

**Testimony in OPPOSITION to Senate Bill 401
Operating Budget – Funding – Scholarships for Nonpublic School Students**

**Senate Budget & Taxation Committee
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**Cheryl Bost
President**

The Maryland State Education Association stands in strong opposition to Senate Bill 401, which codifies Maryland's school voucher program, Broadening Options and Opportunities for Students Today (BOOST), into law and mandates an increasing amount of funding between Fiscal Year 2024 and Fiscal Year 2027. Not only does MSEA call for an unfavorable report on this bill, MSEA continues our request for the complete elimination of the program.

MSEA represents 75,000 educators who work in Maryland's public schools, teaching and preparing our 896,837 students for careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3-million-member National Education Association (NEA).

Public dollars should fund public schools. The BOOST private school voucher program has been highly controversial since its inception and diverts attention and resources from the real needs of our students and public school communities.

First, the funding level of this voucher program has always been subject to much debate. The governor has continued to put \$10 million in the budget, and up until last year, the legislature has decided to reduce that to approximately \$7.5 million. Given BOOST was funded at \$7.5m in FY21, under this bill, the program's funding would increase 113% in six fiscal years. BOOST should not be growing, let alone overfunded, while the governor's FY23 budget proposal did not fully fund the mandated appropriations for the Blueprint for Maryland's Future. What we have seen in other states—and what advocates arguing against BOOST have argued from the beginning—is that voucher programs rapidly expand, regardless of the quality or demonstrated need of those programs. This troubling pattern would only be amplified by this bill. The Governor's budget this year would result in a \$99 million cut from Baltimore City's public schools and \$26 million cut from Prince George's County's public schools along with cuts in funding that were intended to help implement career and technical education, increase behavioral health supports, and train leaders and educators on meeting the goals of the Blueprint.

If the governor is truly interested in making public schools better for all students, particularly struggling students and students from low wealth communities, he can redirect the millions of dollars in this bill toward the funding needed to implement the Blueprint for Maryland's Future and even expedite some of its most important



provisions. That would be precious public dollars better spent. There are a myriad of things our schools, students, and communities need right now to help us recover from the COVID-19 pandemic. Every school system across the state is facing staggering staffing shortages. The \$52 million across four fiscal years (and \$16 million per year after FY27) diverted to private schools through the use of vouchers could go a long way in hiring the desperately needed substitute teachers across the state. Those dollars could help hire more bus drivers, to help ensure that students get to school safely, and parents and guardians are able to consistently make it to work on time. Those funds could be used to ensure there is a school nurse in every building, who is coordinating contact tracing and keeping the school community safe. That funding could go directly towards the many community schools we are working to stand-up across the state, with a proven record in helping to provide wrap-around services and family support to students living in concentrated poverty.

Next, this bill, as written, does not lay out even the current minimum standards to participate in the program that has existed in budget language. These minimum nondiscrimination standards have already been difficult to enforce. The collective priority, if the vouchers are to continue in anyway, should be looking for ways to strengthen those protections rather than looking for ways to increase support for schools without strict nondiscrimination policies. BOOST and other programs which send taxpayer dollars to private institutions have been a target for lawsuits and litigation that cost time and money of the Attorney General and the Maryland State Department of Education (MSDE).

Further, without any of the provisions of the program put into this legislation, it will then be up to MSDE to develop the regulations needed to implement the program. At a time with immense need for our public school students, especially post-pandemic, we should not waste the Department's time on private school support. The Department needs to be focused on the implementation of the Blueprint for Maryland's Future, especially given the delays due to the Governor's veto and then withholding of millions of dollars in a direct attempt to derail the Blueprint implementation. Our kids can't wait any longer. We must start the important work of fully funded implementation right now.

MSEA is increasingly concerned about the possible long-term legal ramifications of continuing to codify and fund this voucher program. The case of *Espinoza v. Montana Department of Revenue* involved a scholarship program created by the Montana legislature that provided a dollar-for-dollar tax credit of up to \$150 for individuals and businesses who donated to private scholarship organizations. The money donated to the organizations was to be used to provide scholarships for children to attend private schools, the vast majority of which, in Montana, are religious. Citing language in its state constitution banning aid for churches and religious schools, the Montana Supreme Court invalidated the entire tax-credit program. In its brief to the Court, the state argued that because the program had been invalidated in its entirety, the plaintiff's claim was no longer about the tax credit program itself but about the state's constitutional provision to not aid religious institutions. Pointing to the *Trinity Lutheran v. Comer* case, the state



argued that by eliminating the program for everyone (religious or secular schools), it could not be found to be violating the Free Exercise Clause.

Chief Justice Roberts, writing for a conservative majority, said, “A state need not subsidize private education. But once a state decides to do so, it cannot disqualify some private schools solely because they are religious.” He went further by adding, “The Montana Legislature created the scholarship program; the Legislature never chose to end it, for policy or other reasons...The program was eliminated by a court, and not based on some innocuous principle of state law. Rather, the Montana Supreme Court invalidated the program pursuant to a state law provision that expressly discriminates on the basis of religious status.”

As it is currently implemented, the BOOST voucher program clearly does not run afoul of the First or Fourteenth Amendments by distinguishing between nonpublic schools that are secular versus those that are religious. However, given the conservative leanings of a majority of the justices on the Supreme Court and their clear inclination to view Montana’s decision through the “free exercise” lens as opposed to the “separation of church and state” lens, we are deeply concerned that any efforts undertaken by members of the General Assembly to enforce the BOOST program’s prohibitions against discriminatory policies or actions would be perceived by these justices as an unfettered attack on religion or a legislative effort to deter public funding from going to nonpublic schools for no other justification than the school’s parochial nature. It is very possible that such enforcement would be deemed unconstitutional. Our concern here is elevated by the flag raised by the justices in the minority when they note that the Montana legislature’s step to eliminate their program in no way deterred their conservative colleagues on the Court from seeking some remedy for a perceived “injustice” that no longer existed. However, we ardently contend that allowing the voucher program to continue, even more so if the program is codified, only increases the probability that such a defense of the program’s long-term continuation only stands to make just such litigation even more eminent.

The State and education stakeholders (parents, students, educators) have spent five years working to determine how we can increase standards for our students and educators through the Blueprint for Maryland’s Future. Schools that participate in the BOOST voucher program do not have the same rigorous standards or accountability to legislators or taxpayers. They are not required to administer the same standards-based assessments, the certification requirements for their teachers are not comparable, and educators are not evaluated similarly, yet these schools are given public tax dollars. Public funding should go to public schools with high standards to serve ALL Maryland students.

The legislature should focus on the implementation of the Blueprint and responding to the urgent needs of our public schools. Students and families are counting on us to get this right, and to help them recover from the pandemic. Our kids can’t wait.

MSEA strongly urges an Unfavorable Report on Senate Bill 401.