

To: Members of the Pennsylvania General Assembly
From: Advocates for Children with Disabilities and for High Quality Public Education
Date: September 11, 2017
Re: Opposition to House Bill 1717

As advocates for high quality education for all children in Pennsylvania and as advocates for children with disabilities, we write with grave concern about House Bill 1717. HB 1717's sponsorship memorandum describes it as "creat[ing] education savings accounts for students with disabilities," with the intention of "guarantee[ing] our students the opportunity for an education that best fits their needs."

In reality, HB 1717 creates an ill-conceived voucher program that applies to hundreds of thousands of children, whether they have disabilities or not, and would devastate school systems around the Commonwealth. We urge you to oppose it.

Children with disabilities should not serve as a Trojan horse for what this bill signifies: a national effort to authorize vouchers.¹ The bill actually enshrines discrimination against Pennsylvania children, making clear that private schools accepting vouchers may discriminate on the basis of gender, religion, and most ironically, disability status. At a time when the Legislature is failing to fund public education adequately, and during an era of great upheaval in this nation, depriving classrooms of more funding, while enshrining discrimination against our children, is the wrong path. It will harm all children, including children with disabilities.

HB 1717 will Devastate Public Schools

HB 1717 will shift millions of dollars of education funding from public to private schools, taking the Legislature further from its constitutional obligation to support and maintain a thorough and efficient system of public schools. *See* Pa. Const. Article III, § 14.

HB 1717's proposed voucher regime operates by providing a voucher to any of the following students: children with identified disabilities; children living within the catchment boundaries of a school at sixty or under in Pennsylvania's school performance profile (SPP); children of service members either on active duty or killed in the line of duty; and children who

¹ HB 1717 was substantially copied from model legislation published by the Foundation for Excellence in Education, a voucher-advocacy organization which counted on Betsy DeVos as a longtime director and donor, and which placed multiple former staffers at the Devos-led Department of Education. *See* Alyson Klein, *Former Jeb Bush Foundation Staffers Working at Trump's Ed. Dept.*, Education Week, Mar. 9, 2017, http://blogs.edweek.org/edweek/campaign-k-12/2017/03/jeb_bush_foundation_staffers_trump_education_department.html; Model Legislation, Foundation for Excellence in Education, available: <http://www.excelined.org/wp-content/uploads/The-Education-Savings-Account-Act-Students-w-Disabilities-Model-Legislation-12.20141.pdf>. A similar bill is expected to be introduced in the Pennsylvania Senate. Whether or not the senate bill uses the fig leaf of helping children with disabilities to introduce vouchers, we expect it to be substantially similar to HB 1717.

received a voucher the previous year. H.B. 1717, Printer No. 2302, § 2601-J(1)-(5) (Aug. 16, 2017). It funds the voucher by subtracting a per capita share of basic education funds directly from that child's "prior school district," and instead sends those funds to the private school where a child enrolls. *Id.* § 2601-J(d).² That school district is responsible for funding that child's voucher until he or she graduates from high school. *Id.* § 2601-J(g).³ This structure will devastate public schools.

While the bill is ostensibly targeted to children with disabilities, its true target appears to be public education itself. It does so by targeting schools that do not perform well on state assessments. And as is expected in a system that is underfunded by billions of dollars, there are many of them: 645 schools failed to reach an SPP of sixty last year. Even that, however, discounts the scope of the impact of HB 1717. Schools are part of school districts, and it is those entire school districts, rather than individual schools, that would suffer as funding is transferred from public to private institutions. Thus, a reasonable expectation is that SPP scores for other schools in affected school districts will also drop. This, too, is of consequence: another 741 schools have SPP scores between sixty and seventy, and therefore would be at significant risk of losing funds as resources dwindle, teachers are laid off, and classroom supports are removed. Together, this is close to half of the Commonwealth's public schools.⁴

Nor would HB 1717's voucher allow poor children to attend the private schools of their choice. That is, while financially devastating to the classrooms of the school districts from which it will come, the voucher will not pay close to the tuition of private schools. A child in Philadelphia, for example, would receive a voucher of approximately \$4,827.⁵ While this would

² Besides tuition, the voucher can be used for other educational services, including books, test prep, special education services, and fees to manage the vouchers themselves. *Id.* § 2601-J(c)(6).

³ Oddly, the original school district, as the "qualified student's prior school district," appears responsible for vouchers payments through high school, *even if the child moves to an entirely different school district.* *Id.* § 2601-J(d). This means that a kindergartner in the Erie School District could receive a voucher, immediately move across the Commonwealth to the Philadelphia suburbs, and the Erie school district would still be responsible for funding that child's voucher for the next eleven years.

⁴ The bill acknowledges there will be significant money wasted on the program itself that could otherwise be spent on education. First, by diverting ten percent of the voucher to administration costs, *id.* § 2601-J(d), then by authorizing the appropriation of even more administrative funds each year, *id.* § 2601-J(e)-(f). Thus, rather than spending money on educating children, HB 1717 sets the stage for instead spending money to administer the spending of money.

⁵ The bill is not written clearly, but it appears that the calculation for a voucher would be ninety percent of a school district's basic education funding divided by its average daily membership. *See id.* § 2601-J(d). To the extent it is instead calculated at 90% of the state's share of a charter school payment, as it could be interpreted, it would be even less.

shift millions of public dollars to families that already choose private schools, it will not give poor children the capacity to attend private schools, where tuitions regularly exceed \$25,000 per child.

It is perhaps for this reason that HB 1717, while banning discrimination on the basis of race or national origin, declines to ban religious discrimination, *see id.* § 2601-J (definitions) (prohibiting discrimination only on the basis of race, color, or national origin): because the only schools where such a voucher would be even close to sufficient are those schools subsidized by religious organizations. It is difficult to think of a time in recent years where the dangers of discrimination in our society have been more present. Yet that is what HB 1717 allows: it authorizes public money sent to private schools that discriminate on the basis of religion, disability, gender, and/or sexual identity.

Each child in this Commonwealth is legally entitled to a quality education, whether they worship in a church, temple, or mosque, or whether they do not worship at all. Devastating public education on the one hand, and then allowing discrimination on the other, is not a path that this Commonwealth should countenance.

HB 1717 will Harm Children with Disabilities

Given the stated purpose of HB 1717—assisting children with disabilities—it is important to note that this bill not only will remove all legal protections for those children, but will actively harm them. First, it will result in children with disabilities attending ever more underfunded public schools, while providing some of them with a voucher that is insufficient to pay private school tuition. Second, it allows private schools to discriminate against them because they have a disability. *See id.* § 2601-J. That is, under HB 1717, a private school may take vouchers from children without disabilities, while shutting the door on those children with them. *See id.* § 2601-J (definitions). Third, it disclaims that private schools are agents of the state or federal government, shielding private schools from compliance with foundational laws that protect exceptional children, such as the Individuals with Disabilities Education Act (IDEA).⁶ *Id.* § 2604(a). And fourth, it makes clear that a private school accepting vouchers needs to make no changes to its practices whatsoever, even if those practices make it impossible for children with disabilities to attend those schools. *Id.* § 2604(a).

Children with disabilities are legally entitled to an education that helps them achieve their vast potential. For some children, this means a considerable amount of resources must be allocated to help get them there, a need that often comes up against the reality of underresourced schools. But HB 1717 does not solve that problem. Instead, it makes it worse, by creating a system where children with disabilities will be in public schools even more underfunded than

⁶ Disclaiming rights under IDEA comes with profound costs to children with disabilities and their families. *See Dana Goldstein, Special Ed School Vouchers May Come With Hidden Costs*, N.Y. Times, Apr. 11, 2017, <https://www.nytimes.com/2017/04/11/us/school-vouchers-disability.html>.

they are today, subject to a voucher regime that legalizes discrimination against them. They deserve better.

Conclusion

The Commonwealth vastly underfunds its public schools, and has the largest funding gap between high wealth and low wealth school districts in the nation. This underfunding especially harms poor children, children of color, and children with disabilities. Yet it is these same groups of children who will have their schools undermined by the introduction of vouchers. We urge you to oppose HB 1717, and instead commit to your unflagging obligation to once and for all provide all children with the education they deserve, by fully funding public schools.

Very truly yours,

Michael Churchill
Dan Urevick-Ackelsberg
PUBLIC INTEREST LAW CENTER

Deborah Gordon Klehr
Reynelle Brown Staley
EDUCATION LAW CENTER

Peri Jude Radecic
DISABILITY RIGHTS PENNSYLVANIA

Jeannine H. Brinkley
PEAL CENTER

Maureen Cronin
THE ARC OF PENNSYLVANIA

Tanya Regli
THE ARC OF PHILADELPHIA

Susan Spicka
EDUCATION VOTERS OF PA

Pam Harbin
EDUCATION RIGHTS NETWORK

Donna Cooper
Tomea Sippio-Smith
PUBLIC CITIZENS FOR CHILDREN AND
YOUTH

Paulette Foster
Rachel Fielder Schlosser
PITTSBURGH LOCAL TASK FORCE ON
THE RIGHT TO EDUCATION

Lisa Snitzer
MENTAL HEALTH PARTNERSHIPS &
PARENT'S INVOLVED NETWORK

Cori Frazer
THE PITTSBURGH CENTER FOR
AUTISTIC ADVOCACY

James Wurster
Thomas Reinke
Andrea Kasper
NEW AVENUE FOUNDATION

Nancy Murray
THE ARC OF GREATER PITTSBURGH /
ACHIEVA