

Education Law Center Position Statement on Senate Bill 1, giving state-funded vouchers for tuition at non-public schools.

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Background

The Education Law Center (ELC) is a non-profit legal advocacy and educational organization, dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. We have operated statewide for more than three decades serving as a resource for children, families, and communities and fighting for their education rights.

ELC interacts every day with parents throughout Pennsylvania who ask us how to protect the rights of their children to receive an opportunity to learn and succeed in school. We focus our efforts on helping parents and grassroots groups to improve educational opportunities for children facing barriers in school – students with disabilities, learning English, living in poverty or homeless, or in the foster care or juvenile justice systems.

ELC believes that quality education is vitally important to the success of both individuals and communities. Education is Pennsylvania's best investment, helping students to become productive citizens and contributing to higher levels of employment, more stable families, and reduced dependency on public expenditures for welfare, health care, crime and incarceration. Effective public schools are essential to the long term well-being of the Commonwealth and require equitable resources and opportunities to learn for all children. Reforms are needed to improve teaching and learning through greater accountability, efficiency, transparency, parent involvement, and adequate funding distribution. State and local policy must prioritize the needs of disadvantaged students and public schools.

Analysis of SB 1

ELC has thoroughly evaluated Senate Bill 1, looked carefully at data about school performance and funding, studied voucher programs in other states, and fairly considered all options for improving Pennsylvania's system of public education. We approach these tasks seriously, as part of our daily work and without political preference or influence.

ELC is certainly not a defender of the *status quo*. We have engaged in decades of advocacy within the courts, the legislature, and administrative agencies, seeking local and state reforms that uphold student rights and improve opportunities to learn for all children. We have seen great improvements and continue to be enthusiastic about new possibilities for reform that can make a quality public education the best choice for Pennsylvanians. But education policies must be based on what research shows is best for children, not on political power or influence.

Our single measuring stick for SB 1 and all education policy proposals is *whether the suggested reform is in the best interest of disadvantaged students, families, and communities throughout Pennsylvania*.

Senate Bill 1 fails this test. It is not designed to maximize help for the neediest students. SB 1 presents bad choices for disadvantaged students, families, and communities.

- The voucher bill as drafted is highly flawed and not ready for consideration or passage by the General Assembly.
- The actual language and provisions of SB 1 do not come close to fulfilling the positive principles and objectives stated by the supporters of the bill.

- The bill is written to allow private and religious schools to take state funding while picking and choosing only the students they prefer, excluding most students with disabilities and other significant educational challenges, and avoiding real state oversight and accountability for demonstrating performance or achieving results.
- In theory it could be possible to start from scratch and create a very different bill that truly strengthens public education for disadvantaged children and communities. But the top priority would need to be strengthening public schools, not transferring state dollars to private and religious schools.
- The various flaws in the design of SB 1 add up to removing any hope of improvement in the public schools that would lose funding through vouchers, sacrificing the majority of students left behind in those schools for the speculative benefit of a few.
- The bill would cost the state many millions of dollars, perhaps billions. And most state funding for vouchers would end up going to students who are not the poorest, are not the lowest achieving, and are not attending the lowest performing public schools.
- State government does the most harm to public education when it runs from one reform to another, without ensuring that any single reform is implemented effectively in a sustained manner for the benefit of the most disadvantaged students and schools. Instead of rolling the dice on vouchers, the state should put its efforts and resources into completing the positive reforms that have not yet fully reached the schools targeted by SB 1. Such incomplete reforms include: standards-based curriculum, testing, and student interventions; adequate funding and resource distribution; measures to improve teacher and administrator preparation, evaluation, and effectiveness; instructional reforms for students with disabilities and English language learners; and initiatives involving magnet schools, charter schools, and vocational-technical programs.
- Even though it is not a popular issue at this time, the distribution of adequate state funding remains the key to success for any education reform initiative. Many of the lowest performing schools in Pennsylvania remain under-resourced, without the means to meet the significant and costly education challenges presented by the needs of their students. It is unfair for the state to distribute funding in a manner that allows the education of children in wealthy communities to be supported by twice as much funding as children in other communities, and then blame the under-resourced students and schools for not performing at the same academic level. Vouchers should not be considered until there is truly an even playing field for all.
- Finally, the Pennsylvania Constitution and other state and federal laws clearly prohibit the transfer of state funding through vouchers to private and religious schools as proposed in SB 1. Several provisions of the Pennsylvania Constitution combine to directly outlaw the vouchers contained in the bill. And it is illegal under various federal laws for a state to set up a system that does not provide equal access and benefits to students with disabilities or learning English.

In conclusion, the Education Law Center feels about Senate Bill 1 the way we often feel about well-intended but unsound education reform initiatives. Pennsylvania might have a chance to really provide an equal opportunity to learn for disadvantaged children, if all of the time, effort, and expense being invested in pursuit of vouchers could be put towards more effective, proven, and practical reforms.

The Top 10 Bad Choices for Children in SB 1 (Vouchers)

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“Regardless of intent, bad choices lead to bad results.”
Ancient proverb

Senate Bill 1 was not drafted in ways that protect the education rights of the neediest children. The bill is designed to transfer taxpayer dollars from public schools to private and religious schools with the fewest strings attached.

Choices have been made about the actual provisions in SB 1 that will harm the best interests of most struggling, low-income students in public schools. The bill will not serve the neediest students, strengthen public schools, or give all children a fair opportunity to learn.

The following analysis shows that whenever choices were available in the bill to either help the most disadvantaged children or instead to make things easy for private and religious schools to get taxpayer dollars, the wrong choice was made. SB 1 cannot be fixed just by correcting a few of these choices. The whole structure of the bill is set up to be ineffective and harmful for disadvantaged students, families, and communities.

Bad Choice #1 – The bill offers vouchers to students in schools that are not failing under long-accepted state and federal standards. (Section 2502-B. Definition of “lowest achieving school”.)

The bill does not use existing standards for “adequate yearly progress” (AYP) as part of the factors for determining which public schools are on the list for student voucher eligibility. Under the bill, a public school could make AYP or be in one of the early AYP stages but still be “failing” so that students can get a voucher. Vouchers should not draw resources away from schools showing great improvement, but should only be available for students in schools that have been failing for more than six consecutive years and are not making progress. (This is the official “AYP” standard used by Pennsylvania and the federal government since 2000.) Of the 144 schools identified in SB 1, over 60 percent are not failing under these standards – vouchers are not needed in these schools. This is the wrong choice, sets the wrong priorities, and will misallocate funding.

Bad Choice #2 – The bill offers vouchers to students who are already meeting academic standards, instead of giving vouchers only to failing students. (Section 2503-B(b).)

The bill gives a voucher to all low-income children, regardless of whether they are doing well or doing poorly in school. Many students show satisfactory academic achievement even in struggling schools. This happens for many reasons, including the traditional assignment of the best students to the best teachers year after year. State spending should give top priority to low-income students with the lowest scores on state tests or using other measures. But SB 1 makes a different choice, thus allowing non-public schools to pick only those voucher students with the best performance.

In Year 2 and all future years, SB 1 would also give vouchers to low-income children attending a non-public school and living within the attendance boundary for a low-performing public school. State spending should only be devoted to these students if they have a low score on state tests, have received a scholarship for at least 80 percent of tuition at the non-public school, and would use a voucher only to attend a higher performing school than their current school. The Year 3 provisions in SB 1 would go

even further and give a voucher to low-income children attending any public or non-public school anywhere in the state. SB 1 makes the wrong choices, allowing taxpayer dollars to end up being used primarily for students who are NOT the most needy.

Bad Choice #3 – The bill does not require non-public schools to qualify and meet basic criteria for success. (Section 2502-B. Definition of “participating nonpublic school”. Section 2505-B(c).)

The bill allows private and religious schools to receive voucher funding without any kind of qualification by the state as meeting basic academic, social, and fiscal standards for success. The total lack of a thorough certification process in SB 1 means that students could end up using taxpayer dollars to attend non-public schools that may be worse than their neighborhood school. Much better options are available and higher standards should be used when so many millions of dollars are at stake. For example, non-public schools could only be eligible for voucher funding if they have operated for at least five years, have become accredited by the relevant state and national organizations, have demonstrated academic success superior to the student’s neighborhood school for the student’s subgroup on standardized tests and other measures, have made publicly available full information about financial and other aspects of operations, and have demonstrated a commitment to diversity and social cohesion within its student body. Non-public schools also could only be eligible if they set aside a minimum percentage of seats for voucher students, perhaps five percent of total enrollment. And students could lose their voucher and return to their neighborhood school if that school eventually demonstrates higher academic performance than the non-public school. But SB 1 makes none of these choices, instead opting for placing no prerequisites for success on the private and religious schools.

Bad Choice #4 – The bill does not use a lottery system for fairness in admission and to avoid selectiveness. (Sections 2504-B(d)(3) and 2505-B(d).)

Instead of handling the admission of voucher students to non-public schools solely by an anonymous lottery system, SB 1 requires schools to make decisions on a first-come-first-served basis and also allows schools to use special admission criteria. A lottery system is needed to ensure equal treatment in the admissions process. Most non-public schools will only have a limited number of available seats for voucher students and the bill makes the wrong choice by allowing them to pick and choose which students they find to be most attractive.

In addition, two enormous loophole provisions are hidden in SB 1. These provisions would specifically allow non-public schools to exclude students who are costly and present academic challenges, perhaps even allowing discrimination against students with disabilities, English language learners, and others. The two loopholes allow denial of enrollment applications if the non-public school believes that the student is not qualified for the school’s “particular areas of concentration” or if it believes that it “does not offer appropriate programs or is not structured or equipped with the necessary facilities to meet the special needs” of the student. These are very bad choices in SB 1.

Bad Choice #5 – The bill does not prohibit or limit charges to families for tuition and other fees above the voucher. (Section 2506-B.)

Because SB 1 allows private and religious schools to impose charges above the voucher amount, most low-income families will be excluded from the voucher system. They will not be able to afford the hundreds or thousands of dollars needed for additional tuition and other fees above the voucher amount. This is the wrong choice for families. SB 1 should prohibit non-public schools from charging tuition or any other fees above the voucher amount to parents using a voucher.

Bad Choice #6 – The bill puts low-income families at financial risk. (Sections 2505-B(b)(3) and 2506-B(d)(2).)

SB 1 does not guarantee families seeking a voucher a fixed annual amount upon approval, so that they can know what to expect before making other decisions and commitments. Because the bill does not deal directly with the variable factors affecting the level of voucher funding per student, the final annual amount of a family's voucher can potentially change by thousands of dollars. Instead, the bill could set an annual limit on the number of vouchers in total statewide and also as a percentage of enrollment in a given public school. The bill could notify parents early in the process about the actual funding they will receive if approved. The bill could use a lottery system to award vouchers if insufficient funds are available to meet demand. The bill could notify parents and the public if delays in the state appropriations process may interfere with timely student admission applications or re-enrollment in schools. SB 1 makes none of these choices, putting families at financial risk and potentially disrupting their lives and the education of their children.

In addition, SB 1 subjects parents to fines and criminal prosecution if they mishandle the voucher funds in any way, such as not promptly returning the remainder of funds to the state if their child switches schools during the year. SB 1 requires the state to write a voucher check to individual families instead of directly to the private or religious school, in order to get around the prohibition in the Pennsylvania Constitution against the state itself using funding "for the support of any sectarian school."

Bad Choice #7 – The bill does not require non-public schools to enroll and assist academically at-risk students. (SB 1 contains nothing except Sections 2504-B(d)(3) and 2505-B(d) on admissions.)

SB 1 does not ensure that the neediest students are given top priority for vouchers, are treated fairly in the admissions process, and are given academic supports in the private and religious schools. The bill allows non-public schools to refuse admission or terminate enrollment for any otherwise eligible voucher student with a disability, learning English, with large achievement gaps, or with a past disciplinary record that is successfully resolved. The bill does not require non-public schools to provide the full range of tutoring, support services and accommodations needed for all students to succeed, including special education, programs for English language learners, and help for other at-risk students. And the bill also does nothing to ensure that voucher students are assigned to inclusive classroom settings along with the non-voucher students in the same school, with a reasonable student-teacher ratio and with a teacher who meets minimum qualifications. SB 1 chooses not to address the needs of voucher students in any of these ways, thus threatening to leave behind the most challenging and costly students in the public schools.

Bad Choice #8 – The bill does not establish fair procedures for ending a voucher student's enrollment. (SB 1 contains nothing except a reference to "no longer enrolled" in Section 2505-B(b)(3).)

Without fair rules and procedures for ending the enrollment of voucher students, private and religious schools will be free to send children back to public schools at any time. Non-public schools could be prohibited from terminating enrollment, "counseling out", or expelling a voucher student based on the child's disability, English language ability, manageable behavior problems, achievement gaps, or level of parent involvement. Any attempt to end the enrollment of voucher students and send them back to a public school could follow the same due process rules and procedures that apply in public schools. But SB 1 makes none of these choices.

Bad Choice #9 – The bill does not mandate strong accountability standards for all parts of the voucher program. (Section 2502-B. Definition of “participating nonpublic school” and Section 2505-B(c). Sections 2505-B(c),(d); 2507-B(a); 2509-B(h). None of these sections address the following issues.)

SB 1 makes none of the choices necessary to ensure even a minimum level of accountability and transparency for the many millions of taxpayer dollars allocated by the state for vouchers. The bill exempts the new State Voucher Board from laws for public scrutiny and review of proposed regulations, and fails to state whether the Board is subject to sunshine laws for open meetings and laws for open records. The bill also does not include any provisions regarding: (i) Requirements for schools accepting voucher students to submit to the department information about financial, academic, and other aspects of their operations; (ii) Procedures for making such information available to the public; (iii) Procedures for parents and schools to submit disputes to the department for resolution and requirements for schools accepting voucher students to participate in such procedures; and (iv) Consequences for schools accepting voucher students that violate state rules. In addition, SB 1 does not contain any provision to pay for the massive state-level regulatory and administrative bureaucracy needed to properly monitor the voucher program and provide adequate accountability.

Bad Choice #10 – The bill does not deal with the real costs of both public education and vouchers. (Section 2506-B(d).)

The state’s first responsibility is to equalize funding so that all children have a fair opportunity to learn in their neighborhood school. In most cases, students have the lowest academic achievement in public schools that are underfunded compared to other schools in wealthier communities. Before the state takes funding away from a public school for vouchers, it should first guarantee that the school has adequate funding sustained for sufficient time to allow investment in real reforms such as replacing the school administrators, improving teacher quality and training, involving parents and community leaders in school governance, strengthening the curriculum, providing extra academic and behavior supports for at-risk students, and installing up-to-date computer technology, science labs, and libraries.

Instead of making these good choices, SB 1 would transfer many millions, if not billions, of taxpayer dollars to private and religious schools. That is the wrong choice.

In addition, if vouchers are used for students in a given school district, the state should fairly pay the district for the real costs associated with operating the voucher program, including: a range of reporting, financial, and transportation tasks; operating the fixed costs of school facilities with less state funding; and maintaining extra classroom capacity to re-absorb voucher students who leave the non-public schools. SB 1 does not make these choices.

Bonus Bad Choice – The bill does not even support the full range of parent choice.

The state can do much more to help local public schools to be a good choice for families. First, provide the public with comprehensive and accurate information about school performance, so that families can make more informed decisions about where to live so that their children have access to public school options that best meet their needs. Second, increase support for more diverse education options within public schools, such as high quality vocational programs, work-study programs, magnet schools, advanced placement programs, and dual enrollment in high school and college. Third, strengthen charter school options by weeding out weak charters and utilizing the best ones as laboratories for innovation where lessons learned are transferred to local public schools. Fourth, develop more comprehensive options for open enrollment and transfers within school districts (not included in SB 1) and between neighboring school districts (limited in SB 1 by not requiring districts to accept students seeking a transfer). SB 1 ignores these choices.