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Mandating and Expanding Private School Vouchers Would Put Maryland on a Dangerous Path

Position Statement in Opposition to Senate Bill 401

Given before the Senate Budget and Taxation Committee

High-quality public schools are part of the foundation of a thriving community. They reflect our understanding that every child has something to contribute – regardless of their race, ethnicity, disability status, sexual orientation, or gender including gender identity. Voucher programs divert public dollars to private schools that have no legal obligation to treat all students with equal dignity, and ongoing litigation threatens the state’s ability to insist that they do so when receiving public funding. Senate Bill 401 would lock in and heighten diversion of public dollars to private and religious schools, and may ultimately require the state to fund schools that discriminate. **For these reasons, the Maryland Center on Economic Policy opposes Senate Bill 401.**

Senate Bill 401 is part of a multi-year agenda to divert money from public schools to private and religious schools:

- Gov. Hogan created the so-called “Broadening Options and Opportunities for Students Today” (BOOST) voucher program in 2016, the culmination of a two-year effort to for the first time use public dollars to pay tuition at private and religious schools in Maryland.
- That same year, the governor introduced a budget that underfunded three-quarters of the state’s public school districts in comparison to a 2002 standard that already underestimated the true cost of providing a high-quality education.ⁱ More than half of the state’s Black students went to school in a district that was underfunded by at least 15% under this budget.
- The governor has sought to increase funding for the voucher program in every subsequent budget, finally reaching his goal of \$10 million in the current budget year. Meanwhile, he continued to underfund public schools and delay or obstruct implementation of the historic Blueprint for Maryland’s Future funding reform. His current budget proposal shorts public schools by \$140 million, with the bulk of cuts hitting schools that primarily serve Black students.ⁱⁱ

The General Assembly has sought to reduce the harm caused by the voucher program by requiring that private schools receiving public support comply with basic nondiscrimination requirements:

- In 2016, the General Assembly added protections to Gov. Hogan’s original private school funding proposal requiring that benefiting schools comply with state employment nondiscrimination law, and that they not discriminate based on race, color, national origin, or sexual orientation in student admission decisions.
- Gov. Hogan’s subsequent budget proposals have included the protections added in 2016.
- In 2019, the legislature expanded the 2016 protections to cover retention, expulsion, and any other

discriminatory action. The legislature also prohibited discrimination based on gender identity and expression.

- Gov. Hogan’s budget proposals submitted in 2020, 2021, and this year have omitted the 2019 protections, and the General Assembly has added them back in each time.

However, current litigation now puts these measures at risk:

- In December, the United States Supreme Court heard a case regarding a program in Maine that pays for private schools to enroll some students in rural areas. Plaintiffs claim that the First Amendment requires the program to partner with religious schools, including those that explicitly discriminate against LGBTQ students and employees.ⁱⁱⁱ While the Court has not yet handed down a decision, legal observers expect the Court to rule in favor of the plaintiffs.^{iv}
- Another federal court in December ruled that Maryland violated a religious school’s constitutional rights by barring it from participation in the BOOST program.^v The school’s handbook includes general language hostile to LGBTQ people and specifically states that transgender students must use facilities that do not match their gender. This requirement puts students in danger of sexual violence^{vi} and clearly violates the requirement that schools not “otherwise discriminate” against students based on gender identity.

There is a strong possibility that programs like BOOST will soon be legally required to fund schools that practice discrimination and put their own students in harm’s way. Senate Bill 401 would lock us into this situation by requiring annual appropriations well above the levels in Gov. Hogan’s budgets to date. This is a dangerous step in the wrong direction. To prevent public support for discriminatory schools, the best course of action is to cancel all funding for BOOST, now and forever.

The threat of effectively pro-discrimination requirements in the near future is not the only reason it is unwise to expand and mandate BOOST funding. Maryland’s constitutional obligation is to provide a free, high-quality *public* education to every child in the state, but policymakers have rarely provided the resources needed to keep that promise. Historically, students of color have borne the cost. The Blueprint for Maryland’s Future gives us a chance to do better – if we implement the plan faithfully. Senate Bill 401 requires an average of \$13 million per year in BOOST funding between fiscal years 2024 and 2027, and more down the line. This is nearly identical to the \$14 million in statewide implementation support for the Blueprint plan that is absent from the governor’s budget proposal. The question is, what do we as a state value?

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Budget and Taxation Committee make an unfavorable report on Senate Bill 401.

Equity Impact Analysis: Senate Bill 401

Bill summary

Senate Bill 401 would mandate annual funding for the so-called “Broadening Options and Opportunities for Students Today” (BOOST) private school voucher program, beginning at \$10 million in fiscal year 2024 and increasing to \$16 million per year in FY 2027 and thereafter.

Background

The fiscal year 2017 adopted budget created BOOST, a modified version of a private school funding proposal in Gov. Hogan's original budget. The state appropriated \$5 million for the program in FY 2017. The governor asked for increased funding in his next five budget proposals. The program receives \$10 million in the current budget year, and Gov. Hogan has proposed the same amount in his FY 2023 budget.

Data released in early 2017 showed that most students who received vouchers during the program's first year of operation already attended private schools, indicating that the program was not achieving its goal of assisting students in transitioning from public to private school. The General Assembly has since added guidelines to prioritize vouchers to students currently attending public schools.

The private school funding program in Gov. Hogan's FY 2017 budget proposal required participating schools to obey federal law prohibiting racial discrimination but did not include any other nondiscrimination protections. The General Assembly added a requirement that participating schools comply with state employment nondiscrimination law, which prohibits discrimination based on gender and sexual orientation, and prohibited participating schools from rejecting student applications based on race, color, national origin, or sexual orientation.

The General Assembly strengthened these protections in 2019, prohibiting discrimination based on gender identity or expression, and expanding the scope of protections to include retention, expulsion, and any other discriminatory decision.

On December 8, 2021, the United States Supreme Court heard oral arguments in the case *Carson v. Makin*, in which plaintiffs argue that the Constitution requires a private school funding program in Maine to partner with religious schools, including those that practice discrimination.

On December 14, 2021, a judge at the United States District Court for the District of Maryland ruled that Maryland violated the Constitution by barring a religious school from receiving funding through BOOST based on language in the school's handbook, which states opposition to same-gender marriage and rights for transgender people. The handbook also states that "faculty, staff and students are required to identify with, dress in accordance with, and use facilities associated with" the gender they were assigned at birth.

Equity Implications

The likelihood that federal courts will invalidate the current BOOST nondiscrimination protections potentially limits access to the program based on sexual orientation and gender identity and puts LGBTQ students who do participate at risk of discrimination and sexual violence.

Furthermore, mandating and expanding BOOST would use resources that could otherwise be used to support public schools. The state's history of education funding following the Great Recession – as well as the budget proposal Gov. Hogan submitted this year – that that underfunding of public schools disproportionately harms students of color, especially Black students:

- During the 2016–2017 school year, 52% of Black students in Maryland went to school in a district that was underfunded by at least 15% in comparison to the state's 2002 standards. Only 13% of white students went to school in a district this deeply underfunded.

- The governor’s FY 2023 budget proposal omits \$99 million in funding for Baltimore City schools through the Education Effort Adjustment. Three-quarters of students in Baltimore City schools are Black and nine out of ten are students of color.
- The governor’s FY 2023 budget proposal omits \$27 million in funding for Prince George’s County schools through the Education Effort Adjustment. More than half of students in Prince George’s County schools are Black and 19 out of 20 are students of color.
- The governor’s FY 2023 budget proposal fully funds direct aid to the state’s 22 other school districts. Altogether, one-quarter of the students in these districts are Black and just over half are students of color.

Impact

Senate Bill 401 would likely **worsen racial, ethnic, and gender (including sexual orientation and gender identity) inequity** in Maryland.

ⁱ MDCEP analysis of DLS funding adequacy data and National Center for Education Statistics enrollment data.

See “Adequacy of Education Funding in Maryland Since 2002,” Department of Legislative Services, 2019, http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnInnovEduc/2019_07-24_AdequacyDLS.pdf

ⁱⁱ Christopher Meyer, “Governor’s Budget Proposal Shorts Public Schools by \$140 Million,” Maryland Center on Economic Policy, 2022, <http://www.mdeconomy.org/governors-budget-proposal-shorts-public-schools-by-140-million/>

ⁱⁱⁱ Rachel Laser, “Do Taxpayers Have to Fund Religious Schools? The Supreme Court May Say Yes,” *The Washington Post*, December 5, 2021, <https://www.washingtonpost.com/opinions/2021/12/05/carson-v-makin-supreme-court-religious-education/>

^{iv} Jay Michaelson, “The Supreme Court Is Ready to Make Taxpayers Fund Religious Schools,” *New York Magazine*, December 8, 2021, <https://nymag.com/intelligencer/2021/12/supreme-court-ready-to-make-taxpayers-fund-religious-schools.html>

^v Taylor Deville and Alex Mann, “Federal Court Rules Maryland Violated Christian School’s Rights by Banning it from Voucher Program,” *The Baltimore Sun*, December 14, 2021, <https://www.baltimoresun.com/education/bs-md-bethel-christian-violated-rights-20211214-ouywlglqz5eaxc4dfbqxmglhm-story.html>

^{vi} “Transgender Teens with Restricted Bathroom Access at Higher Risk of Sexual Assault,” Harvard T.H. Chan School of Public Health, 2019, <https://www.hsph.harvard.edu/news/hsph-in-the-news/transgender-teens-restricted-bathroom-access-sexual-assault/>