); **Arkansas' charter school authorizing board**; and **private school vouchers**.

Inter-District School Choice: In June 2012, a federal judge struck down a 1989 law that allowed students to transfer to a district other than their residentially zoned district as long as the student would be part of the minority racial group in their new district–with a few exceptions made for less diverse areas of the state. The ruling stated that race couldn't be the only factor considered in deciding whether students could transfer between districts.

This ruling was culmination of the 2011 case, *Teague v. Arkansas Board of Education*, involving a group of parents from Malvern that challenged the law, so that students could transfer despite the race barrier. The June 2012 US District Court ruling stated that the law violates the 14th Amendment, and thus was unconstitutional. The decision was appealed. In January, the 8th US Circuit Court of Appeals in St. Louis heard oral arguments of the case. The Federal Circuit Court has not yet ruled on the choice law.

The court issued a stay that allowed students who previously transferred under the law to remain in the transferred school district in the 2012-13 school year. In 2012-13, nearly 16,000 students in Arkansas have transferred districts. As such, the 89th general assembly responded to a charge by Attorney General Dustin McDaniel that the law would need to be revised.

Choices Among Choice Bills: There were four bills filed during the 89th General Assembly Regular session of 2013 with the goal of amending the school choice law. The first proposal, **SB65 by Senator Johnny Key (R-Mountain Home)** proposed to allow all students in Arkansas to transfer to another school district of their choice

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unless they reside in a district that has a pending desegregation court order. Around the same time, **Senator Joyce Elliot (D-Little Rock) filed SB114**, which would allow districts to opt out of school choice and would restrict choice for only educational purposes. Furthermore, **HB1507 was filed by Representative Kim Hammer (R-Benton)**. HB1507 proposed to use both socioeconomic status and district poverty level to determine whether a student could "choice" into a district. However, there was some question about whether that bill resolved the legal issues raised in the current school choice bill (i.e. basing transfers on socioeconomic status may be too similar to basing transfers on race), and thus HB1507 died in committee.

After a lot of discussion in the Senate Education Committee, Sen. Key added amendments to SB65 to create a compromise bill, and Senator Elliot voiced her support for the amended bill.

Senator Key's compromised SB65 would pass both houses and be signed into law by Governor Beebe as **Act 1227—the Arkansas Opportunity Public School Choice Act of 2013**. The final stipulations in the Act were:

- Districts shall participate unless a district receives approval to be exempted by the ADE if a district is under an enforceable desegregation order.
- No more than a **net 3%** of a district's average daily membership (ADM) can transfer using choice.
- Parents must submit application to nonresident district and have application approved by ADE no later than June 1.
- The ADE shall collect and report data on transfers.
- An expiration date that is effective in 2 years. This expiration date will allow the legislators to look at the data to determine if any changes should be made to the law.

Finally, **Rep. Kim Hammer filed HB1294**, which proposed allowing the 16,000 students who have "choiced" into non-residential schools under the old school choice law to remain in their current districts. This bill would pass both houses and be signed into law as Act 1334. The previously-transferred students under Act 1334 will not impact the net 3% limit set by Sen. Key's Act 1227.

Charter School Authorizer: Since 1999, when the Arkansas legislative approved open-enrollment charter schools (Act 890), the State Board of Education has been the authorizing entity of open-enrollment charter schools. While some states require the State Board to be the authorizing entity, in other states, there are alternative methods—one or multiple independent authorizing entities (such as authorizing boards created by a Department of Education, colleges and universities, and/or approved non-profit organizations).

In January, **Senator Mark Bivanio (R-Searcy) filed HB1040** which would create a Public Charter School Commission to authorize Arkansas' charter schools. HB1040 proposed to create a five-person commission to be comprised of individuals appointed by the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, and chairs of the House and Senate Committees on Education. Those in favor of the Commission argued that it would create an impartial panel and allow the State Board of Education to focus on other work; but those against the Commission argued that it would create a biased panel.

After much debate, in February, Senator Bivanio submitted a compromise bill, HB1528, which became Act 509. **The Act created a 5 to 11 member charter authorizing board within the Department of Education,** with members appointed by the Commissioner of Education. The State Board of Education will only play a role in charter school decisions if the State Board requests to appeal the ADE decision by majority vote.

Private School Choice—Voucher Bills: **SB740, filed by Senator Jane English (R-North Little Rock) and Representative Charlie Collins (R-Fayetteville)**, sought to provide an income tax credit for contributions to a non-profit scholarship fund that would provide scholarships for low-income students to attend private schools. SB740 failed to pass through the Senate Committee on Revenue and Taxation; however, it received a recommendation to be the focus of an interim study.

A true restrictive voucher bill, **HB2260, was filed by Representative Mark Biviano (R-Searcy)** to create a voucher program for special-needs students to attend private schools. Finally, the least restrictive voucher bill, **HB1897, was filed by Representative Randy Alexander (R-Fayetteville)** to create a voucher program for students to attend participating private school, by allowing state funding to follow the student to the school. This bill was considered problematic by many critics, as it would allow *any existing public school student* to transfer to a private school. Both voucher bills failed in committee, though HB1897 received a recommendation to be the focus of an interim study.

School Choice Legislation—Review

By the end of the session, the compromise bills created slight changes to Arkansas' school choice policies; but these changes were small compared to the initial proposed legislation. While the inter-district school choice law allows students to shift districts, with the net 3% mandate, no district will lose a substantial amount of students. With the ADE as the authorizing entity, there may be a slight increase or decrease in the number of new charter schools; however, the yearly cap will remain and limit the number of schools opening to five. Finally, in the end, as many people expected, the legislature did not support any form of vouchers for private school enrollment. Following other states and in light of todays political climate, we except to see more school choice legislation in the 2015 session.

School Funding Legislation

Funding: With few changes, **SB233 (Act 1310)** legislated the operating budget for the ADE in 2013-14. **HB1774 (Act 1467)** appropriated the foundation funding amount to Arkansas school districts, with an expected 3% increase. ($6,393 per pupil in 2013-14 and $6,521 in 2014-15). HB1774 also increased categorical funding amounts for alternative learning environment (ALE) students and English language learner (ELL) students and for professional development.

In response to the Arkansas Supreme Court's *Kimbrell v. McCleskey* decision regarding Fountain Lake and Eureka Springs School Districts, SB425 (Act 557) was passed. Act 557 legislates that the ADE will not distribute foundation funding to districts with net revenues meeting or exceeding the foundation funding amount.

Poverty Funding: The Public School Funding Act of 2003 established Arkansas' current funding system. Within it, the National School Lunch Act (NSLA) was created to appropriate funding to districts based on the percentage of free-and-reduced lunch (FRL) students (a poverty indicator). NSLA funds are allocated so that districts with higher concentrations of poverty receive more funding for students in poverty; however, the funding is distributed in a tiered system, so that districts above 70% and 90% FRL receive more funding per student.

Before the session, the Bureau of Legislative Research reported an interim study on NSLA funding that could not claim correlation between the existing NSLA funding structure and student achievement. In response, **Sen. Johnny Key filed SB811** to amend how NSLA funding is distributed to districts so that funding would be allocated with a sliding scale, instead of the tiered system. Additionally, **Senator Joyce Elliott filed SB208** to change the requirements for spending NSLA funding. Both bills did not pass through the Senate Education Committee, as a majority of members decided that it was too late to make substantial changes the funding structure for the next school year. However, the BLR will conducted another interim study to examine the proposed funding structure and use of funding.

Representative John Catlett (D-Rover) and Senator Joyce Elliott (D-Little Rock) filed HB 1817 (now Act 1473) that that allows NSLA funds to be used to implement evidence-based programs with art-infused curriculum used to close the achievement gap.

School Funding Legislation—Review

Despite a number of discussions by both the House and Senate Education Committees on funding, there were no real changes made the Arkansas' funding structure, other than slight expected increases. We expect to see the issue of categorical poverty funding to reappear during the 2014 Fiscal Session.

Miscellaneous Bills of Interest

We also followed a few interesting bills that were signed into law this session, including the creation of "schools of innovation" and new school rating and reward systems and other bills that directly impact school districts.

Resources — Summaries of the 89th General Assembly's Education Legislation

Arkansas Advocates for Children and Families (AACF): http://www.aradvocates.org/legislation/

Arkansas Association of Educational Administrators (AAEA): http://www.theaaea.org/Domain/122

Arkansas Education Association (AEA): http://www.aeaonline.org/political_action/update.asp

Arkansas Education Law Blog: http://www.arkansaseducationlaw.com/

Arkansas Public School Resource Center (APSRC): www.**apsrc**.net/Images/Interior/spring2013advantage.pdf

Arkansas Retired Teacher's Association: (ARTS) http://artanow.com/?page_id=1136

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Districts of Innovation: **Sen. Joyce Elliott filed Senate Bill 66 (now Act 601)** to create Districts of Innovation. The Act paves the way for schools to create plans that will increase academic performance by improving teaching and learning in innovative ways. Any traditional public school in the state may apply to the Department of Education, after creating a School of Innovation plan that has the approval of at least 60% of eligible employees in the school and the local school board. By becoming a School of Innovation, a school will receive the necessary waivers from laws, rules, and local policies to implement the Innovation plan. The Department of Education will approve Schools of Innovation for four years.

School Rating System: **Senator Jim Hendren (R-Gravette) and Representative Debbie Hobbs (R-Rogers) filed SB175** to create a new rating system for Arkansas' public schools based on an A - F reporting scale. The bill passed to become Act 696, and so, by 2014-15, Arkansas' schools will receive a new rating based on school performance.

School Reward Program: **SB1100 (Act 1429), filed by Sen. Key,** created a new system to reward districts based on student achievement (academic performance or growth and graduation rates). Any district in the top 10% of the state will receive $100 per student and districts in the top 11% - 20% of the state will receive $50 per student, after the 2012-13 school year.

Legislation with Direct District Impacts:

HB 1770 (Act 600) allows the Department of Education to extend the time of state control over school districts in academic, fiscal, or facilities distress from two to five years. Furthermore, the Commission can appoint a community advisory board for the district that will (with limited authority) support the school district.

HB1789 (Act 1469) allows home-school students to participate in their resident district's athletic, fine arts, and special-interest programs, as long as student fulfills academic requirements based on a norm-reference test.

There were a number of other Acts passed that will directly impact Arkansas' school districts, including HB1262 (Act 969) regarding professional development, SB833 (Act 709) regarding the Teacher Excellence and Support System, HB1689 (Act 1108) that will implement a five year pilot program for an arts-enriched curriculum, and SB1147 (Act 1329) that requires districts to submit more detailed student discipline reports. Moreover, Act 599 requires Arkansas' 7th and 8th grade students to enroll in a visual or performing arts course; and Act 1280 requires all entering 9th grade students to have at least one digital learning class (beginning in 2014-15).

Conclusion

During the 100 days of the 89th General Assembly, lawmakers faced important education issues, and over time, lawmakers came to a number of compromises. In the upcoming months and years, the impacts of the new bills regarding school choice will certainly be watched by many stakeholders in Arkansas. While the inter-district school choice law allows students to shift districts, with the net 3% mandate, no district will lose a substantial amount of students. With the ADE as the charter authorizing entity, there may be shifts in the number or type of new charter schools; however, the yearly cap remains at 5. While there was discussion around the funding system, in the end, there were no real changes other than slight expected increases to funding amounts. Other bills, such as the Districts of Innovation bill, may result in promising improvements to Arkansas' schools. We look forward to understanding these Acts and others when the ADE adopts the rules governing the acts.

Since the OEP's founding in 2003, our mission has been to encourage and support thoughtful, data-driven decision-making from our state policymakers. We look forward to the coming months and years to examine the impacts of this legislative session.