



Testimony to Joint Hearing of House Education and Appropriations Committees

October 25, 2023

Good afternoon, Chairman Harris, Schweyer, Grove, and Topper and the Honorable members of the Appropriations and Education Committees.

Thank you for the opportunity to testify today. My name is Maura McInerney and I am the Legal Director at the Education Law Center, a nonprofit legal services organization dedicated to ensuring access to a quality public education for students who are underserved by our education system, including students impacted by poverty, Black and Latino students, students with disabilities, multilingual learners, those in the foster care or juvenile justice system, children experiencing homelessness, LGBTQ+ students, and students at the intersection of these identities.

For the reasons discussed herein, the proposal to create a separate private school voucher program is fundamentally flawed as matter of law and a matter of policy. Diverting public funds to support a private school voucher program in the face of a court decision mandating adequate and equitable funding for our public schools is ill-advised and misguided for three reasons. First, it will divert funding from public schools to private schools, undermining the state's ability to fulfill its unmet constitutional obligation to provide a thorough and efficient system of *public* education for all students as required by our state constitution. Second, a private school voucher program utilizes public dollars to support private schools that can and do discriminate against students based on race, disability, religion, ethnicity, sex, gender, etc. This creates a second-tiered system that exacerbates racial segregation and deprives students of equal opportunities. Third, a private school voucher program lacks standards, transparency, and accountability, and fails to improve educational outcomes, creating false hope for families and students.

I A Private School Voucher Program Will Undermine the Commonwealth's Ability to Meet its Constitutional Obligations.

First, funding private schools with public dollars undermines the Commonwealth's ability to achieve constitutional compliance with the Education Clause set forth in Article III, Section 14 which expressly states: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth."¹

¹ PA. CONST. art. III, § 14.

On February 7, 2023, the Commonwealth Court ruled in *William Penn v. Pennsylvania Dept. of Education*² that Pennsylvania's current school funding system is unconstitutional and schools in low-wealth districts need additional adequate funding to meet the needs of their students. What the Court did not do, (not a single time) in its sweeping 786-page decision is to suggest that creating a private school voucher system is a strategy to meet this constitutional requirement.

Funding private schools with public dollars, will not move the Commonwealth a single dollar closer to its constitutional mandate, which is to support and maintain a contemporary, effective public education system accessible to every child in the Commonwealth, regardless of their school district's local wealth. In fact, it does the opposite, redirecting funds away from public schools and making compliance with the court ruling harder to achieve.

Simply put, siphoning money to support private schools will reduce the amount of state revenues available to correct the funding inequities that led the Commonwealth Court to rule Pennsylvania's education funding system is unconstitutional. The Legislature must provide for a system of free public schools rather than a separate system of private schooling. The Legislature should not take any action that undermines its ability to provide public education by diverting public funds to private education.

This is a particular issue here where the proposed legislation, S.B. 757 allows students who are starting school for the first time or are currently attending private schools and residing within the catchment area of underperforming school to utilize public dollars to support their private school choice.

Research shows that state voucher programs draw significant money away from public schools. For example, an analysis of seven voucher programs across the country found that when funding for private school vouchers increased in these seven states, the portion of state GDP allocated to K-12 public education decreased, even though public school enrollment increased over the same period in five of the seven states.³ Studies of voucher programs in Florida and Wisconsin also show how private voucher programs siphon funding away from public schools.⁴

The General Assembly has an urgent task before it – to create a constitutional funding system in compliance with the courts order. Any consideration of vouchers is a needless diversion from this

² *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 587 M.D. 2014 (Feb. 7, 2023), *Slip. Opinion* (“Op.”).

³ *The Fiscal Consequences of Private School Vouchers*, Public Funds Public Schools, publishing research report by Samuel E. Abrams and Steven J. Koutsavlis, (March 2023) available at https://pfps.org/assets/uploads/SPLC_ELC_PFPS_2023Report_Final.pdf.

⁴ A 2022 report of Florida's program found that the diversion of state school aid to vouchers reached an estimated \$1.3 billion in the wake of the 2019 enactment of the Family Empowerment Scholarship voucher program. This diversion of public funds to vouchers directly from school districts was in addition to a potential \$1.1 billion in public dollars diverted from the state treasury through vouchers financed by corporate tax credits. See *Florida's Hidden Voucher Expansion: Over \$1 Billion From Public Schools to Fund Private Education*, Education Law Center-New Jersey and the Florida Policy Institute (Sept. 2022) available at <https://edlawcenter.org/assets/Florida/Florida-Hidden-Voucher-Expansion.pdf>. See also *Assessing the Fiscal Impact of Wisconsin's Statewide Voucher Program*, National Education Policy Center (2017) available at https://nepc.colorado.edu/sites/default/files/publications/PM%20Bruecker%20Funding_0.pdf. (examining the fiscal impact of Wisconsin's private school voucher program and concluding the statewide voucher program posed a significant risk to public school funding levels).

responsibility. ELC urges the General Assembly not to consider legislation funneling scarce and needed education funding to private schools through a voucher program -- particularly at this time in our history.

II. The Proposed Private School Voucher Program Authorizes the Use of Public Dollars to Discriminate Against Students.

The Commonwealth Court's February ruling also declared education to be a fundamental right in our state as part of the Court's equal protection analysis. The Court expressly held that our school funding system must ensure that *every* student receives "a meaningful opportunity to succeed academically, socially, and civically, which requires that all students have access to a comprehensive, effective, and contemporary system of public education."⁵ A private school voucher program is inherently flawed as a vehicle for providing equity.

There can be no question that private schools can and do discriminate; they alone determine who is in and who is out. Research and empirical data reflect that existing voucher programs discriminate against students in numerous ways.⁶ Students may be denied access to private schools based on their income, race, ethnicity, religion, gender, sexual orientation, and disability status. Unlike public schools which are required to serve all students, private schools are not required to serve them at all and can turn students away because they refuse to follow a certain religion or identify as transgender or non-binary, or because a child is an English Learner and needs language instruction. Religious and sectarian schools often explicitly discriminate against LGBTQ+ students.

Students with disabilities are commonly denied admission to private schools or told to leave because the school cannot or will not accommodate their behavioral or mental and physical health needs.⁷ Moreover, private schools are under no obligation to comply with Individualized Education Programs ("IEPs"), educate students with disabilities in the least restrictive environment, or provide a free appropriate public education ("FAPE"). Yet, often families are not even informed of the elimination of these rights and protections.⁸ Children with disabilities have

⁵ *William Penn*, Op. at 634.

⁶ For example, a 2018 policy brief from the National Education Policy Center found that private school vouchers and other privatization programs open the door for discrimination because private schools are free to determine what programs to offer, they can attract some populations while excluding others. *How School Privatization Opens the Door for Discrimination*, Mead, Julie F., Eckes, Suzanne (Dec. 2018) available at https://nepc.colorado.edu/sites/default/files/publications/PB%20Mead-Eckes%20Privatization_4.pdf.

⁷ For example, a 2016 report by the Council of Parent Attorneys and Advocates found that while private schools may accept students with disabilities, they often expel them for behavioral or other reasons, and moreover, even private school vouchers for special education students "typically fail to include all students with disabilities." *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*, Almazan, Selene and Stile Marshall,, Denise (June 2016) available at https://cdn.ymaws.com/www.copaa.org/resource/resmgr/2016_Conference/COPAA_Voucher_paper_final_R6.pdf.

⁸ A 2017 report by the Government Accountability Office found that parents are often uninformed that students' special education rights are significantly diminished when they use private school vouchers. The report concluded that in the 2016-17 school year, 83 percent of students enrolled in a voucher program designed specifically for

often been left behind in underfunded public schools and denied the same opportunities to utilize a voucher as their peers.⁹

Notably, SB 757 also raises concerns regarding discrimination against students with disabilities because it provides such a low increase in voucher amounts for students with disabilities which will require the families of students with disabilities to bear additional responsibility for special education costs or may result in rejecting students with more significant disabilities. This deprives students with disabilities of equal access to private schools and the voucher program, and imposes a large financial burden on parents, thereby drastically reducing the number of children with disabilities who are likely to use the voucher program.

Private schools also have no obligation serve English learners or to provide language instruction to multilingual learners – shutting out students who need effective language instruction in order to learn.

The failure of private schools to serve all children was made clear through the testimony of Rev. Aaron Anderson, CEO and Head of School of Logos Academy located in York City, Pennsylvania. As Rev. Anderson explained in his testimony during the school funding trial, Logos Academy is a “faith-based Christ centered school”¹⁰ which receives \$1.3 - \$1.8 million per year in funding from Pennsylvania’s educational tax credit programs.¹¹ Rev. Anderson specifically testified that Logos does not enroll or serve students with disabilities or English learners.¹² He further testified that Logos relies on a selective application process that includes not only a review of a prospective student’s grades and behavior reports, but also requires interviews with a potential student and their parents in conjunction with two additional academic assessments to determine whether the student is a “good fit.”¹³ As Rev. Anderson explained, “if there’s a great grade disparity, you know, a student comes in testing for 9th grade and they have a 5th grade reading level, we may look at that and say, well, that may be a student we would struggle to serve” and therefore the student would not be admitted.¹⁴ He also testified that Logos is not required to comply with laws and protections granted to students with disabilities who attend public schools.¹⁵

Notably, such sprawling discriminatory practices are highly unlikely to be remedied legislatively. One study of voucher and EITC programs in 29 states found that only three states require private

students with disabilities were in a program that provided either no information about changes in federal protections and right or were provided information with information that the U.S. Department of Education confirmed contained inaccuracies about the changes. See GAO Report, *Private School Choice Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities* (Nov. 2017) available at <https://www.gao.gov/assets/gao-18-94.pdf>.

⁹ *Id.*

¹⁰ *William Penn*, Trial Tr., Vol 37, 11356:11-12.

¹¹ *Id.* at p. 11365:21-24.

¹² *Id.* at 11453:15- 11455:2.

¹³ *Id.* at p. 11447::13- 11450:10.

¹⁴ *Id.* at 11448: 22- 11449:3.

¹⁵ *Id.* at 11455:12-18.

voucher schools to admit students regardless of their sexual orientation, while only six require that students be admitted regardless of their religion.¹⁶

Here, the proposed legislation offers only a weak and extremely limited protection against racial discrimination. It requires only that participating schools comply with the nondiscrimination policies specified in 42 U.S.C. § 1981, which prohibits intentional racial discrimination in making and enforcing contracts. As the Supreme Court held in *Runyon v. McCrary*, 427 U.S. 160 (1976), Section 1981 prohibits private, nonsectarian schools from denying admission to students based solely on their race, because that restriction interferes with parents' ability to contract for educational services. The law does not protect students from discrimination beyond this contractual relationship and offers no protection at all against other forms of discrimination based on gender, religion, creed, national origin, gender, sexual orientation, or disability status.

Importantly, research shows that private school voucher programs also exacerbate racial segregation. For example, a 2018 evaluation of Washington DC's opportunity scholarship program found that since the program's inception in 2003, student enrollment in the voucher program declined and had become whiter while Black and Brown students receiving vouchers were enrolled in heavily segregated schools.¹⁷ There is also evidence that private schools push out the lowest-achieving voucher students.¹⁸

In sum, private voucher programs subsidize discrimination and fail to provide any real choice for a great number of students. In addition to discriminating against certain types of students, many children will be unable to utilize vouchers for other reasons, including that many families will be unable to meet their financial obligation to contribute to the full private school tuition amount. In addition, those living in rural settings may have little to no access to any private schools. These students will be unable to derive any purported benefit from a private school voucher program.

¹⁶ *Private School Choice Programs Fall Short on Transparency, Accountability*, Education Week Research Center, Prothero, Arianna; Harwin, Alex (February 28, 2020) available at <https://www.edweek.org/policy-politics/private-school-choice-programs-fall-short-on-transparency-accountability/2020/02?r=2000718806>.

¹⁷ Levy, Mayr *Washington, D.C. Voucher Program: Civil Rights Implications*, Working paper for The UCLA Civil Rights Project, (March 5, 2018) available at <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/washington-d.c.s-voucher-program-civil-rights-implications/Levy-DC-VOUCHER-PAPER-FINAL-TO-POST-030218C.pdf>; (finding that 70% of participating voucher students were enrolled in heavily segregated schools with 90% or more students of color, and 58% were enrolled in all-minority schools.); Ee Jongyeon Orfield, Gary, Teitell Jennifer, *Private Schools in American Education A Small Sector Still Lagging in Diversity*, Working paper for The UCLA Civil Rights Project, (March 5, 2018) available at https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/private-schools-in-american-education-a-small-sector-still-lagging-in-diversity/Ee-Orfield-Teitell-Private-School-Report_03012018.pdf. See also Potter, Halley, *Do Private School Vouchers Pose a Threat to Integration?* (Century Foundation, March 21, 2017) (analyzing Louisiana's school voucher program and concluding that, "On balance, voucher programs are more likely to increase school segregation than to promote integration or maintain the status quo.").

¹⁸ Waddington, Joseph, Zimmer, Ron, Berends, Mark *Cream Skimming and Pushout of Students Participating in a Statewide Private School Voucher Program* (Aug. 8, 2022) available at <https://www.edworkingpapers.com/ai22-635>.

This is a particular issue in Pennsylvania where approximately 65% of private schools are religious and may require participating students to adhere to a religious faith.¹⁹

Nothing in the proposed legislation changes any of this. ELC opposes SB 757 on the ground that it supports the unequal treatment of students in violation of the Equal Protection provisions of our state constitution.²⁰

III. Private School Voucher Programs Lack Accountability, Quality Standards and Do Not Improve Academic Outcomes.

We have learned from two decades of experience with private school vouchers that private school voucher programs not only subsidize discrimination but offer a false hope to parents, are unaccountable to the public, and do not improve student success.

The proposed private school voucher bill contains no education quality standards and virtually no accountability to the public about how public funds will be used. The requirements are minimal, and include no requirements regarding, for example, educator certification, curriculum, or testing or how the General Assembly will know whether students are receiving an effective, comprehensive, contemporary education at all.

Similarly, a 2020 survey of 29 states with private school voucher programs revealed that “few require private schools to follow standard policies used to ensure transparency and accountability in the nation’s public schools.” For example, fewer than half the states require that private voucher schools hire teachers with more than a bachelor’s degree, and not even a third of voucher programs publicly report student results on state tests or high school graduation rates.²¹

Moreover, multiple peer-reviewed studies of different programs demonstrate that private school voucher programs fail to improve academic outcomes:

A 2019 [study of the academic impact of the Louisiana voucher program](#) found that after four years, students using the vouchers to attend private schools "performed noticeably worse on state assessments than their [public school] control group counterparts." The data showed "large negative effects" on assessment results, especially in math.

Similarly, a 2019 [evaluation by the Institute for Education Sciences](#) found that the Washington, D.C. voucher program had no statistically significant effect on student achievement in reading or math after three years.

A 2018 [longitudinal study of the Indiana Choice Scholarship Program](#) published in the Journal of Policy Analysis and Management found that low-income students who switched from public to private school using a voucher starting in the 2011-12 school year experienced

¹⁹ Private School Review, Religiously Affiliated Private Schools (2023-24) available at <https://www.privateschoolreview.com/pennsylvania/religiously-affiliated-schools>

²⁰ PA. CONST. art III, § 32.

²¹ *Private School Choice Programs Fall Short on Transparency, Accountability*, supra.

achievement losses in Math. This loss remained consistent regardless of the length of time spent in private school, contradicting the claim that loss in achievement is the result of student adjustment to private school.

Finally, a 2019 [study published in the Russel Sage Foundation Journal of the Social Sciences](#) found significant losses in academic achievement for Indiana students who used a voucher to move from public to private school.

The quality and depth of these studies reveal that private school voucher programs have not been effective in achieving their intended goals. The consistency of these more recent findings should not be ignored.

IV. Pennsylvania Should Not Continue to Expand Its EITC and OSTC Programs Which Lack Accountability and Transparency.

Finally, as a cautionary tale of the anticipated expansion of a private school voucher program as has occurred in many states, I would like to touch briefly on Pennsylvania's current educational tax credit programs – one of which provides taxpayer-funded dollars to private and religious schools: the Educational Improvement Tax Credit (EITC) and the other known as the Opportunity Scholarship Tax Credit (OSTC) program.

Since their inception in 2001, the EITC and OSTC programs have provided tax credits valued at more than \$2 billion directly to private schools. In 2022-2023 the EITC and OSTC programs will provide \$340 million to private scholarship organizations, which award tuition vouchers to families whose children attend private and religious schools.

These programs operate almost completely in the shadows without any transparency, accountability, or oversight. In fact, state law explicitly prohibits the collection of information about who benefits from these programs, so there is no evidence that EITC/OSTC programs benefit children in poverty or help students in low-achieving schools attend higher achieving schools.

Private and religious schools that receive EITC/OSTC funding are also allowed to discriminate and can refuse enrollment to students for any reason, including due to a student's disability, race, socio-economic status, and sexual orientation.

These programs aren't designed to direct funding to support children living in deep poverty; rather, Pennsylvania law sets the family income limit of roughly 500% of the federal poverty level, or \$130,710 for a family of four, the highest in the nation for any state with a similar program that has an income limit. Because there are no public auditing powers associated with these programs, EITC/OSTC funds can support families whose incomes significantly exceed the limit. In addition, there is no accountability for wealthy families that may make contributions via EITC/OSTC in exchange for reduced tuition for their own children.

There is no evidence that more than two billion in tax dollars spent on these programs has had any positive impact on student achievement in the Commonwealth because state law prohibits

the collection of information about students' academic progress. Scholarship organizations that receive diverted tax dollars are also allowed to keep up to 20% of the total funding they receive, the highest amount allowed by any state that has a similar program. There is no legislative or public oversight over these tax dollars and no reporting requirements for how scholarship organizations spend these dollars.

In other words, Pennsylvania continues to increase and expand these education tax credit programs without any knowledge of how many students benefit from the program, who these students are, whether students in poverty are benefiting from these programs, or whether students utilizing these tax credit programs are experiencing improved educational outcomes. What we do know is that the scholarship organizations in a small number of counties receive the majority of the tax credit funding. We know that most of EITC/OSTC contributions benefit Pennsylvania's 25 most expensive and elite private schools.²²

Despite this lack of knowledge, funding for K-12 EITC/OSTC programs has increased nearly twelvefold over the past two decades; yet Pennsylvania taxpayers know virtually nothing about who has benefited from these programs.

Conclusion

We urge the General Assembly to reject SB 757 and to turn its attention toward its constitutional responsibility to provide a thorough and efficient system of *public* education. The best choice for all students and taxpayers is to construct an adequately and equitably funded public school system that is transparent, accountable, and serves all children. A public education system provides such standards and accountability and can measure progress towards the common goal of providing every child with a comprehensive, effective, and contemporary education that prepares them to lead civically and economically. Thank you.

²² For example, in 2019-2020, Episcopal Academy whose annual tuition was then \$39,000 for grades 9-12 received \$4 million in EITC and OSTC contributions. In 2020-21, AIM Academy's self-reported receiving \$1.3 million in revenue from EITC and OSTC contributions to support 96 students - providing \$13.5 thousand per student – higher than the state per-student funding contribution of 97% of students who attended public schools that year.