



**Testimony for the House Ways and Means Committee  
February 27, 2013**

**HB 1033 – Education – Taxpayers’ Savings Act**

**OPPOSE**

The ACLU of Maryland opposes HB 1033 and urges an unfavorable report. HB 1033 will siphon off millions of dollars from public education and divert it to pay parents to send their children to private schools. This bill establishes a system of vouchers for the first time in Maryland. We oppose this bill for several reasons. First, it is questionable whether this bill complies with the Maryland Constitution. Second, assuming it does, neither the state nor the counties should fund students to attend schools that do not have to abide by the same hard fought prohibitions against discrimination that public schools do.

**This bill may violate the Maryland Constitution**

Under Article VIII of the Maryland Constitution, the State must establish a “thorough and efficient system of free public schools.” Further, “The School Fund of the State shall be kept inviolate, and appropriated only for the purposes of education.”

It is unclear under HB 1033 whether it would be the state or the counties that are required to pay the parent to send their child to private school. In (F)(II) it appears that the state must pay the parents: “any funds used for reimbursement under this section shall be subtracted from the State financial assistance for public education to the county.” However, in (F)(3) and (4) it appears the county must pay the parents: “the county board shall remit payment to the parent...”

If it is to be the State that pays the parents, then under the constitution the monies can only be appropriated “for the purposes of education.” But once that money is paid to the parent, the parent is under no obligation to use that money for education. Thus, HB 1033 may fall afoul of Maryland constitutional requirements.

**Private schools can skirt civil rights laws that protect public school students and teachers from discrimination.**

Unlike public schools, private schools are not required to provide children with comprehensive protections against discrimination. Title VI of the Civil Rights Act prohibits discrimination in public schools on the basis of race, color, or national origin. Maryland state regulations require that all public schools students, regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability, have the right to educational environments that are safe, appropriate for academic achievement, and free from harassment. COMAR 13A.01.04.03.<sup>1</sup> Finally, pursuant to Md. Education Code

<sup>1</sup> Note that non-public schools that receive state funds must now adopt policies prohibiting bullying and harassment. However, this does not specify, as it does in COMAR 13A.01.04.03,

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Ann. § 7-101, “All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State.” Thus, public schools are not allowed to discriminate against any group of students and deny them admission. Private schools can, however, discriminate on any of these bases and have denied admission and expelled children on the basis of characteristics such as sexual orientation. Private schools are not accountable for the diversity of their student body, their graduation rates or achievement gaps, as public schools are. They have no obligation to educate low-income children.

Additionally, public schools also cannot discriminate against teachers on the basis of “race, religion, color, national origin, handicap, or sex.” Maryland Code Annotated, Education Article, § 6-104(b). Once again, however, this prohibition does not apply to private schools.<sup>2</sup>

### **Disability Discrimination**

Both the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 promote “inclusion” and require public schools to eliminate any barriers that would prevent a student from fully participating in the same programs and services offered to the general school population. The ADA requires all public entities, including schools, to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” However, private parochial schools run by churches are exempt from the ADA because it does not apply to religious organizations. Title III of the ADA, § 36.102(e).

Additionally, Section 504 of the Rehabilitation Act of 1973, a civil rights law that prohibits recipients of federal funding from discriminating against individuals with disabilities, applies only to public schools. This law does not apply to private schools not receiving federal funding. As it relates to public education, the law states that a school cannot place a student in segregated classes or facilities “solely by reason of her or his disability.” Students with disabilities must be given the same opportunities to participate in academic, nonacademic and extracurricular activities as their non-disabled peers. This law applies to public elementary and secondary schools, as well as other education entities. [Texas FIRST Project, The Americans with Disabilities Act (ADA), available at, <http://texasprojectfirst.org/ADA.html>].

While students attending private schools may be entitled to accommodations under the ADA Title III, but not Section 504, if that school does not receive any federal funding, private schools are required to provide only “reasonable accommodations,” meaning those that would not change the fundamental nature of the program or result in undue administrative hardships or costs. [Texas FIRST Project, The Americans with Disabilities Act (ADA), available at, <http://texasprojectfirst.org/ADA.html>].

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that the environment must be appropriate for academic achievement for the child regardless of various enumerated characteristics of the child, such as race and sexual orientation.

<sup>2</sup> A Catholic school in St. Louis recently fired a teacher because he was going to marry his partner. [http://www.stltoday.com/lifestyles/faith-and-values/tim-townsend/archdiocese-defends-firing-of-gay-st-louis-county-teacher/article\\_565171af-f822-5ff9-9346-8774ec565640.html](http://www.stltoday.com/lifestyles/faith-and-values/tim-townsend/archdiocese-defends-firing-of-gay-st-louis-county-teacher/article_565171af-f822-5ff9-9346-8774ec565640.html)

**Entanglement of church and state.** This bill would divert general funds to parents sending their children private schools, the primary beneficiaries of which are religious schools with religious curriculum, entangling the state in promoting religious education.

**Every dollar diverted to parents choosing to send their children to private schools is a dollar lost to the taxpayers of Maryland.**

Under HB 1033, it is unclear who is to pay the parent for the child to attend private school. But regardless of who pays, it is clear that public schools lose, as the money will be taken directly from public schools and sent to parents choosing to send their children to private school. Especially in this time of scarce resources and cutbacks in public education, we urge you not to divert education dollars to parents sending their children to private schools. While this bill is introduced under the guise of saving taxpayers money, it will divert necessary resources away from public education and towards unaccountable educational institutions without any regard for the quality of the programs receiving funding.

Additionally, there is no means test associated with the proposal in this bill meaning that families of wealth within this state would be able to benefit from this program for their children entering kindergarten in a private school despite the reality that their plans were always to place their child in a private school and they have the ability to pay the tuition without taxpayer assistance.

Finally, Maryland has spent millions of dollars and many years to ensure that its public school education is excellent. Indeed, Maryland was just named number one in public education, for the fifth year in a row. In so doing, the state has indicated many factors that are important to it, including building up schools with students in poverty and with special needs; accountability; and educating every child. Funding private schools with general funds abandons those principles. The General Assembly has recognized that, by refusing to pass the previous BOAST bills, and this committee should continue that commitment to excellent public education by giving this bill an unfavorable report.

For the foregoing reasons, we urge an unfavorable report on HB 1033.