

**TO:** Pennsylvania Senators  
**FROM:** Deborah Gordon Klehr, Executive Director, and Sharon Ward, Senior Policy Advisor  
Education Law Center-PA  
**RE:** SB 795, Private School Vouchers  
**DATE:** June 27, 2023

**The Education Law Center strongly opposes Senate Bill 795**, which would divert funding from public schools to create a new, duplicative private school voucher program.

In February 2023, the Commonwealth Court ruled that Pennsylvania's school funding system is unconstitutional and that education is a fundamental right. One week ago, the Court reaffirmed its decision in favor of petitioner public school districts, families, and statewide organizations, denying a motion for post-trial relief.

What the Court did not do, in its sweeping 786-page decision or subsequent ruling, is to suggest that creating or expanding a private school voucher system is a strategy to meet the constitutional requirements.

Funding private schools with public dollars, as this bill proposes, 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.

We urge the Senate to attend to the problem at hand, which is to fully fund our public education system, starting with a robust downpayment in the 2023-24 school year.

We have learned from two decades of experience from other states that these programs fail to offer a lifeline to many students, are unaccountable to the public, subsidize discrimination, and do not improve student success.

### **A Deeply Flawed Bill**

The private school voucher program in SB 795 is inherently flawed and offers a false choice to families. ELC is particularly concerned that the proposed Lifeline voucher program authorizes public dollars to support private schools that can and do discriminate against students based on disability, race, national origin, religion, ethnicity, gender, gender identity, and sexual orientation. Private schools that accept vouchers are not obligated to provide special education services or accommodations for students with disabilities or language instruction for English learners. Private schools can and do refuse to serve students with disabilities, children who are immigrants, students who identify as LBGQT+, or those who do not share their school's religious values. Private schools can also refuse to admit children because they are poor or because they don't like their parents. A private school can refuse to enroll or retain students who struggle academically.

Nothing in the proposed legislation changes any of this.

The bill offers weak and extremely limited anti-discrimination protection. 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 the restriction interferes with their

**Ensuring that all of Pennsylvania's children have equal access to a quality public education.**

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 discrimination based on gender, religion, creed, national origin, sexual orientation, or disability status.

SB 795 has particularly troubling provisions with respect to children with disabilities, providing a paltry increase in voucher amounts for students with disabilities for private schools to charge families for special education services, depriving students with disabilities of equal access to the program, and imposing a large financial burden on parents that would drastically reduce the number of children with disabilities who would be able to attend a private school.

### **Evidence From Other States**

Research and empirical data also establish that existing voucher programs discriminate against students in numerous ways.

- 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 and federal law defines discrimination differently in public and private spaces.
- A 2016 [report from the Council of Parent Attorneys and Advocates](#) found that private schools may accept students with disabilities but expel them for behavioral or other reasons, and private school vouchers for special education students “typically fail to include all students with disabilities.”
- A 2020 [study published in the International Journal of Qualitative Studies in Education](#) found that three of the largest special needs voucher programs in the country (in Florida, Georgia, and Ohio) were silent on the right of students with disabilities to education in the least restrictive environment. The authors concluded that “[t]his deception undermines the right to inclusion, legitimizes discrimination, and facilitates systematic segregation in U.S. schools.”

Religious and sectarian schools may explicitly discriminate against LGBTQ+ students. Such schools fail to provide real choice for students. *See e.g.*, [‘Unwanted and unwelcome’: Anti-LGBTQ+ policies common at Wisconsin voucher schools](#).

Private school vouchers also exacerbate racial segregation. A 2018 [evaluation of Washington DC’s](#) opportunity scholarship program by the UCLA Civil Rights Project found that since the program’s inception in 2003, student enrollment has declined and become whiter, and Black and Brown students receiving vouchers were enrolled in heavily segregated schools. There is also evidence that private schools push out the lowest-achieving voucher students. *See e.g.*, [Cream Skimming and Pushout of Students Participating in a Statewide Private School Voucher Program](#).

**The pattern of state voucher programs is that they in fact draw significant money away from public schools.** An [analysis of seven voucher programs](#) across the country by the Education Law Center of New Jersey and the Southern Poverty Law Center found that at the same time funding for vouchers climbed significantly in these seven states, the portion of state GDP allocated to K-12 public education decreased, even though public school enrollment grew over the same period in five of the seven states.

**We urge the Senate to reject SB 795** and turn its attention to its constitutional responsibility. The best choice for parents and for taxpayers is a public school system that meets the needs of students and prepares the next generation to lead civically and economically.