



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

January 28, 2021

SB 98

**County Boards and Public and Nonpublic Prekindergarten Programs and Schools -
Discrimination – Prohibition**

Senate Judicial Proceedings Committee

Position: OPPOSE

The Maryland Catholic Conference offers this testimony on behalf of the families of approximately 50,000 students served by more than 150 PreK-12 Catholic schools in Maryland in OPPOSITION to Senate Bill 98. The Conference represents the public policy interests of the three (arch)dioceses serving Maryland, the Archdioceses of Baltimore and Washington and the Diocese of Wilmington, which together encompass over one million Marylanders.

This bill seeks to enshrine in law stringent restrictions on hiring and employment, student accommodations and written policies. It places requirements on public and nonpublic schools that are not currently in law and frustrate day-to-day operational practicalities in both educational forums. It does not define “discrimination”, making for an overbroad and vague concept within the bill. Additionally, creating “disability” as a protected class against “discrimination” does not account for the fact that not all schools, whether public or nonpublic, can accommodate each student, as to do so would be to the student’s detriment if a school was not equipped to accommodate them. In fact, public schools that cannot accommodate students with particular disabilities often have to place those students with nonpublic providers.

Moreover, this bill does not provide First Amendment Free Exercise Clause protections. Thus, the inclusion of nonpublic schools, of which the majority are faith-based, in the requirements proposed by this bill could very well be rendered unconstitutional. This bill would force many faith-based schools to abandon exceptions for religious entities already placed in law by forcing them to choose between participating in an otherwise available state benefit for their students or remaining a religious institution that is free to exercise its First Amendment rights.

This bill is also unnecessary relative to nonpublic schools, as stringent and effective nondiscrimination protections already placed in state programs for those schools and they are working. This bill is a clear attempt to challenge conscience protections for faith-based schools participating in state programs. Catholic schools have complied with all state and federal nondiscrimination provisions and comply with every requirement already placed upon them through state-funded programs.

The majority of states in the U.S. provide assistance for nonpublic school students and families. However, other state programs do not subject schools to requirements such as those put

forth by Senate Bill 98. Moreover, since 1965, the federal Elementary and Secondary School Act (n/k/a the Every Student Succeeds Act or ESSA) has provided for the equitable inclusion of nonpublic school students in federal education programs without imposing government regulations like those promulgated by Senate Bill 98.

This legislation will deprive children, many of them from minority, low-income families, of the benefits of state programs that make their school day better and more productive. This bill is detrimental to more than 80,000 of the 120,000 preK-12 nonpublic school students in the state whose schools are eligible for the longstanding Nonpublic Student Textbook Program, and more than 180 schools that participate in the Nonpublic Aging Schools Program. To even greater detriment, the bill would effectively take away scholarships from thousands of FARMs-eligible, low-income, state scholarship recipients, the majority of who are minorities and/or English language learners.

For each of the aforementioned reasons, we urge you to report unfavorably on Senate Bill 98.